

1 STRUCK LOVE BOJANOWSKI & ACEDO, PLC  
 Daniel P. Struck, AZ Bar #012377  
 2 (*admitted pro hac vice*)  
 Rachel Love, AZ Bar #019881  
 3 (*admitted pro hac vice*)  
 Nicholas D. Acedo, AZ Bar #021644  
 4 (*admitted pro hac vice*)  
 Ashlee B. Hesman, AZ Bar #028874  
 5 (*admitted pro hac vice*)  
 Jacob B. Lee, AZ Bar #030371  
 6 (*admitted pro hac vice*)  
 3100 West Ray Road, Suite 300  
 7 Chandler, Arizona 85226  
 Tel.: (480) 420-1600  
 8 Fax: (480) 420-1695  
 dstruck@strucklove.com  
 9 rlove@strucklove.com  
 nacedo@strucklove.com  
 10 ahesman@strucklove.com  
 jlee@strucklove.com

11 LAW OFFICE OF ETHAN H. NELSON  
 12 Ethan H. Nelson, CA Bar #262448  
 4 Park Plaza, Suite 1025  
 13 Irvine, California 92614  
 Tel.: (949) 229-0961  
 14 Fax: (949) 861-7122  
 ethannelsonesq@gmail.com

15 Attorneys for Defendant/Counter-Claimant  
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**  
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,  
 20 on behalf of themselves, and all others  
 similarly situated,

21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland  
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

**DEFENDANT’S RESPONSE TO  
 PLAINTIFFS’ SUPPLEMENTAL  
 BRIEF RE: MOTION FOR CLASS  
 CERTIFICATION**

Date: December 19, 2019  
 Time: 2:30pm  
 Courtroom: 4D  
 Judge: Honorable Janis L. Sammartino

1 CoreCivic, Inc., a Maryland  
2 corporation,  
3  
4 Counter-Claimant,  
5  
6 v.  
7  
8 Sylvester Owino and Jonathan Gomez,  
9 on behalf of themselves, and all others  
10 similarly situated,  
11  
12 Counter-Defendants.  
13  
14

15 When Plaintiffs filed their Complaint, they knew they did not have standing  
16 to pursue prospective equitable relief. They were no longer in ICE custody or  
17 detained in a CoreCivic facility. Yet, they filed their Complaint as is, and over the  
18 next 2½ years, made *no* attempt to voluntarily cure that jurisdictional defect, even  
19 when granted the opportunity to amend. Plaintiffs’ lack of individual standing  
20 prevented them from ever seeking prospective relief on behalf of any class. That  
21 they were aware of and accepted this legal impediment to classwide prospective  
22 relief is evidenced by their decision not to request certification pursuant to Rule  
23 23(b)(2), a prerequisite to certifying any class for prospective relief. They moved  
24 only to certify damages classes under Rule 23(b)(3), and have abandoned any claim  
25 for classwide prospective relief.

26 Plaintiffs’ argument now that they do have standing is without merit. The  
27 Supreme Court in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), did *not* recently  
28 overturn decades of standing jurisprudence; plaintiffs seeking prospective relief  
must still demonstrate that there is a real and immediate threat of a future injury.  
*Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018). Plaintiffs’  
proposed amendments to demonstrate standing also come too late. Not only is their  
original lack of standing incurable, but any amendment now is irrelevant. The  
class-certification deadline has expired. In addition, the proposed amendments do  
not establish standing for either individual or classwide prospective relief.

1 **I. PLAINTIFFS LACK STANDING TO PURSUE CLAIMS FOR**  
 2 **INDIVIDUAL PROSPECTIVE EQUITABLE RELIEF.**

3 Plaintiffs request prospective equitable relief for their claims under the  
 4 Trafficking Victims Protection Act, Dkt. 67, ¶¶ 46–48 (injunctive and declaratory  
 5 relief), the California Trafficking Victims Protection Act, *id.*, ¶¶ 58–60 (injunctive  
 6 and declaratory relief), and California’s Unfair Competition Law, *id.*, ¶¶ 69–70  
 7 (injunctive and “further equitable relief”).<sup>1</sup> *See Kwikset Corp. v. Superior Court*,  
 8 246 P.3d 877, 895 (Cal. App. 2011) (“Injunctions are ‘the primary form of relief  
 9 available under the UCL to protect consumers from unfair business practices,’  
 10 while restitution is a type of ‘ancillary relief.’”) (citation omitted).

11 “[T]o satisfy Article III’s standing requirements, a plaintiff must show (1) it  
 12 has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual  
 13 or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the  
 14 challenged action of the defendant; and (3) it is likely, as opposed to merely  
 15 speculative, that the injury will be redressed by a favorable decision.” *Friends of*  
 16 *the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000).  
 17 This is the “irreducible constitutional minimum of standing.” *Lujan v. Defenders of*  
 18 *Wildlife*, 504 U.S. 555, 560 (1992).

19 A plaintiff seeking prospective equitable relief must *also* show “‘a sufficient  
 20 likelihood that he will again be wronged in a similar way.’” *Bates v. United Parcel*  
 21 *Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (quoting *Lujan*, 504 U.S. at 560, and  
 22 *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). “That is, he must establish  
 23 a ‘real and immediate threat of repeated injury.’” *Fortyune v. Am. Multi-Cinema,*  
 24 *Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004) (quoting *O’Shea v. Littleton*, 414 U.S.  
 25 488, 496 (1974)); *see also San Diego Cty. Gun Rights Comm. v. Reno*, 98 F.3d  
 26 1121, 1126 (9th Cir. 1996) (prospective relief requires “a very significant

27 <sup>1</sup> The Complaint seeks “further equitable relief” for their claim under California’s  
 28 Minimum Wage Law, Dkt. 67, ¶ 75, and for their unjust enrichment claim, *id.*,  
 ¶ 128, but they do not define “equitable relief.”

1 possibility of future harm; it is insufficient for them to demonstrate only a past  
2 injury”). Thus, to recover any prospective relief, Plaintiffs must show that they  
3 were exposed to a “real and immediate threat” of a future injury at the time they  
4 filed their original Complaint. *See Nordstrom v. Ryan*, 856 F.3d 1265, 1270 n.2  
5 (9th Cir. 2017) (“[A] plaintiff must have standing at the time the complaint is  
6 filed.”).

7 Plaintiffs tacitly concede that there are no allegations in their original  
8 Complaint or their First Amended Complaint to support this showing. Instead, they  
9 argue that *Spokeo* relieved them of their duty to show a sufficient likelihood of  
10 future harm. *Spokeo* does not support this proposition. *Spokeo* involved a *damages*  
11 claim for an alleged violation of the Fair Credit Reporting Act,<sup>2</sup> and addressed  
12 whether a bare procedural violation of that statute satisfied the “concreteness”  
13 element of the “injury-in-fact” prong. 136 S. Ct. at 1545, 1549–50. The standing  
14 inquiry in this case, however, concerns a request for *prospective equitable* relief  
15 and whether Plaintiffs have established the sufficient-likelihood-of-future-harm  
16 prong. Nothing in *Spokeo* suggests that a plaintiff seeking prospective relief for a  
17 statutory violation is relieved from making this additional showing. *See Joslin v.*  
18 *Clif Bar & Co.*, 2019 WL 5690632, at \*2 (N.D. Cal. Aug. 26, 2019) (post-*Spokeo*  
19 case quoting *Bates* for the proposition, “In order to show they have standing to seek  
20 injunctive relief, Plaintiffs must ‘demonstrate that [they have] suffered or [are]  
21 threatened with a ‘concrete and particularized’ legal harm, *coupled with* a  
22 ‘sufficient likelihood that [they] will again be wronged in a similar way’”)  
23 (emphasis added); *Min Sook Shin v. Umeken, U.S.A., Inc.*, 2017 WL 6885378, at \*7  
24 (C.D. Cal. June 1, 2017) (same). Moreover, a statute does not automatically confer  
25 Article III standing simply because the statute authorizes prospective relief. *See*

26  
27 <sup>2</sup> “[I]njunctive and declaratory relief is not available to private plaintiffs under the  
28 FCRA.” *White v. Navy Fed. Credit Union*, 2018 WL 3729510, at \*7 (S.D. Cal.  
Aug. 3, 2018).

1 *Am. Civil Liberties Union v. Nat'l Sec. Agency*, 493 F.3d 644, 676 (6th Cir. 2007)  
2 (“The availability of a statutory claim, however, does not relieve the plaintiffs of  
3 the need to establish constitutional standing to litigate that claim.”); *Rivas v. Rail*  
4 *Delivery Serv., Inc.*, 423 F.3d 1079, 1083 (9th Cir. 2005) (“A federal statute,  
5 however, cannot confer standing on plaintiffs who do not meet Article III  
6 requirements.”).

7 Because Plaintiffs concede that they were no longer in a CoreCivic facility at  
8 the time they filed their original Complaint, and further acknowledge that they were  
9 not exposed to a significant risk of future harm at that time, they lacked standing to  
10 pursue any individual claim for prospective relief. *See Am. Civil Liberties Union of*  
11 *Nev. v. Lomax*, 471 F.3d 1010, 1015 (9th Cir. 2006) (“When evaluating whether  
12 [the standing] elements are present, we must look at the facts as they exist at the  
13 time the complaint was filed.”).

## 14 **II. THE PUTATIVE CLASSES CANNOT PURSUE PROSPECTIVE** 15 **EQUITABLE RELIEF.**

16 Classwide prospective equitable relief is also unavailable. Because Plaintiffs  
17 lacked standing to bring their own claims for prospective relief, they cannot bring  
18 claims for equitable relief on behalf of the putative classes. *See O’Shea*, 414 U.S.  
19 at 494 (“[I]f none of the named plaintiffs purporting to represent a class establishes  
20 the requisite of a case or controversy with the defendants, none may seek relief on  
21 behalf of himself or any other member of the class.”); *B.C. v. Plumas Unified Sch.*  
22 *Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999) (“A class of plaintiffs does not have  
23 standing to sue if the named plaintiff does not have standing.”); *Lucas v. Breg, Inc.*,  
24 212 F. Supp. 3d 950, 964 (S.D. Cal. 2016) (because “Plaintiffs do not have standing  
25 to pursue injunctive relief, ... that relief is also unavailable to the class”).

26 Standing aside, Plaintiffs did not move to certify any claims for prospective  
27 relief. Plaintiffs’ Motion for Class Certification *only* sought certification under  
28 Rule 23(b)(3). (*See* Dkt. 84 at 5–6; Dkt. 84-1 at 29–30; *see also* Dkt. 84-1 at 19

1 ["Here, Plaintiffs seek certification of the proposed class pursuant to Rule  
2 23(b)(3)[.]"] To certify a class seeking *prospective* relief, however, they were  
3 required to establish the elements of Rule 23(b)(2) ("the party opposing the class  
4 has acted or refused to act on grounds that apply generally to the class, so that final  
5 injunctive relief or corresponding declaratory relief is appropriate respecting the  
6 class as a whole"). See *Minnick v. City of Vacaville*, 2017 WL 4340263, at \*3  
7 (E.D. Cal. Sept. 29, 2017); *Barrett v. Wesley Fin. Group, LLC*, 2015 WL  
8 12910740, at \*7 (S.D. Cal. Mar. 30, 2015); *Yordy v. Plimus, Inc.*, 2013 WL  
9 5832225, at \*2 (N.D. Cal. Oct. 29, 2013).

10 Plaintiffs' Motion for Class Certification did not even mention Rule 23(b)(2),  
11 much less affirmatively satisfy its elements. Therefore, even if Plaintiffs had  
12 standing to bring individual claims for prospective relief, their standing is  
13 irrelevant. They never moved to bring claims for prospective relief on behalf of the  
14 class, and the time to certify any such claims has expired. (Dkt. 57, ¶ 8.)

### 15 **III. PLAINTIFFS' PROPOSED AMENDMENTS ARE FUTILE.**

16 To save their claims for prospective relief, Plaintiffs alternatively request  
17 leave to amend their First Amended Complaint to assert new facts purportedly  
18 supporting a significant risk of future harm or add an additional named plaintiff, or  
19 to conduct additional discovery to locate a suitable class representative. (Dkt. 114  
20 at 6–9.) These proposals are futile for several reasons.

21 First, as discussed, any amendments will not undo Plaintiffs' failure to seek  
22 certification of the putative classes pursuant to Rule 23(b)(2) in their Motion for  
23 Class Certification. They have already waived any classwide prospective relief.

24 Second, an amendment cannot cure Plaintiffs' lack of original individual  
25 standing. Again, a plaintiff's standing is determined at the time the complaint is  
26 filed, *Nordstrom*, 856 F.3d at 1270 n.2, and it is undisputed that Plaintiffs did not  
27 have standing at that time to seek prospective relief. Because standing is "central to  
28 [this Court's] subject matter jurisdiction," *Bates*, 511 F.3d at 985, any amendment

1 cannot cure this jurisdictional defect. *See Paradise Creations, Inc. v. UV Sales,*  
2 *Inc.*, 315 F.3d 1304, 1310 (Fed. Cir. 2003) (“Such a defect in standing cannot be  
3 cured after the inception of the lawsuit.”); *Viesti Assocs., Inc. v. Pearson Educ.,*  
4 *Inc.*, 2014 WL 1053772, at \*15 (D. Colo. Mar. 19, 2014) (“A party cannot attempt  
5 to amend defective jurisdictional facts once litigation has commenced.”); *Riverfront*  
6 *Landing Phase II Owners’ Ass’n v. Assurance Co. of Am.*, 2009 WL 1952002, at \*4  
7 (W.D. Wash. July 6, 2009) (“Because standing is determined at the time the  
8 complaint is filed, a lack of standing cannot be retroactively cured by later  
9 occurring events.”).

10 Similarly, an amendment to add a new class representative cannot resurrect  
11 the class claims for prospective relief. *See Lierboe v. State Farm Mut. Auto. Ins.*  
12 *Co.*, 350 F.3d 1018, 1023 (9th Cir. 2003) (holding that the lack of standing cannot  
13 be cured by amendment to substitute “another [class] representative”); *Hill v. Cty.*  
14 *of Montgomery*, 2018 WL 2417839, at \*5 (N.D.N.Y. May 29, 2018) (quoting  
15 *Police & Fire Ret. Sys. of City of Detroit v. IndyMac MBS, Inc.*, 721 F.3d 95, 111  
16 (2d Cir. 2013)) (holding that a putative class member’s “ability to join the suit is  
17 foreclosed by the ‘long recognized’ rule that ‘if jurisdiction is lacking at the  
18 commencement of a suit, it cannot be aided by the intervention of a plaintiff with a  
19 sufficient claim’”); *Almeida v. Google, Inc.*, 2009 WL 3809808, at \*2 (N.D. Cal.  
20 Nov. 13, 2009) (“[W]here the original named plaintiff lacks standing, a new  
21 plaintiff with standing cannot step in to save the lawsuit from dismissal.”).<sup>3</sup>

22  
23 <sup>3</sup> CoreCivic notes that “this is not a mootness case, in which substitution or  
24 intervention might have been possible.” *Lierboe*, 350 F.3d at 1023. Substituting a  
25 class representative may have been proper only if either Plaintiff had standing at the  
26 outset of the litigation, the class was certified, and *then* their claim subsequently  
27 became moot. *Id.* at 1023 n.6. But neither Plaintiff had original standing and no  
28 class is certified. Thus, substitution is not possible. *See Garcia v. Lane Bryant, Inc.*,  
2012 WL 293544, at \*4 (E.D. Cal. Jan. 31, 2012); *Velazquez v. GMAC Mortg.*  
*Corp.*, 2009 WL 2959838, at \*3 (C.D. Cal. Sept. 10, 2009). Moreover, former  
detainee Achiri Geh would not be a proper substitute anyway. Although he was  
detained at OMDC at the time the Complaint was filed, he admits that he is not  
*currently* detained there or in ICE custody. (Dkt. 144-3, ¶¶ 2, 16.) Therefore, he has  
no standing either, and his status as a *putative* class member does not somehow

1 Third, Plaintiffs do not even try to meet their burden under Rule 15 for  
2 amending pleadings. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (a court  
3 considering leave to amend should consider (1) undue delay, (2) bad faith,  
4 (3) futility of amendment, and (4) prejudice to the opposing party). The fact that  
5 they so casually propose adding named plaintiffs/allegations and conducting  
6 additional discovery to find a proper class representative—nearly 2½ years after  
7 filing their original Complaint and eight months after the class discovery  
8 deadline—completely undermines: (1) their argument that the Court should find  
9 CoreCivic’s personal-jurisdiction defense untimely, Dkt. 134 at 10–16; (2) their  
10 demand for strict application of Rules 12(c) and 56(d), Dkt. 134 at 17–19; Dkt. 141  
11 at 7–14; their premature request for partial summary judgment, Dkt. 97; and their  
12 opposition to CoreCivic’s request to conduct additional merits discovery before  
13 responding to their motion for partial summary judgment, Dkt. 141 at 7–14. A  
14 district court’s exercise of discretion should work both ways.

15 Fourth, Plaintiffs’ proposed amendments fall woefully short of establishing a  
16 “real and immediate threat of repeated injury.” *Fortyune*, 364 F.3d at 1081. “[T]he  
17 threat of injury must be ‘actual and imminent, not conjectural or hypothetical.’”  
18 *Davidson*, 889 F.3d at 967 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488,  
19 493 (2009)). “In other words, the ‘threatened injury must be certainly impending to  
20 constitute injury in fact’ and ‘allegations of possible future injury are not  
21 sufficient.’” *Id.* (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013)).

22 Owino does not provide a clear picture of his immigration status, but it  
23 appears that he is currently released on bond pending a determination of his asylum  
24 application. (Dkt. 144-1, ¶ 5.) *See also Owino v. Holder*, 771 F.3d 527 (9th Cir.  
25 2014) (recounting Owino’s immigration status); [https://thehill.com/opinion/  
26 immigration/377162-i-spent-a-decade-in-immigration-detention](https://thehill.com/opinion/immigration/377162-i-spent-a-decade-in-immigration-detention) (noting that a bond

27 grandfather him in and confer original standing. *See Wilbur v. City of Mount*  
28 *Vernon*, 2011 WL 13101827, at \*2 (W.D. Wash. Oct. 17, 2011).



1 was posted on Owino’s behalf). Owino “believe[s] that there is a high risk I.C.E.  
2 can and will attempt to detain [him] again, and should I.C.E. detain [him], [he]  
3 believe[s] that [he] would be re-housed in OMDC ... [and] again be exposed to  
4 CoreCivic’s policies and practices concerning detainee labor.” (Dkt. 144-1, ¶ 11.)  
5 This belief is grounded in (1) “the increase in immigration ‘enforcement’ by the  
6 Trump Administration and its various anti-immigrant policies,” as recited in an  
7 April 21, 2019 New York Times article, and (2) his paranoia that ICE will “make  
8 an example” out of him for filing this lawsuit. (Dkt. 144 at 6; Dkt. 144-1, ¶¶ 8–9.)

9 Gomez states that he has a green card and has “lawful status in the United  
10 States,” but asserts that “there is no guarantee that [he] will not be wrongfully  
11 detained” by ICE and re-housed in a CoreCivic facility. (Dkt. 144-2, ¶¶ 5–7, 12–  
12 13.) Like Owino, Gomez’s belief is grounded in the publication’s description of  
13 the Trump Administration’s immigration policies, and his paranoia about ICE  
14 retaliation for his participation in this lawsuit. (Dkt. 144-2, ¶¶ 9–10.)

15 These hypothetical, subjective concerns are nothing more than conjecture.  
16 Plaintiffs provide nothing to show that their arrest—followed by their detention at  
17 OMDC, or any other CoreCivic facility—is “actual and imminent” and “certainly  
18 impending.” *Davidson*, 889 F.3d at 967. To the contrary, Owino has been out of  
19 ICE custody for four years, Gomez has been out of ICE custody for six years, and  
20 neither has been arrested or detained by ICE since—even in the 2½ years after  
21 filing this lawsuit.<sup>4</sup> (Dkt. 144-1, ¶ 3; Dkt. 144-2, ¶ 3.) Even if they are placed back  
22 into ICE custody at some point (e.g., because they violate the conditions of their  
23 bond or green card), they provide no support for their assertion that they will be  
24 detained at OMDC, much less any CoreCivic facility. Indeed, of the 135

25 \_\_\_\_\_  
26 <sup>4</sup> The New York Times article Plaintiffs reference discusses only the Trump  
27 Administration’s alleged policy of *deporting* immigrants who have been denied  
28 asylum and have a standing deportation order against them. (Exhibit 1.) It does not  
describe a policy of targeting, arresting, and detaining people of color, as Plaintiffs  
allege. (Dkt. 144-1, ¶ 8; Dkt. 144-2, ¶ 9.) Neither Plaintiff alleges that they have a  
standing deportation order.

1 immigration detention facilities in the country, [https://www.ice.gov/detention-](https://www.ice.gov/detention-facilities)  
2 [facilities](https://www.ice.gov/detention-facilities), CoreCivic *currently* operates approximately only 16 of them. (Dkt. 118-  
3 2, ¶¶ 4–6.) *See also* <http://www.corecivic.com/facilities>. Plaintiffs’ speculative  
4 assertions do not meet their high burden. *See Mendia v. Garcia*, 165 F. Supp. 3d  
5 861, 895 (N.D. Cal. 2016) (“Although Plaintiff articulates his fear of being subject  
6 to another immigration detainer, he does not explain why or how this is likely to  
7 occur again. ... Plaintiff offers no facts suggesting it is likely that ICE officials will  
8 issue another immigration detainer on him. For instance, there are no allegations  
9 ICE officials have continued to question his immigration status, have sought  
10 additional detainers on him, or even had any contact with him at all since his  
11 release from custody in 2009.”); *see also Lyons*, 461 U.S. at 108 (holding that it “is  
12 no more than conjecture to suggest that in every instance of a traffic stop, arrest, or  
13 other encounter between the police and a citizen, the police will act  
14 unconstitutionally and inflict injury without provocation or legal excuse. And it is  
15 speculation to assert either that Lyons himself will again be involved in one of  
16 those unfortunate instances, or that he will be arrested in the future and provoke the  
17 use of a chokehold by resisting arrest, attempting to escape, or threatening deadly  
18 force or serious bodily injury”); *O’Shea*, 414 U.S. at 497 (“[W]e are nonetheless  
19 unable to conclude that the case-or-controversy requirement is satisfied by general  
20 assertions or inferences that in the course of their activities respondents will be  
21 prosecuted for violating valid criminal laws. We assume that respondents will  
22 conduct their activities within the law and so avoid prosecution and conviction as  
23 well as exposure to the challenged course of conduct said to be followed by  
24 petitioners.”); *Diamond v. Corizon Health, Inc.*, 2016 WL 7034036, at \*5 (N.D.  
25 Cal. Dec. 2, 2016) (holding that a former detainee did not have standing to bring  
26 injunctive relief claim where the alleged threat of future injury first required his  
27 arrest and placement in jail).

28

1 Plaintiffs misplace reliance on the unusual facts in *Creedle v. Miami-Dade*  
2 *County*, 349 F. Supp. 3d 1276 (S.D. Fla. 2018), to support their allegations. In  
3 *Creedle*, the plaintiff, a U.S. citizen was mistakenly arrested, placed in  
4 administrative removal proceedings, and then released by the government once it  
5 realized he was a U.S. citizen. *Id.* at 1282. Two years later, the plaintiff was re-  
6 arrested pursuant to an ICE detainer and then released after the government again  
7 realized he was a U.S. citizen. *Id.* The plaintiff sued to enjoin the county’s blanket  
8 policy of arresting people pursuant to an immigration detainer. *Id.* at 1286. The  
9 district court ruled that the plaintiff had standing because he had been wrongly  
10 detained for alleged immigration purposes twice in two years, which suggested that  
11 he was “susceptible to being held pursuant to a detainer in the future.” *Id.* at 1288.  
12 In this case, Owino was detained only one time; he does not allege that it was  
13 unlawful; and he has not been detained since his release four years ago. (Dkt. 144-  
14 1, ¶ 3.) Gomez was also detained only once and, although he claims that his  
15 detention was “wrongful,” Dkt. 144-2, ¶¶ 3–6, he does not explain the  
16 circumstances or provide any verifiable proof that it was unlawful (like the plaintiff  
17 in *Creedle*). Moreover, Gomez has not been detained since his release six years  
18 ago. The plaintiff in *Creedle* was arrested *twice* in two years and he *did* establish  
19 that they were both in error.

20 **IV. PLAINTIFFS’ SUPPLEMENTAL BRIEF CONTAINS AT LEAST**  
21 **TWO MISSTATEMENTS.**

22 Plaintiffs assert that CoreCivic has “effectively blocked Plaintiffs’ counsel  
23 from accessing and interviewing presently detained putative class members.” (Dkt.  
24 144 at 9–10.) Not true. CoreCivic’s counsel simply informed Plaintiffs’ counsel  
25 that they could not conduct detainee interviews during a scheduled facility  
26 inspection, but that they could arrange interviews through the normal facility  
27 channels. (Exhibit 2.) Owino and Gomez also claim that they were detained at  
28 OMDC. (Dkt. 144-1, ¶ 3; Dkt. 144-2, ¶ 3.) These assertions are false as well.

1 OMDC did not begin accepting detainees until October 15, 2015, after both  
2 Plaintiffs were already out of ICE custody. (Exhibit 3; Dkt. 144-1, ¶ 3 [Owino  
3 released from ICE custody on March 9, 2015]; Dkt. 144-2, ¶ 3 [Gomez released  
4 from ICE custody on September 18, 2013].)

5 **CONCLUSION**

6 The Court should find that Plaintiffs do not have standing to seek prospective  
7 equitable relief for themselves or the putative classes.

8 Dated: November 22, 2019

9  
10 By s/ Nicholas D. Acedo

---

11 Daniel P. Struck  
12 dstruck@strucklove.com  
13 Rachel Love  
14 rlove@strucklove.com  
15 Nicholas D. Acedo  
16 nacedo@strucklove.com  
17 Ashlee B. Hesman  
18 ahesman@strucklove.com  
19 Jacob B. Lee  
20 jlee@strucklove.com  
21 STRUCK LOVE BOJANOWSKI & ACEDO,  
22 PLC

23  
24 Ethan H. Nelson  
25 LAW OFFICE OF ETHAN H. NELSON  
26 ethannelsonesq@gmail.com

27 Attorneys for Defendant/Counter-  
28 Claimant CoreCivic, Inc.

1 STRUCK LOVE BOJANOWSKI & ACEDO, PLC  
 Daniel P. Struck, AZ Bar #012377  
 2 (*admitted pro hac vice*)  
 Rachel Love, AZ Bar #019881  
 3 (*admitted pro hac vice*)  
 Nicholas D. Acedo, AZ Bar #021644  
 4 (*admitted pro hac vice*)  
 Ashlee B. Hesman, AZ Bar #028874  
 5 (*admitted pro hac vice*)  
 Jacob B. Lee, AZ Bar #030371  
 6 (*admitted pro hac vice*)  
 3100 West Ray Road, Suite 300  
 7 Chandler, Arizona 85226  
 Tel.: (480) 420-1600  
 8 Fax: (480) 420-1695  
 dstruck@strucklove.com  
 9 rlove@strucklove.com  
 nacedo@strucklove.com  
 10 ahesman@strucklove.com  
 jlee@strucklove.com

11 LAW OFFICE OF ETHAN H. NELSON  
 12 Ethan H. Nelson, CA Bar #262448  
 4 Park Plaza, Suite 1025  
 13 Irvine, California 92614  
 Tel.: (949) 229-0961  
 14 Fax: (949) 861-7122  
 ethannelsonesq@gmail.com

15 Attorneys for Defendant/Counter-Claimant  
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**  
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,  
 20 on behalf of themselves, and all others  
 similarly situated,

21 Plaintiff,

22 v.

23 CoreCivic, Inc., a Maryland  
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

**DECLARATION OF NICHOLAS D.  
 ACEDO**

Date: December 19, 2019

Time: 2:30pm

Courtroom: 4D

Judge: Honorable Janis L. Sammartino

1 CoreCivic, Inc., a Maryland  
 2 corporation,  
 3  
 4 Counter-Claimant,  
 5  
 6 v.  
 7  
 8 Sylvester Owino and Jonathan Gomez,  
 9 on behalf of themselves, and all others  
 10 similarly situated,  
 11  
 12 Counter-Defendants.

13 I, NICHOLAS D. ACEDO, make the following Declaration:

14 1. I am over the age of 18 years and have personal knowledge of and am  
 15 competent to testify to the matters set forth in this Declaration.

16 2. I am counsel for Defendant CoreCivic.

17 3. Attached as Exhibit 1 is a true and correct copy of Christina  
 18 Golbaum’s article, “I Don’t Want to Die’: Asylum Seekers, Once in Limbo, face  
 19 Deportation Under Trump,” published in the New York Times on April 21, 2019,  
 20 and accessed and printed from [www.nytimes.com](http://www.nytimes.com) on November 18, 2019.

21 4. Attached as Exhibit 2 is a true and correct copy of an e-mail sent on  
 22 October 17, 2018 from co-counsel, Jacob Lee, to Plaintiffs’ counsel Alan Ouellette  
 23 and Geoffrey Raux.

24 5. Attached as Exhibit 3 is a true and correct copy of an October 15, 2015  
 25 Letter from Contracting Officer Deborah M. Johnson to Bart VerHulst, which was  
 26 previously produced in this matter bearing production number (CCOG00006335).

27 I declare under penalty of perjury that the foregoing is true and correct to the  
 28 best of my knowledge.

EXECUTED this 22nd day of November, 2019 at Chandler, Arizona.

s/ Nicholas D. Acedo  
 \_\_\_\_\_  
 Nicholas D. Acedo

3644032.1

1 STRUCK LOVE BOJANOWSKI & ACEDO, PLC  
 Daniel P. Struck, AZ Bar #012377  
 2 (*admitted pro hac vice*)  
 Rachel Love, AZ Bar #019881  
 3 (*admitted pro hac vice*)  
 Nicholas D. Acedo, AZ Bar #021644  
 4 (*admitted pro hac vice*)  
 Ashlee B. Hesman, AZ Bar #028874  
 5 (*admitted pro hac vice*)  
 Jacob B. Lee, AZ Bar #030371  
 6 (*admitted pro hac vice*)  
 3100 West Ray Road, Suite 300  
 7 Chandler, Arizona 85226  
 Tel.: (480) 420-1600  
 8 Fax: (480) 420-1695  
 dstruck@strucklove.com  
 9 rlove@strucklove.com  
 nacedo@strucklove.com  
 10 ahesman@strucklove.com  
 jlee@strucklove.com

11 LAW OFFICE OF ETHAN H. NELSON  
 12 Ethan H. Nelson, CA Bar #262448  
 4 Park Plaza, Suite 1025  
 13 Irvine, California 92614  
 Tel.: (949) 229-0961  
 14 Fax: (949) 861-7122  
 ethannelsonesq@gmail.com

15 Attorneys for Defendant/Counter-Claimant  
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**  
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,  
 20 on behalf of themselves, and all others  
 similarly situated,

21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland  
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

**INDEX TO EXHIBITS**

1 CoreCivic, Inc., a Maryland  
 2 corporation,  
 3  
 4 Counter-Claimant,  
 5  
 6 v.  
 7  
 8 Sylvester Owino and Jonathan Gomez,  
 9 on behalf of themselves, and all others  
 10 similarly situated,  
 11  
 12 Counter-Defendants.  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

EXHIBIT	DESCRIPTION	PAGES
1	“I Don’t Want to Die’: Asylum Seekers, Once in Limbo, face Deportation Under Trump”, published in the New York Times on April 21, 2019	001–008
2	October 17, 2018 e-mail from Jacob Lee to Alan Ouellette and Geoffrey Raux	009–010
3	October 15, 2015 Letter from Deborah M. Johnson to Bart VerHulst (CCOG00006335)	011



**EXHIBIT 1**

**EXHIBIT 1**



Subscribe

Log in

ADVERTISEMENT

***‘I Don’t Want to Die’:  
Asylum Seekers, Once in  
Limbo, Face Deportation  
Under Trump***



Indra Sihotang, 52, with his wife and their children in their Queens home. Mr. Sihotang, an asylum seeker, was granted a temporary reprieve from deportation by the Obama administration. President Trump revoked that safeguard. Elias Williams for The New York Times

By Christina Goldbaum

April 21, 2019



This is your one article preview.  
Log in or create a free account to read more articles each month.

*[What you need to know to start the day: [Get New York Today in your inbox.](#)]*

Indra Sihotang was desperate to stay in New York. Minutes from being deported to Indonesia, the 52-year-old father clung to a chair bolted to the floor at Kennedy International Airport, struggling against four immigration officers trying to tear him away.

By the end of the confrontation, his face was bloody and bruised. But neither Mr. Sihotang, nor another immigrant in the officers' custody who watched the incident unfold, was allowed onto the plane after the pilot raised security concerns.

"I kept trying to explain to them that the conditions in my country are very bad now," Mr. Sihotang said. "I was telling them, 'I don't want to die there.'"

Mr. Sihotang had lost his fight to receive asylum in the United States a decade ago, a decision he did not appeal after he and thousands like him were granted a temporary reprieve from deportation by the Obama administration. Days after assuming office, President Trump revoked that protection, making Mr. Sihotang and thousands of other asylum seekers suddenly eligible for deportation, though many did not realize it.

ADVERTISEMENT

Even as Mr. Trump has sought in recent days to [limit who can apply for asylum](#), and to [expand indefinite detention for asylum seekers](#), his administration has with little public notice been carrying out a crackdown on people who asked for asylum, did not receive it and remained in the United States.

The policy, which often involves seeking out immigrants who have been in the country for years in a legal gray area, shows how the Trump administration aims to reverse what it believes are the misguided policies of the Obama administration.

Immigration agents have been especially active in New York City. Deportations of immigrants with no criminal convictions, including asylum seekers with years- or decades-old deportation orders, rose to 1,144 in the 2018 federal fiscal year from 313 in 2016, a 266 percent increase, according to a [recent report](#) from the city comptroller.

That is the largest percentage increase of any Immigration and Customs Enforcement field office in the country.

The Trump administration said ICE agents are following the law in trying to return asylum seekers who have lost their cases on the merits and have no right to remain in the country.

But as these people are caught in a deportation dragnet, they risk being sent to countries where the persecution threats they face are even greater than when they fled to the United States, asylum seekers and lawyers say.

In the final years of the Obama administration, immigration judges were instructed to use prosecutorial discretion to grant some undocumented immigrants, such as asylum seekers who had lost their cases, the ability to stay and work in the United States legally as long as they regularly checked in with ICE.

These enforcement policies were designed to focus ICE's limited resources on deporting unauthorized immigrants who had criminal convictions, recently crossed the border or posed a threat to national security.

Until Mr. Trump came into office, asylum seekers like Mr. Sihotang "had no reason to try to reopen their asylum case because they were permitted to stay and work in this country," Amber Gracia, an immigration lawyer in Texas, said. "When the government suddenly seeks removal, these people are caught off guard."

She questioned why agents were focusing on deporting undocumented immigrants who had not broken the law, rather than focusing on violent criminals in the country illegally.

ICE officials said that as long as there was a standing deportation order for an individual, there would be legal grounds to take that person into custody.

"The U.S. government provides all those in removal proceedings with an opportunity to apply and be considered for relief from removal," an ICE spokeswoman, Rachael Yong Yow, said in a statement. "If an immigration judge finds an individual ineligible for any form of relief, the judge will issue a final order of removal, which ICE carries out in accordance with applicable U.S. law."

ADVERTISEMENT

She said she could not comment on specific cases.

After losing his original asylum case five years ago, Mr. Sihotang lived and worked legally in New York City and watched as the persecution of Christians like him intensified in Indonesia.

When he arrived for his biannual check-in with ICE — a condition of his reprieve — in summer 2017, he said he had thought that it would proceed like every other: He would update his home address, provide his work address and confirm that he had not been arrested or convicted of a crime.



In 2017, Mr. Sihotang clung to a chair at Kennedy International Airport and struggled against immigration officers trying to tear him away. Elias Williams for The New York Times

But this time, the ICE officer asked him to renew his passport and return to the ICE office. When he returned with the new passport, ICE took him into custody.

Only when ICE drove him to Kennedy Airport four weeks later did Mr. Sihotang realize why the ICE officer had requested that he renew his passport: The plan was to put him on a commercial flight to Indonesia.

“I was shocked,” Mr. Sihotang said. “I was thinking about my kids. I told them, ‘I’ve got four kids and my family. How will they survive without me?’”

Months after the confrontation at the boarding gate last year, ICE again tried to deport Mr. Sihotang. But this time, as he sat in a van minutes away from the airport, an ICE officer received a call telling him to stop the

deportation.

ADVERTISEMENT

A judge had determined Mr. Sihotang faced credible fears of persecution in Indonesia and reopened his asylum case, which remains unresolved.

The asylum seeker who watched Mr. Sihotang's first airport confrontation requested that he be identified only by his nickname, Neo, and that his home country not be named for fear of persecution. He was deported from New York weeks after that encounter, despite last-minute attempts to reopen his asylum case.

"I didn't do anything criminal," Neo said, breaking into tears. "I didn't do anything wrong, then suddenly they just sent me back."

One aspect of Neo's asylum case, he and his lawyer said, was a medical condition he had developed for which he needed daily medication unavailable in his home country. When he boarded his deportation flight to East Asia, he said he had three weeks' worth of the medication left. So, he said, he started to ration it: Take one pill. Skip a day. Take another.

"I was worried I was going to die," he said.

His only hope was his lawyer in the United States, who had filed an appeal to the Board of Immigration Appeals, the highest immigration court in the country.

The board determines whether an asylum seeker's claim has new merits and can issue an order preventing ICE from deporting an immigrant while that decision is made.

Since Mr. Trump came into office, more immigrants are making requests to the board to temporarily prevent a deportation.

ADVERTISEMENT



But the denial rate for those requests has sharply increased, according to analysis by the Benjamin N. Cardozo School of Law in New York.

Steven Stafford, a spokesman for the Justice Department, said judges on the board “apply the law to the facts of the case before them.”

When the board grants these requests, it is often only hours before an immigrant is scheduled to board a deportation flight, lawyers say. Some asylum seekers have even had their cases reopened after they have been deported.

Last spring, Neo was brought back to the United States by ICE after the board agreed to reopen his asylum case.

Still, not everyone is as lucky.

Immigration lawyers pointed to the circumstances of a Bangladeshi man who requested that he be identified only by his given name, Mahbub, because of an unresolved asylum case. He was granted permission to stay in the United States until the board reconsidered his case. He had sought asylum on the grounds that he was being persecuted over his political affiliation.

But the panel’s decision, which arrived in his lawyer’s inbox at 9 a.m., came four hours too late: At 5 a.m., he had been put on a flight to Bangladesh.

When he arrived in the Bangladeshi capital, Dhaka, he said he called his mother who, distraught, told him that he could not come to their home. One of his friends in the opposition party, in which Mahbub was an activist, had been arrested in the months before his return.

ADVERTISEMENT

Fearing he faced the same fate, Mahbub, 36, said that he went into hiding. Months later, he paid a smuggler to help make his way to France, where he sought asylum.

“I’m just happy I stayed alive,” Mahbub said.

Follow Christina Goldbaum on Twitter: @cegoldbaum.

A version of this article appears in print on April 22, 2019, Section A, Page 1 of the New York edition with the headline: Asylum Seekers Got Relief. Then ICE Moved In.. Order Reprints | Today’s Paper | Subscribe

Read 76 Comments

**EXHIBIT 2**

**EXHIBIT 2**

**From:** [Jacob Lee](#)  
**To:** [AQuellette@foley.com](mailto:AQuellette@foley.com); [GRaux@foley.com](mailto:GRaux@foley.com); [WDelValle@foley.com](mailto:WDelValle@foley.com)  
**Cc:** [Owino Team](#)  
**Subject:** Owino - ESI Meet and Confer  
**Date:** Wednesday, October 17, 2018 5:25:11 PM  
**Attachments:** [image001.gif](#)  
[image002.png](#)  
[DEF Proposed ESI Search Terms.pdf](#)

---

Alan and Geoff,

Our proposed search terms are attached for your review, as we discussed this morning. The list of custodians included with the search terms is the same list we previously sent you.

We hope to be able to provide you with the date ranges during which ICE detainees were housed at those facilities that have not housed ICE detainees continuously for the past 10 years soon, as well as the job titles and tenures for the FSC custodians we listed.

This will also confirm that we are not doing the site visit at OMDC on Tuesday 10/30 at 1:30 p.m. Pacific. It will further confirm the objections we discussed during the call, namely:

1. We cannot allow Plaintiffs' counsel to bring their own cameras—whether still or video—into the facility, as these pose a risk to the safety and security of the facility. As an alternative, we will have a facility staff member accompanying us on the visit with a camera, who will be able to take any shots requested by Plaintiffs' counsel. You will be able to review the shots on the camera to ensure they capture what you wanted them to capture. Before we produce copies of the photos, however, we will review them to ensure no safety- or security-sensitive information is inadvertently included.
2. We cannot allow the inspection to last longer than 2 hours. Due to the layout of the facility, facility operations must be suspended during the site visit to ensure that no detainees are captured in the photographs. Any such suspension disrupts facility operations, but a suspension longer than 2 hours will unreasonably do so.

Additionally, although we did not discuss it during today's call, we have discussed before that the site visit may not be used to interview staff or detainees. We have previously provided instructions on how to arrange interviews with particular detainees, and Plaintiffs may utilize the procedures under the Federal Rules for depositions for staff members they wish to speak with. The site visit is to allow Plaintiffs' counsel to see the facility, nothing more (indeed, the request seeks only to "inspect" the *facility*). Similarly, although counsel will be permitted to "inspect" (i.e., see) areas such as, for example, those "where detainee records are kept and stored," they will not be permitted to review records during the site visit, or to request a demonstration of the computer-based records systems.

Jacob

Jacob B. Lee

Attorney

**STRUCK LOVE BOJANOWSKI & ACEDO, PLC**

3100 West Ray Road | Suite 300 | Chandler AZ 85226

480.420.1641 | [jlee@strucklove.com](mailto:jlee@strucklove.com) | [STRUCKLOVE.COM](http://STRUCKLOVE.COM)

**EXHIBIT 3**

**EXHIBIT 3**



**U.S. Department of Justice**  
United States Marshals Service  
*Prisoner Operations Division*

---

*Arlington, VA 22301-1025*

October 15, 2015

Corrections Corporation of America  
Attn: Bart E. VerHulst, Vice President, Federal and Local Customer Relations  
10 Burton Hills Boulevard  
Nashville, Tennessee 37215

Dear Mr. VerHulst:

This letter is in reference to contract number ODT-5-C-0003 for Detention Services (Otay Mesa Detention Center) contract with the United States Marshals Service, Prisoner Operations Division. Inspections of the new facility have been completed and have met the acceptable standards of the transfer. Therefore, this letter serves as your official Notice to Proceed, effective October 15, 2015 for the transfer of detainees in custody of the U.S. Marshal Service (USMS) and U.S. Immigration and Customs Enforcement (ICE) from 446 Alta Road, San Diego, CA to the new address 7488 Cal Zeta Del Fuente, San Diego, CA.

Should you have any technical questions related to this notification, please contact your Contracting Officer Representative (COR). Any contractual questions, please contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "Deborah M. Johnson".

Deborah M. Johnson  
Contracting Officer

CC: Jaime Schimmel (COR)  
Contract File

1 STRUCK LOVE BOJANOWSKI & ACEDO, PLC  
 Daniel P. Struck, AZ Bar #012377  
 2 (*admitted pro hac vice*)  
 Rachel Love, AZ Bar #019881  
 3 (*admitted pro hac vice*)  
 Nicholas D. Acedo, AZ Bar #021644  
 4 (*admitted pro hac vice*)  
 Ashlee B. Hesman, AZ Bar #028874  
 5 (*admitted pro hac vice*)  
 Jacob B. Lee, AZ Bar #030371  
 6 (*admitted pro hac vice*)  
 3100 West Ray Road, Suite 300  
 7 Chandler, Arizona 85226  
 Tel.: (480) 420-1600  
 8 Fax: (480) 420-1695  
 dstruck@strucklove.com  
 9 rlove@strucklove.com  
 nacedo@strucklove.com  
 10 ahesman@strucklove.com  
 jlee@strucklove.com

11 LAW OFFICE OF ETHAN H. NELSON  
 12 Ethan H. Nelson, CA Bar #262448  
 4 Park Plaza, Suite 1025  
 13 Irvine, California 92614  
 Tel.: (949) 229-0961  
 14 Fax: (949) 861-7122  
 ethannelsonesq@gmail.com

15 Attorneys for Defendant/Counter-Claimant  
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**  
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,  
 20 on behalf of themselves, and all others  
 similarly situated,

21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland  
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

**CERTIFICATE OF SERVICE**

1 CoreCivic, Inc., a Maryland  
 2 corporation,  
 3  
 4 Counter-Claimant,  
 5  
 6 v.  
 7  
 8 Sylvester Owino and Jonathan Gomez,  
 9 on behalf of themselves, and all others  
 10 similarly situated,  
 11  
 12 Counter-Defendants.

13 I am a citizen of the United States and am over the age of eighteen years, and  
 14 not a party to the within action. My business address is Struck Love Bojanowski &  
 15 Acedo, PLC, 3100 West Ray Road, Suite 300, Chandler, AZ 85226. On  
 16 November 22, 2019, I served the following document(s):

17 **DEFENDANT’S RESPONSE TO PLAINTIFFS’ SUPPLEMENTAL BRIEF**  
 18 **RE: MOTION FOR CLASS CERTIFICATION;**  
 19 **DECLARATION OF NICHOLAS D. ACEDO (with exhibits);**  
 20 **and this CERTIFICATE OF SERVICE**

21  **BY MAIL:** by placing the document(s) listed above in a sealed  
 22 envelope with postage thereon fully prepaid, in the United States Mail at  
 23 Phoenix, Arizona addressed as set forth below.

24  **BY ELECTRONIC SUBMISSION:** submitted electronically by  
 25 CM/ECF to be posted to the website and notice given to all parties that the  
 26 document(s) has been served.

27 LAW OFFICE OF ROBERT L. TEEL  
 28 Robert L. Teel  
 1425 Broadway, Mail Code: 20-6690  
 Seattle, WA 98122  
 Telephone: (866) 833-5529  
 Facsimile: (855) 609-6911  
 Email: lawoffice@rlteel.com  
 Attorney for Plaintiffs

FOLEY & LARDNER LLP  
 J. Mark Waxman  
 Nicholas J. Fox  
 3579 Valley Centre Drive, Suite 300  
 San Diego, CA 92130  
 Telephone: (858) 847-6700  
 Facsimile: (858) 792-6773  
 Email: mwaxman@foley.com;  
 nfox@foley.com



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FOLEY & LARDNER LLP  
Eileen R. Ridley  
Alan R. Ouellette  
555 California Street, Suite 1700  
San Francisco, CA 94104-1520  
Telephone: (415) 434-4484  
Facsimile: (415) 434-4507  
Email: eridley@foley.com  
aouellette@foley.com

FOLEY & LARDNER LLP  
Geoffrey M. Raux  
111 Huntington Avenue  
Boston, MA 02199-07610  
Telephone: (617) 342-4000  
Facsimile: (617) 342-4001  
Email: graux@foley.com

*Attorneys for Plaintiffs and the Proposed Class*

I declare that I am employed in the office of a member who is admitted pro hac vice in this Court at whose direction the service was made. I declare under penalty of perjury that the forgoing is true and correct.

Executed on November 22, 2019, at Chandler, Arizona.

s/ Nicholas D. Acedo