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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 RENEWED
 MOTION FOR LEAVE TO FILE
 DOCUMENTS UNDER SEAL**

Judge: Honorable Janis L. Sammartino

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

8 Defendant/Counter-Claimant CoreCivic, Inc. (“CoreCivic”), through
9 counsel, and pursuant to the Court’s December 16, 2019 Order (Doc. 152), moves
10 to keep the unredacted copies of Exhibits B, C, and D to the Supplemental
11 Declaration of Eileen R. Ridley in Support of Plaintiffs’ Reply Brief in Response to
12 Defendant’s Supplemental Brief (Doc. 148); Exhibits 41 and 42 to the Declaration
13 of Eileen R. Ridley in Support of Plaintiffs’ Motion for Partial Summary Judgment
14 (Doc. 110); and Exhibit 11 to the Declaration of Eileen R. Ridley in Support of
15 Plaintiffs’ Motion for Class Certification (Doc. 114)¹ under seal because they
16 contain the full names of CoreCivic employees at Otay Mesa Detention Center
17 (“OMDC”).

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. FACTUAL BACKGROUND**

20 On August 13, 2018, the Court entered a Protective Order pursuant to the
21 parties’ Joint Motion for Entry of Protective Order. (Doc. 60.) Under the terms of
22 the Protective Order, the parties may designate documents and information as
23

24 ¹ Redacted copies of these documents have been filed on the public docket pursuant
25 to the terms of the Protective Order in effect in this matter. (Doc. 60 at ¶¶ 10-11.)
26 Although the December 16, 2019 Order only specifically required CoreCivic to file
27 a Renewed Motion for Leave to File Documents Under Seal as to Exhibits B, C,
28 and D to the Supplemental Declaration of Eileen R. Ridley (Doc. 148), it noted that
“this Order may have ramifications for the documents filed publicly in response to
the Court’s June 24, 2019 Order. *See* ECF Nos. 110, 114.” (Doc. 152.)

1 “confidential information,” which is defined in part as security-sensitive and/or
2 confidential personal information that, if released to the public or current or former
3 detainees, would have a high likelihood of compromising the safety and security of
4 a correctional or detention facility. (Id. at ¶ 4.) This specifically includes
5 “confidential information” regarding the “address, identifying information (does not
6 include last names of current and former CoreCivic employees and contractors),
7 dependent information, or contact information concerning current or former
8 CoreCivic employees or contractors.” (Id. at ¶ 14.) The Protective Order established
9 a procedure to be followed when a party wishes to file confidential information on
10 the public docket, including the filing of redacted documents on the public docket
11 and unredacted documents under seal, and a request for an Order from the Court to
12 file such documents under seal according to applicable law. (Id. at ¶¶ 10–11.)

13 On December 2, 2019, Plaintiffs filed their Reply Brief in Response to
14 Defendant’s Supplemental Brief. (Doc. 148.) On that same date, Plaintiffs filed
15 their Motion for Leave to File Documents Under Seal Regarding Plaintiffs’
16 Supplemental Reply Brief Filed Pursuant to Court Order (Doc. 149), seeking to file
17 Exhibits B, C, and D to the Supplemental Declaration of Eileen R. Ridley under
18 seal in part because they contain “personally identifying information related to
19 detainees who are not parties to this litigation, or to CoreCivic’s personnel.” (Doc.
20 149.) On December 16, 2019, the Court granted the Motion for Leave to File
21 Documents Under Seal in part to the extent it sought to file “identifying
22 information concerning CoreCivic’s detainees” under seal, but denied it without
23 prejudice to the extent it sought to file “identifying information concerning
24 CoreCivic’s personnel” under seal. (Doc. 152.) The Court gave CoreCivic leave to
25 file a Renewed Motion for Leave to File Documents Under Seal, and set December
26 23, 2019 as the deadline for CoreCivic to do so. (Id.)

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1 **II. LEGAL ARGUMENT**

2 Where a party seeks to file documents under seal in support of a motion that
 3 is “more than tangentially related to the merits of the case,” the party must show
 4 “compelling reasons” sufficient to overcome the “strong presumption in favor of
 5 access” by the public to court records. *See Kamakana v. City & Cty. of Honolulu*,
 6 447 F.3d 1172, 1178-79 (9th Cir. 2006). “In general, ‘compelling reasons’
 7 sufficient to outweigh the public’s interest in disclosure and justify sealing court
 8 records exist when such ‘court files might have become a vehicle for improper
 9 purposes,’ such as the use of records to gratify private spite, promote public
 10 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting
 11 *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)). The decision to
 12 seal documents is “one best left to the sound discretion of the trial court” upon
 13 consideration of “the relevant facts and circumstances of the particular case.”
 14 *Nixon*, 435 U.S. at 599.

15 Here, compelling reasons exist to keep the full names of CoreCivic/SDCF/
 16 OMDC staff under seal, as the unfettered release of personal identifying
 17 information of current and former CoreCivic/SDCF/OMDC personnel would
 18 seriously impede the facility’s ability to protect both staff and detainees from
 19 foreseeable risks of harm, and would seriously compromise the orderly operation of
 20 OMDC. (*See* Declaration of Warden C. LaRose, Ex. 1, ¶¶ 4-5, 13-14.) Without an
 21 Order sealing such information, it would quickly spread among the detainee
 22 population at OMDC and pose a significant risk to staff and/or detainee safety and
 23 security. (*Id.* at ¶ 6.)

24 OMDC houses both immigration detainees in the legal custody of United
 25 States Immigration and Customs Enforcement (“ICE”) and pretrial detainees in the
 26 legal custody of the United States Marshals Service (“USMS”).² (*Id.* at ¶ 13.) The

27 _____
 28 ² ICE detainees and USMS detainees at OMDC live in separate housing units and
 do not commingle (e.g., housing, recreation, programming, meals, etc.). Staff,

1 ICE detainees include individuals with pending deportation proceedings against
2 them based on their criminal activities within the United States. (Id.) The USMS
3 detainees include both pretrial detainees awaiting adjudication of criminal charges
4 against them, as well as convicted criminals who are awaiting sentencing and
5 designation to a particular Bureau of Prisons facility. (Id.)

6 Many OMDC detainees, including ICE detainees, have extensive criminal
7 histories, including crimes of violence. (Id.) And both ICE and USMS detainees
8 include individuals who are verified members of a security threat group (“STG”).
9 (Id. at ¶ 14.) An STG is a group of individuals with a history, common interest,
10 bond, affiliation, or motivation to engage in criminal or disruptive conduct, either
11 collectively or individually. (Id.) STGs threaten the secure and orderly operation of
12 the facility and often prey upon other detainees. (Id.) They also threaten the public
13 through affiliations with out-of-custody street gangs. (Id.) As of December 2, 2019,
14 OMDC housed over 300 members of various gangs, including but not limited to
15 274 Paisas, 57 Sureños, 7 MS-13 members, 4 Norteños, and 4 cartel members. (Id.)

16 Information regarding facility employees is one of the most sensitive and
17 controlled types of information in any detention facility, including but not limited
18 to employees’ full names. (Id. at ¶ 7.) Such information is one of the most valuable
19 assets a detainee can obtain. (Id. at ¶ 17.) Information as seemingly innocuous as an
20 officer’s first name can be used by a detainee to attempt to befriend an employee in
21 order to compromise them. (Id.) Likewise, detainees can use personal identifying
22 information to find other information about an employee, such as the name of the
23 park where the employee takes his or her children to play, and use it as ammunition
24 to intimidate staff. (Id.) If a staff member either becomes too friendly with, or too
25 fearful of, a detainee, the staff member has been compromised, and can no longer
26 stay objective and protect the safety and security of the facility. (Id. at ¶18.) Losing
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28 however, may work with both populations depending on their position and post.

1 objectivity when tasked with controlling and maintaining order in a detention
2 facility poses risks to the public, facility staff, and the detainees, and for that reason
3 cannot be tolerated. (Id.) Staff members who have been compromised in such a
4 manner may be terminated from employment. (Id.)

5 For these reasons, detainees in custody at OMDC are not provided access to
6 facility employee personal identifying information, which is secured in a location of
7 the facility where detainees are not permitted at any time. (Id. at ¶ 7.) Additionally,
8 staff first names do not appear on their name badges, and employees who use their
9 co-workers' first names within earshot of detainees may be subject to reprimand or
10 other discipline. (Id.)

11 Although ICE detainees housed at OMDC do not have *pending* criminal
12 charges against them, because the population includes detainees with criminal
13 histories and/or who are verified STG members,³ providing them the names of staff
14 members places not only the lives and physical and mental well-being of the
15 employees at risk, but also the lives and physical and mental well-being of the
16 employees' families, neighbors, and the public in general. (Id. at ¶ 8.) *See Nielsen v.*
17 *Preap*, 139 S. Ct. 954, 959 (2019) ("Congress has decided, however, that this
18 procedure [of releasing aliens who have been arrested because they are deportable
19 on bond or parole while their removal is being decided] is too risky in some
20 instances. Congress therefore adopted a special rule for aliens who have committed
21 certain dangerous crimes and those who have connections to terrorism. Under a

22
23 ³ For example, Owino was convicted of second degree robbery in 2003, for which
24 he was in prison until November 8, 2005. (*See Owino v. Napolitano*, No. 07cv2267
25 WQH (POR), Doc. 57 at 1.) After completing his sentence, Owino was placed in
26 ICE custody, where he conceded removability but applied for asylum, withholding
27 of removal, and relief under the Convention Against Torture. (Id.) Owino was
28 thereafter housed at CoreCivic's San Diego Correctional Facility ("SDCF") and
other non-CoreCivic facilities pending his immigration proceedings.

1 statutory provision enacted in 1996, 110 Stat. 3009–585, 8 U.S.C. § 1226(c), these
2 aliens must be arrested ‘when [they are] released’ from custody on criminal charges
3 and (with one narrow exception not involved in these cases) must be detained
4 without a bond hearing until the question of their removal is resolved.”).

5 The reality of life in a secure detention facility such as OMDC is that
6 detainees can and will assault, or attempt to assault, staff members. (Id. at ¶ 12.)
7 The fact that they have no *pending* criminal charges against them does not eliminate
8 any violent tendencies they may have (as evidenced by their prior criminal
9 convictions), or any motive they may have to harm those responsible for detaining
10 them. (Id.) As a result, if even partial employee information is released to a detainee
11 and/or placed on the public docket, that information can be used by the detainees’
12 family members or other gang members who are not incarcerated to do research,
13 such as by finding staff members’ social media accounts, to locate additional
14 personal identifying information of facility staff. (Id. at ¶ 15.) That information can
15 then be shared among the detainee population or published on the internet and/or
16 social media sites.⁴ (Id.) With such information, detainees and/or their family or
17 associates can threaten staff at their homes, or at the facility by correctly reciting
18 their home address to them.⁵ (Id. at ¶ 16.) Threats of this nature toward facility

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20 ⁴ It is generally known that, in a custodial detention setting, detainees will attempt
21 to, and are likely to succeed in, communicating with each other and sharing
22 information, whether in writing, orally, or through communications with third
23 parties outside the facility. (Ex. 1 at ¶ 6.)

24 ⁵ There have been many reported instances of corrections and law enforcement
25 officers being threatened, injured, or killed in or near their own homes by
26 previously-incarcerated inmates or detainees and/or their associates. (Id. at ¶ 9; *see*
27 *also* footnote 3, *supra*.) For example, Tom Clements, who was the Director of the
28 Colorado Department of Corrections, was murdered in 2013 on the doorstep of his
own home by an inmate (and verified gang member) who had recently been
paroled. (Id. at ¶ 11.) Warden LaRose, the Warden of OMDC, has personally
received threats from inmates, including people pulling up in front of his home and
watching it, and anonymous letters that mention his home, suggesting that the

1 employees not only threaten the safety of the employees and their families, but also
2 undermine the position of authority employees must maintain over detainees. (Id.)

3 **III. CONCLUSION**

4 For these reasons, compelling reasons exist to keep the full names of
5 CoreCivic/SDCF/OMDC staff under seal in order to protect the safety and security
6 of OMDC staff, the facility, detainees, and the public in general. CoreCivic
7 therefore respectfully requests that the unredacted copies of Exhibits B, C, and D to
8 the Supplemental Declaration of Eileen R. Ridley in Support of Plaintiffs’ Reply
9 Brief in Response to Defendant’s Supplemental Brief (Doc. 148); Exhibits 41 and
10 42 to the Declaration of Eileen R. Ridley in Support of Plaintiffs’ Motion for Partial
11 Summary Judgment (Doc. 110); and Exhibit 11 to the Declaration of Eileen R.
12 Ridley in Support of Plaintiffs’ Motion for Class Certification (Doc. 114) be kept
13 under seal, with redacted copies on the public docket.

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23 sender has been there, or at least knows where it is, during his more than 23 years
24 of working in correctional and detention centers. (Id. at ¶¶ 2-3, 9.) In one instance,
25 an inmate threatened to come to Warden LaRose’s house and shoot him in front of
26 his family on Christmas Eve when he got out of custody. (Id. at ¶ 10.) As a result of
27 the threat, the inmate was placed on an ankle bracelet when he was released. (Id.)
28 On Christmas Eve, however, Warden LaRose received a phone call from local
police alerting him that the inmate had cut his ankle bracelet, and they did not know
where he was (police caught the inmate several hours later). (Id.)

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Dated: December 23, 2019

By s/ Jacob B. Lee

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

19 Sylvester Owino and Jonathan Gomez,
 20 on behalf of themselves, and all others
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21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland
 24 corporation,

25 Defendant.

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

**INDEX TO EXHIBIT 1 TO
 DEFENDANT'S RENEWED
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 DOCUMENTS UNDER SEAL**

1 CoreCivic, Inc., a Maryland
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6 v.
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9 on behalf of themselves, and all others
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12 Counter-Defendants.

EXHIBIT	DESCRIPTION	PAGES
1	Declaration of Warden C. LaRose in Support of Defendant's Renewed Motion for Leave to File Documents Under Seal	001-006

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EXHIBIT 1

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

**DECLARATION OF WARDEN C.
 LAROSE**

Judge: Honorable Janis L. Sammartino

1 CoreCivic, Inc., a Maryland
2 corporation,
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4 Counter-Claimant,
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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, C. LAROSE, make the following Declaration:

14 1. I am over the age of 18 years and am competent to testify to the
15 matters set forth in this Declaration. I make this Declaration in support of
16 CoreCivic’s Renewed Motion for Leave to File Documents Under Seal based on
17 my personal knowledge and professional experience.

18 2. I am currently employed by CoreCivic as the Warden of CoreCivic’s
19 Otay Mesa Detention Facility (“OMDC”) in San Diego, California, a position I
20 have held since October 2019. I have been employed by CoreCivic since February
21 2016, when I became the Warden at CoreCivic’s Northeast Ohio Correctional
22 Center (“NEOCC”) in Youngstown, Ohio, a position I held until October 2019.

23 3. I have been in corrections since 1996, when I started as a Correctional
24 Officer for the Ohio Department of Rehabilitation and Correction (“ODRC”). I
25 have served as a Lieutenant, Captain, Administrative Captain, and Deputy Warden
26 of Operations during my career.

27 4. I understand the Court has required CoreCivic to file a Renewed
28 Motion for Leave to File Documents Under Seal articulating “compelling reasons”
to file personal identifying information of CoreCivic/OMDC personnel under seal.

Based upon my knowledge, training, and more than 23 years of
correctional and detention experience, it is my professional judgment that the
unfettered release of personal identifying information of current and former
CoreCivic/OMDC personnel would seriously impede the facility’s ability to protect

1 both staff and detainees from foreseeable risks of harm, and would seriously
2 compromise the orderly operation of OMDC.

3 6. It is generally known in the field of corrections that inmates and
4 detainees, even those housed in the most secure manner, will attempt and are likely
5 to succeed in communicating with each other and sharing information, whether in
6 writing, orally, or through communications with third parties outside the facility. I
7 have no doubt that without an Order allowing the personal identifying information
8 of current and former CoreCivic/OMDC personnel to be filed under seal, such
9 information would quickly spread among the detainee population at OMDC and
10 pose a significant risk to staff and/or detainee safety and security at OMDC.

11 7. Information regarding facility employees is one of the most sensitive
12 and controlled types of information in any correctional or detention facility,
13 including but not limited to employees' full names. Detainees in custody at OMDC
14 are not provided access to facility employee personal identifying information,
15 which is secured in a location of the facility where detainees are not permitted at
16 any time. Additionally, staff first names do not appear on their name badges, and
17 employees who use their co-workers' first names within earshot of detainees may
18 be subject to reprimand or other discipline.

19 8. The release of such personal information regarding facility employees,
20 particularly to detainees who have criminal histories and/or are verified members of
21 security threat groups and organized criminal enterprises, places not only the lives
22 and physical and mental well-being of the employees at risk, but also the lives and
23 physical and mental well-being of the employees' families, neighbors, and the
24 public in general.

25 9. I am personally aware of many reported instances of corrections and
26 law enforcement officers being threatened, injured, or killed in or near their own
27 homes by previously-incarcerated inmates or detainees and/or their associates. I
28 have personally received threats from inmates, including people pulling up in front

1 of my home and watching it, and anonymous letters that mention my home,
2 suggesting that the sender has been there, or at least knows where it is.

3 10. In one instance, an inmate threatened to come to my house and shoot
4 me in front of my family on Christmas Eve when he got out of custody. As a result
5 of the threat, he was placed on an ankle bracelet when he was released. On
6 Christmas Eve, however, I received a phone call from local police alerting me that
7 the inmate had cut his ankle bracelet, and they did not know where he was (police
8 caught the inmate several hours later).

9 11. I am also aware of the murder of Tom Clements in 2013, who was the
10 Director of the Colorado Department of Corrections, by an inmate (and verified
11 gang member) who had recently been paroled, on the doorstep of his own home.

12 12. The reality of life in a secure detention facility such as OMDC is that
13 detainees will assault, or attempt to assault, staff members. When such incidents
14 occur, it is often because detainees dislike that they are subject to supervision and
15 expected to abide by facility rules, which are designed to limit criminal activities,
16 so they assault the staff members who are tasked with enforcing those rules.

17 13. OMDC houses both immigration detainees in the legal custody of
18 United States Immigration and Customs Enforcement (“ICE”) and federal criminal
19 detainees in the legal custody of the United States Marshals Service (“USMS”).
20 Many of these detainees, including ICE detainees, have extensive criminal histories,
21 including crimes of violence. The USMS detainees include both pretrial detainees
22 awaiting adjudication of criminal charges against them, as well as convicted
23 criminals who are awaiting sentencing and designation to a particular Bureau of
24 Prisons facility. The ICE detainees includes individuals who are in immigration
25 detention while deportation proceedings are pending against them based on their
26 criminal activities within the United States.

27 14. Still others—including both ICE and USMS detainees—are verified
28 members of a security threat group (“STG”). An STG is a group of individuals with

1 a history, common interest, bond, affiliation, or motivation to engage in criminal or
2 disruptive conduct, either collectively or individually. STGs threaten the secure and
3 orderly operation of the facility and often prey upon other detainees. They also
4 threaten the public through affiliations with out-of-custody street gangs. As of
5 December 2, 2019, OMDC housed over 300 members of various gangs, including
6 but not limited to 274 Paisas, 57 Sureños, 7 MS-13 members, 4 Norteños, and 4
7 cartel members.

8 15. As a result, if even partial employee information is released to a
9 detainee and/or placed on the public docket, that information can be used by family
10 members or other gang members who are not incarcerated to do research, such as
11 by finding staff members' social media accounts, to locate additional personal
12 identifying information of facility staff. That information can then be shared among
13 the detainee population or published on the internet and/or social media sites.

14 16. With such information, detainees and/or their family or associates can
15 threaten staff at their homes, or at the facility by correctly reciting their home
16 address to them. Threats of this nature toward facility employees not only threaten
17 the safety of the employees and their families, but also undermine the position of
18 authority employees must maintain over detainees.

19 17. One of the primary training classes for any correctional or detention
20 facility employee focuses on the topic of "games" inmates and detainees play to
21 gain information about staff. Such information is one of the most valuable assets an
22 inmate or detainee can obtain. Information as seemingly innocuous as an officer's
23 first name can be used by an inmate or detainee to attempt to befriend an employee
24 in order to compromise them. Likewise, inmates or detainees can use personal
25 identifying information to find other information about an employee, such as the
26 name of the park where the employee takes his or her children to play, and use it as
27 ammunition to intimidate staff.

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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 December 23, 2019, I served the following document(s):

17 **DEFENDANT’S RENEWED MOTION FOR LEAVE TO FILE**
 18 **DOCUMENTS UNDER SEAL; DECLARATION OF WARDEN C. LAROSE;**
 19 **and this CERTIFICATE OF SERVICE**

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

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

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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 December 23, 2019, at Chandler, Arizona.

s/ Jacob B. Lee