IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JULIANNE PANAGACOS, et al., Appellants/Plaintiffs, v. JOHN J. TOWERY, et al., Appellees/Defendants.	CASE NO. 14-35598 APPELLEE THOMAS R. RUDD'S RESPONSE IN OPPOSITION TO APPELLANTS' RENEWED MOTION TO UNSEAL CONFIDENTIAL ARMY DOCUMENTS

GROUNDS AND RELIEF SOUGHT

Appellee Thomas R. Rudd respectfully asks this Court to deny Appellants' Renewed Motion to Unseal Confidential Army Documents ("Renewed Motion") to the extent that the motion challenges Mr. Rudd's designation of certain documents (and portions of documents) as "Rudd-Confidential."[1] There is no basis for unsealing the Rudd-Confidential documents under Circuit Rule 27-13(d).

[1] Mr. Rudd applied the "Rudd-Confidential" designation to documents that contain confidential information about him. Appellants separately challenge the United States Army's designation of other information as: "Army Document Subject to Protective Order." Mr. Rudd does not take a position with respect to the propriety of the Army's designation or the Army's redactions except to the extent the Army has redacted information in which Mr. Rudd has an interest.

First, Appellants cannot demonstrate that the district court abused its discretion in denying their motion to unseal. The district court properly held that Appellants forfeited any right to challenge protective order designations because they waited for more than six months (and until after the district court had ruled on summary judgment) before challenging those designations. W.D. Dkt. # 425.[2] Moreover, Mr. Rudd has now provided Appellants—and has filed with the district court—versions of the sealed documents to which he has applied a small number of redactions. W.D. Dkt. # 420-3, 420-4 & 423 (Ex. E).[3] Appellants and potential amici can rely on (and cite) these redacted versions of the sealed documents, and Appellants (and this Court) can access the

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Mr. Rudd notes, however, that the Army is not a party to this appeal, and it appears that the Army was not served a copy of Appellants' motion. Thus, it appears that Appellants' motion cannot resolve their concerns regarding some of the currently sealed documents.

[2] As used in this Response, citations to "W.D. Dkt. #" refer to the docket in *Panagacos v. Towery*, Western District of Washington Case No. 3:10-cv-05018-RBL. "Dkt. #" refers to the docket in this appeal, 9th Cir. Case No. 14-35598.

[3] Of these two exhibits, one (Ex. C (W.D. Dkt. # 420-3 & 420-4)) is available to the public, but the other (Ex. E (W.D. Dkt. # 423)) was filed under seal because the Army has not removed its "Army Document Subject to Protective Order" designation. In addition, sealed versions of each exhibit, which do not contain Mr. Rudd's proposed redactions, are also in the district court record should this Court wish to review them so it can see the text that Mr. Rudd proposed to redact. The version of Ex. C that does not contain Mr. Rudd's redactions is available as Ex. D (W.D. Dkt. # 423) and the unreacted version of Ex. E is available as Ex. F (W.D. Dkt. # 423).

sealed documents, W.D. Dkt. # 425 at 2, thereby eliminating any potential prejudice from Mr. Rudd's redactions.

The Renewed Motion should also be denied because Appellants' arguments are contrary to governing Ninth Circuit precedent. Documents that are not part of the summary judgment record can remain under seal if there is good cause for treating them as confidential. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Good cause exists here because the public does not have a cognizable interest in these documents, which are not part of the record for review and cannot be considered by the appellate court. *See Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 594 (9th Cir. 2002). Redactions to documents that were filed with the district court will be upheld if they are justified by compelling reasons. *Kamakana*, 447 F.3d at 1178. That standard is easily met here where the public does not have a cognizable interest in the redacted information and there is a risk that the information will be used for an improper purpose such as "gratify[ing] private spite, promot[ing] public scandal, [or] circulat[ing] libelous statements." *Id.* at 1179.

FACTUAL BACKGROUND

A. Production of Army Documents to Appellants

Mr. Rudd is a civilian employee of the United States Army ("Army").

Declaration of Heidi Craig Garcia ¶ 2, Jan. 26, 2015 ("Garcia Decl."). As a result, all of the documents that he generated or received as part of his official duties, or because of his official status, had to be obtained directly from the Army through what is known as the *Touhy* process. *See* 32 C.F.R. § 516.41(a) & Appendix F (Glossary); *see also* Garcia Decl. ¶ 4. Appellants were familiar with this process as a result of previous efforts to obtain discovery from former defendant Clint Colvin. *See* W.D. Dkt. # 112.

Beginning on May 15, 2013, several months before receiving discovery requests from the Appellants, Mr. Rudd and his co-defendant, John Towery, submitted *Touhy* requests to the Army for documents that might be relevant to this litigation. Garcia Decl. ¶¶ 5-6. While the Army searched for responsive documents, the parties to the litigation negotiated a Stipulated Protective Order. *See id.* ¶ 7. That Stipulated Protective Order included a provision that allowed Mr. Rudd (or any other party to the litigation) to review third party documents and designate them as confidential. W.D. Dkt. # 215.

On December 6, the Army produced documents responsive to the *Touhy* requests to Mssrs. Rudd and Towery. Garcia Decl. ¶ 10. In total, the Army produced 2,232 documents consisting of 9,440 pages. *Id.* Of those, Mr. Rudd designated 1,096 documents (4,688 pages) as "Rudd-Confidential." *Id.* In total,

Mr. Rudd designated less than 50% of the Army documents as "Rudd-Confidential." *Id.*

The documents marked "Rudd-Confidential" contain the following kinds of information:

- Mr. Rudd's personal information such as his contact information, social security number, and salary information;
- Mr. Rudd's medical history;
- "For Official Use Only" information that Mr. Rudd prepared in the course of his employment, which he was obligated to keep confidential and which frequently contained his contact information; and
- Opinions regarding Mr. Rudd's job performance, including the Army Regulation 15-6 Investigation Report ("15-6 Report") memorializing the Army's inquiry into Mssrs. Rudd and Towery's activities related to PMR.

Throughout the course of the litigation, Mr. Rudd's attorneys told Appellants' counsel that the "Rudd-Confidential" designation could be removed from many of the documents if Appellants agreed to certain redactions, which Appellants agreed to make. *Id.* ¶ 11. They never made the redactions, however, so Mr. Rudd was unable to remove the "Rudd-Confidential" designation. *See id.*

B. Summary Judgment Proceedings

On April 3, 2014, Mr. Rudd and his co-defendants filed their motions for summary judgment. *Id.* ¶ 12. Defendants did not file those motions, or the supporting factual materials, under seal.[4] *Id.* On May 28, Appellants filed a joint response to those motions ("SJ Response"). *Id.* Appellants filed their SJ Response, as well as much of the evidence submitted in support of it, under seal. *Id.* At no time prior to filing the SJ Response and supporting documentation did Appellants contact Mr. Rudd and ask that he remove the "Rudd-Confidential" designation from any of the documents, or whether Mr. Rudd would permit Appellants to file some or all of their SJ Response in the ordinary course, rather than under seal. *Id.*

Appellants filed their SJ Response on May 28, almost eight weeks after Appellees filed their motions and after receiving two extensions from the district court. *See* W.D. Dkt. # 309, 325. In support of the SJ Response, they filed voluminous evidence that can only be described as a "document dump." For example, they filed complete, unexcerpted deposition transcripts, *see* W.D. Dkt.

[4] Some of the exhibits that Mr. Rudd filed in support of his summary judgment reply were filed under seal because the Army had not authorized their release. Those documents were already in the summary judgment record (under seal) but Mr. Rudd filed them for the court's convenience.

335-18 & 335-19, even though they did not cite to the entire depositions, and they filed numerous declarations and exhibits to which they did not cite at all.

Following an approximately two-hour-long hearing, the district court granted all of the motions for summary judgment on June 18. W.D. Dkt. # 372, 399.

C. Harassment of Mr. Rudd During and After Litigation

From March through June 2014, Mr. Rudd received numerous threatening emails and texts from one or more anonymous sources that explicitly referred to or clearly were related to this litigation. Declaration of Thomas R. Rudd ¶¶ 4-5, 7 & Ex. A & B, Jan. 23, 2015 ("Rudd Decl."). Some of the messages referred to Mr. Rudd as a "spy," and others said that the sender and his or her associates were spying on Mr. Rudd. *Id.* ¶ 4 & Ex. A. One accused Mr. Rudd of bribing Judge Leighton and called Mr. Rudd an "evil piece of shit." *Id.* Ex. B.

D. Appellants' Attempts to "Unseal" Army Documents

After the district court granted the motions for summary judgment, Appellants requested a meet-and-confer to discuss "deconfidentializing"[5] all of the Army documents. Garcia Decl. ¶ 14. After that meeting, the Army provided

[5] Appellants have used both the terms "deconfidentialize" and "unseal." Although "deconfidentialize" is more accurate where the documents were not filed with the district court, this Response, like Appellants, uses the terms interchangeably.

Appellants with redacted versions of a subset of the documents that were in the summary judgment record. *Id.* ¶ 16. On August 26, 2014, Appellants filed a motion with this Court to unseal those documents. Dkt. # 8-1. Although that motion was directed primarily at the Army's redactions, the Army did not respond to the motion.[6] Mr. Rudd did respond, however, because he had previously marked approximately 80% of the pages at issue as "Rudd-Confidential." Garcia Decl. ¶¶ 16, 19.

This Court denied Appellants' motion to unseal on November 6, 2014, ordering Appellants to "first seek[] this relief in the district court." Dkt. # 21. Appellants refiled their motion in the district court on November 12. W.D. Dkt. # 417. The district court motion did not specify which documents Appellants sought to unseal. *Id.*

In support of his response, which he filed on November 24, Mr. Rudd filed and served copies of all documents in the summary judgment record that Appellants had requested and that had been marked "Rudd-Confidential" with the designation removed and a small amount of sensitive information redacted. W.D. Dkt. # 420-3, 420-4 & 423 (Ex. E). The redacted information was limited to contact information, social security number, salary information, medical

[6] As noted above, the Army is not a party to this litigation and it is unclear whether the motion was served on it. Garcia Decl. ¶¶ 3, 18.

history information, and non-factual employee evaluation and disciplinary material. Garcia Decl. ¶ 24. Mr. Rudd indicated that—as redacted—those documents could be disclosed publicly and used freely. *See* W.D. Dkt. # 420, ¶¶ 21, 23.

The district court denied Appellants' motion on December 30, explaining that (1) the motion was untimely because Appellants "did not object to the classification of documents pursuant to the Protective Order at any time prior to the Order granting summary judgment" and (2) "[t]he parties and the Appellate Court have access to the sealed documents to argue and to evaluate the merits of the case." W.D. Dkt. # 425.

One week later, on January 12, Appellants filed their Renewed Motion in this Court. Dkt. # 22-1. As it relates to Mr. Rudd, the Renewed Motion is identical to the district court motion. *Compare* W.D. Dkt. # 417, *with* Dkt. # 22-1. Appellants did not acknowledge Mr. Rudd's redactions or address the arguments that he made to the district court. Dkt. # 22-1. Nor did Appellants clarify which documents they are asking the Court to unseal. *Id.*

LEGAL ARGUMENT

A. The Renewed Motion should be denied because Judge Leighton did not abuse his discretion when he denied the motion to unseal.

This Court reviews Judge Leighton's decision for an abuse of discretion.

See Kamakana, 447 F.3d at 1178 n.3 (abuse of discretion standard applies to review of motions to unseal and motions to modify protective order). In this case, Judge Leighton stated that he denied the motion to unseal because Appellants did not challenge the confidentiality designations for more than six months and waited until after the district court had ruled on summary judgment. W.D. Dkt. # 425. Moreover, Appellants acquiesced in the designation by filing their SJ Response under seal without first talking to the Army and Mr. Rudd to determine whether the confidentiality designations could be removed. Garcia Decl. ¶ 12. In other words, Appellants waived or forfeited their challenge.[7] Under these circumstances, denying the motion to unseal was well within Judge Leighton's discretion. *Cf. Orange Cnty. v. Air Calif.*, 799 F.2d 535, 538 (9th Cir. 1986) (not an abuse of discretion to deny motion to intervene filed after litigation had settled).

B. In the alternative, the Renewed Motion should be denied under the good cause and/or compelling reasons standard.

In the Ninth Circuit, motions to unseal are evaluated under either a good cause or compelling reasons standard. If the confidential documents were not

[7] This case is fundamentally different than *Kamakana* and others in which a third-party intervenor has asked that documents be unsealed. Under those circumstances, the third party is not bound by the parties' agreement that the documents be kept confidential. In contrast, a party to the litigation that chooses to file documents under seal cannot now complain that the documents are sealed.

both filed with the district court and relied upon by the parties in their summary judgment papers, the motion to unseal must be denied if "good cause" exists to justify keeping them confidential. *Kamakana*, 447 F.3d at 1180 (citing Fed. R. Civ. P. 26(c)); *see also Carmen v. S.F. Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001). If, on the other hand, the documents were filed with the district court and the facts therein were relied upon in the parties' summary judgment papers,[8] the higher, "compelling reasons" standard applies. *Kamakana*, 447 F.3d at 1178-79 (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In both cases, the court balances the individual's interest in maintaining confidentiality against the public's interest in accessing the information so that it can better understand the judicial process and/or a limited universe of significant public events, such as Watergate. *Valley Broadcasting Co. v. U.S. Dist. Ct. for Dist. of Nev.*, 798 F.2d 1289, 1293-94 (9th Cir. 1986) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 602 (1978)). Regardless of which standard applies, the private interest outweighs the public interest when the "court files might . . . become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, [or]

[8] *See Carmen*, 237 F.3d at 1031 (explaining that only evidence "set forth in the [summary judgment] papers with adequate references so that it could conveniently be found" is part of the summary judgment record).

circulate libelous statements." *Kamakana*, 447 F.3d at 1179 (internal quotations and citation omitted).

1. Good cause exists to deny the motion as it applies to documents not in the summary judgment record.

The Renewed Motion does not identify the documents that Appellants are asking this Court to unseal, but appears on its face to apply to documents that none of the parties presented to the district court in connection with summary judgment. *See* Dkt. # 22-1 at 11 (distinguishing between documents that "were used and are part of the record in the District Court" and those that Appellants "intend[] to use in [their] briefing before this court"). With respect to all documents that are not in the summary judgment record, good cause exists to protect the documents and the Renewed Motion should be denied.

Only exhibits that were filed with the district court and explicitly referenced in the summary judgment papers are part of the summary judgment record. *See Carmen*, 237 F.3d at 1031. Other documents cannot be presented to the Ninth Circuit, whether in the Excerpts of Record or otherwise. *See, e.g.*, *Barcamerica Int'l USA Trust*, 289 F.3d at 594-95 (granting motion to strike Excerpts of Record and portions of brief referencing documents that were not part of the record on appeal—including exhibits to depositions that were themselves part of the record). Thus, documents that Appellants did not file and

cite to do not "go[] to the heart of the primary issues on appeal" as Appellants contend. Dkt. # 22-1 at 17.

At this stage of litigation, the public does not have any cognizable interest in these documents. Because the documents are not part of the summary judgment record, they cannot help the public better understand the proceeding. Moreover, these documents do not relate to a "significant historical event" under *Valley Broadcasting Company*. In contrast to the Watergate scandal at issue in *Warner Communications*, which led to the resignation of the President of the United States in the face of near-certain impeachment, this case involves claims against two low-level, civilian employees of the Army. These are not the kinds of documents in which the public has an interest under the controlling precedent.[9]

In contrast to the non-existent public interest in these documents, Mr. Rudd has a significant privacy interest in many of the underlying facts as described in Part B.2. Not only do the documents contain information that is typically kept confidential, that information's release could result in harassment, or worse, for Mr. Rudd. *See* Rudd Decl. & Ex. A & B. Accordingly, this Court

[9] Even if the public did have an interest in understanding the underlying events, there is no reason to believe that these documents would help them to do so in a way that the documents that are part of the summary judgment record would not.

should deny the Renewed Motion to the extent it asks this Court to unseal any documents that are not part of the summary judgment record.[10]

2. Compelling reasons justify Mr. Rudd's proposed redactions to the "Rudd-Confidential" documents in the summary judgment record.

On November 24, Mr. Rudd provided Appellants with a copy of all documents that had been marked "Rudd-Confidential" that were in the summary judgment record and that Appellants had requested be unsealed with the "Rudd-Confidential" designation removed and the confidential information redacted. Garcia Decl. ¶ 24. The redacted documents are more than sufficient to allow Appellants and any amici to prepare their briefs. Moreover, there are compelling reasons for the redactions that Mr. Rudd made. Thus, Mr. Rudd asks this Court to deny Appellants' motion to the extent they seek to make public the redacted information.

a. Threat Assessments and Other Documents Containing "FOUO" Information

Mr. Rudd has removed the "Rudd-Confidential" designation from all Threat Assessments and other documents containing "FOUO" information,

[10] If Appellants subsequently identify the documents they wish to have unsealed, and if this Court unseals them, Mr. Rudd requests the opportunity to redact the confidential information within those documents. *See infra* Section B.2 (identifying categories of information that should be redacted).

subject to the redaction of his contact information.[11] As explained in Section B.2, compelling reasons exist to justify those redactions, and Appellants do not object to them. Accordingly, the Renewed Motion should be denied as it relates to these documents.

b. Personal Information

Three types of personal information regarding Mr. Rudd can be found in the summary judgment record: (a) contact information; (b) Mr. Rudd's social security number; and (c) salary information. Appellants have expressly agreed to redaction of the first two categories of information.[12] Dkt. # 22-1 at 15. Moreover, the Ninth Circuit has previously recognized that compelling reasons exist to justify redaction of social security numbers and contact information. *Kamakana*, 447 F.3d at 1182; *Foltz*, 331 F.3d at 1137. Thus, the Renewed Motion should be denied as it relates to the redaction of that information.

[11] Mr. Rudd removed this designation after the Army determined that it no longer considered these documents FOUO. Prior to that determination Mr. Rudd was prohibited from releasing the documents to any person who did not have a valid need for access in connection with a legitimate and authorized governmental purpose. *See, e.g.*, DoDM 5200.01-V4, Feb. 24, 2012.

[12] Although they purport to limit their consent to situations in which the information is not "necessary to verify [Mr. Rudd's] identity and that he was acting in the course and scope of his official duties and on his work time," Dkt. # 22-1 at 15, their limitation is of no effect because the parties and this Court can access the unredacted documents if necessary to brief and decide this appeal, W.D. Dkt. # 425 at 2.

As for Mr. Rudd's salary information,[13] Appellants have not objected to the proposed redaction, and compelling reasons justify it. Most people consider their salary information to be private and it is not something that they share with the general public. In contrast to this privacy interest, the public has virtually no interest in the information because it will not enable the public to better understand the judicial process or the events underlying this litigation. Mr. Rudd's pay grade is not relevant to what occurred, and Appellants have not argued otherwise. Moreover, the release of this information could lead to further harassment of Mr. Rudd. *See* Rudd Decl. & Ex A & B. Accordingly, this information should be redacted and the Renewed Motion should be denied. *See, e.g.*, *Lucero v. Sandia Corp.*, 495 Fed. App'x 903, 913-14 (10th Cir. 2012) (sealing portion of joint appendix on appeal that disclosed, *inter alia*, salary information); *Adami v. Cardo Windows, Inc.*, 299 F.R.D. 68, 86 (D.N.J. 2014) (citation omitted) (recognizing legitimate privacy interest in not having addresses, social security numbers, and salaries disclosed to the public).

c. Medical History Information

Mr. Rudd next asks this Court to uphold the Army's redaction of one question-and-answer in Rudd's Sworn Statement found at Army 000286. That

[13] The specific information at issue is Mr. Rudd's pay grade. If the pay grade is disclosed, his salary could be easily determined through a simple internet search for the federal government's pay scale.

question-and-answer relates to a medical incident that Mr. Rudd experienced during the time period at issue in this litigation. It is unclear from the Renewed Motion whether Appellants agree to this redaction. They state that they do not object to redaction of Mr. Rudd's medical records, Dkt. # 22-1 at 15, but this is a statement of medical history, not a medical record. Mr. Rudd interprets their statement as meaning that they do not object to this redaction, but even if they did, the Renewed Motion should be denied.

Compelling reasons justify redacting this confidential medical information. The risk is high that information regarding Mr. Rudd's medical history (and speculation based on that history) will be used for an improper purpose such as "gratify[ing] private spite, promot[ing] public scandal, [or] circulat[ing] libelous statements."[14] *Kamakana*, 447 F.3d at 1179. Moreover, neither party raised Mr. Rudd's medical condition in the summary judgment proceedings before the district court, and the summary judgment order does not indicate that it played any role in the court's decision. *See* W.D. Dkt. # 399. Thus, this question-and-answer will in no way help the public understand the judicial process or these proceedings. Nor can release of this information assist the public to understand the underlying facts, given that such a small portion of

[14] Mr. Rudd has already experienced harassment in connection with this litigation. *See* Rudd Decl. & Ex. A & B.

the evidence related to his medical history. As a result, Mr. Rudd's compelling interest in maintaining the confidentiality of this medical information far outweighs the public's interest in access, and the redaction should stand.

d. Non-factual Employee Evaluation and Disciplinary Material

Finally, Mr. Rudd seeks to redact a small number of lines of non-factual employee evaluation and disciplinary material contained in the 15-6 Report and related email correspondence between Army personnel. Although Mr. Rudd initially designated the entire 15-6 Report as "Rudd-Confidential" on the basis that it was an internal Army employment record, Mr. Rudd subsequently withdrew that designation from the portions of the 15-6 Report that are factual in nature, in the summary judgment record, and requested by Appellants. The same is true for the email contained at Army 1021-1022: Mr. Rudd withdrew his designation from the portions of that email that are factual in nature.

But Mr. Rudd does seek to redact the portions of the email and 15-6 Report that go beyond the facts and express opinions about Mr. Rudd's job performance and what his employer should do in response. Mr. Rudd's compelling interest in maintaining the confidentiality of this information outweighs the public's interest in access. Much like salary information, most people consider employee evaluations and employee discipline to be a private matter. They are by their nature potential sources of embarrassment, and their

release may result in harassment. *See, e.g.*, *Robbins v. Tripp*, 510 B.R. 61, 69 (E.D. Va. 2014) (upholding sealing of report regarding attorney conduct where its release could harm subject's reputation and "would serve no useful purpose other than to embarrass"); *Banks v. Office of Senate Sergeant-at-Arms*, 233 F.R.D. 1, 10-11 (D.D.C. 2005) (requiring redaction of disciplinary material).

In contrast to Mr. Rudd's interest in keeping this information confidential, the public has no cognizable interest in access to it. The summary judgment order does not mention these findings or recommendations, thus indicating that the district court did not rely on this information in any way. W.D. Dkt. # 399. Moreover, it is irrelevant that the 15-6 Report includes "the Army's internal advisory on how they were to address the civilian media and frame their conclusions" Dkt. # 22-1 at 16, because the relevant pages of the 15-6 are no longer marked confidential. *See* W.D. Dkt. # 420-4 (Army 009080-9090). Additionally, understanding the Army's response to Mssrs. Rudd and Towery would not help the public understand what they did—even if this were a significant historical event, which it is not. *See* discussion *supra* Section B.1. Accordingly, Mr. Rudd's interest in maintaining the confidentiality of this information significantly outweighs the public's interest in access, particularly in light of the harassment that he has previously faced as a result of this

litigation, *see* Rudd Decl. & Ex. A & B. The Renewed Motion should be denied.

C. Potential amici do not require unsealing the documents.

Finally, there is no basis for Appellants' suggestion that the sealing has created difficulty for unidentified "potential amici." The redacted documents provide potential amici all the information they need to determine whether they can assist the Court in this case.

CONCLUSION

Mr. Rudd respectfully requests that this court deny Appellants' Renewed Motion to Unseal and require that Appellants use the redacted versions of the documents that can be found in the district court record as W.D. Dkt. # 420-3, 420-4 & 423 (Ex. E). In addition, if the Court "unseals" any of the redactions made by the Army, Mr. Rudd asks for the opportunity to redact his confidential information consistent with the Court's order.

DATED this 26th day of January, 2015.

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CERTIFICATE OF SERVICE

U.S. Court of Appeals Docket No. 14-35598

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 26, 2015.

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