



April 23, 2020

The Honorable Chief Justice Tani Cantil-Sakauye  
The Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

**RE: Letter of Amici Curiae in Support of Petition for Writ of Mandate in *California Attorneys for Criminal Justice and American Immigration Lawyers Association, Southern California Chapter v. Gavin Newsom, California Governor and Xavier Becerra, California Attorney General*, Supreme Ct. No. S261829**

Dear Chief Justice Cantil-Sakauye and Hon. Justices of the California Supreme Court:

We are writing to you to express our profound concern over the fate of those detained in immigrant detention facilities in the state of California, based on the threat posed by COVID-19. At this time, reports indicate COVID-19 has contaminated all five facilities in California, with growing concern that it will soon result in deaths for those detained and a devastating impact on surrounding communities.

We urge you to grant Petitioners' writ of mandate and halt state and local law enforcement's transfer of individuals to ICE custody during this pandemic.

**I. Interests of Amici Curiae**

Immigrant Defense Advocates ("IDA") is a project of the nonprofit Social Good Fund, with a focus on policy and advocacy on immigrant detention in the state of California. IDA is part of a broader coalition of immigrants' rights organizations advocating for the protection of human and civil rights for those subject to immigrant detention.

IDA works closely with legal service providers representing individuals in detention as well as community-based organizations involved in coordinating support for individuals in detention and their families. IDA is familiar with the conditions in the detention facilities in California and the legal structure under which they operate.

IDA is joined by eighty-four California based organizations engaged in immigrants' rights advocacy. Amici are familiar with the issues involving human rights and immigrant detention in the state of California. For a complete list of organizations signed on, please see appendix A.

## **II. COVID-19 presents a dire threat to immigrant detention facilities in California**

The state of California is home to more immigrants than any other state. Our state is also home to one of the largest immigrant detention systems in the country. California currently has five detention facilities, with the capacity to hold 5,200 individuals in detention.

Immigrant detention facilities in California include four privately owned and operated facilities and one county jail.

California Immigrant Detention Facilities include:

**Otay Mesa Detention Facility** - Population 1,500 (Operated by CoreCivic Inc.)

**Mesa Verde Detention Facility** - Population 400 (Operated by The GEO Group Inc.)

**Adelanto Detention Facility** - Population 1,940 (Operated by The GEO Group Inc.)

**Imperial Regional Detention Facility** - Population 700 (Operated by the Management and Training Corp)

**Yuba County Jail** - Population 220 (Operated by the Yuba County Sheriff's Office)

The detention capacity in the state may expand to 7,200 by the end of this year. On average tens of thousands of individuals may pass through these facilities in a year, and are often cycled through multiple facilities before their release or removal. As a result, a single individual may come into contact with hundreds of other detainees during their stay in detention without any ability to practice social distancing.

The majority of these facilities are located in rural regions of the state, and lack the legal and medical infrastructure of urban regions. As a result, access to these facilities is difficult for legal service providers who are commonly located in major metropolitan areas. The California Attorney General has noted that immigrants in detention face a litany of challenges with respect to navigating their case, and these challenges are exacerbated by the location of detention facilities. "Each of these challenges is compounded by being detained in often remote facilities that are either jails or jail-like with limited immigrant-specific services and accommodations."<sup>1</sup> These limitations on access to counsel undermine due process rights for those detained in the state of California.

These facilities often lack adequate medical care for those detained, with the Attorney General's report citing "access to medical care" as a common complaint across all detention facilities. The lack of proper medical care and access will likely be further strained with the threat of COVID-19. A more serious concern may also include the need to hospitalize critically ill detainees, and

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<sup>1</sup> California Department of Justice's Review of Immigration Detention in California, February 2019, pg 121.

the burden this may place on local hospitals in rural regions that lack the capacity to deal with a widespread outbreak potentially involving hundreds of individuals.

The threat of COVID-19 in immigrant detention facilities not only threatens the lives of the detained, but can have dire consequences for surrounding communities. When an outbreak of COVID-19 occurs in these facilities, the potential for mass contamination is high, given the number of individuals held in close proximity, and the inadequate medical resources available. The result of this outbreak will be the hospitalization of dozens or hundreds of individuals. The immediate impact will result in devastating consequences on the medical resources in that area, and the long-term effect could mean death for hundreds.

As a result, the consequences of COVID-19 in immigrant detention are dire for the detained but should be of concern given the significant challenges this potential outbreak has for California as a whole. The Governor, in his six-point plan to lift shelter in place, included the need to formulate...”a plan to quickly identify and contain outbreaks in facilities housing ... those currently incarcerated... among other groups. <sup>2</sup> To date, no such plan has been developed for immigrant detention facilities, despite the unique and serious challenges they present.

**a. California’s immigration detention facilities are operated with inadequate accountability and oversight**

Immigration detention facilities operate under a subpar inspection regime, particularly when a private operator is involved. The lack of accountability with respect to oversight and conditions in these facilities is the result of an inadequate inspection and compliance scheme. Despite the fact that ICE sets specific conditions standards in their detention contracts, violations of these standards are routinely met with indifference, even when they result in death.

As of this date, private operators have not been required to publicly disclose the number of positive COVID-19 detainees in their custody and are tasked with making medical decisions that not only affect those in their care, but can have dire consequences for public health at large.<sup>3</sup> These decisions are often at direct odds with their financial interests.

Four of the five immigration detention facilities in California are currently operated by private actors, specifically the GEO Group, Core Civic, and the Management and Training Corporation

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<sup>2</sup> Governor Newsom Outlines Six Critical Indicators the State will Consider Before Modifying the Stay-at-Home Order and Other COVID-19 Interventions, Office of the Governor, April 14 2020

<https://www.gov.ca.gov/2020/04/14/governor-newsom-outlines-six-critical-indicators-the-state-will-consider-before-modifying-the-stay-at-home-order-and-other-covid-19-interventions/>

<sup>3</sup> 'Terrified of dying': Immigrants beg to be released from immigration detention as coronavirus spreads, By Alan Gomez Maria Clark Rebecca Plevin, USA TODAY, April 7 2020,

<https://www.usatoday.com/story/news/nation/2020/04/07/covid-19-hits-ice-detention-migrants-say-they-cant-clean-stay-safe/2953170001/>

(MTC).<sup>4</sup> These operators act as federal contractors and are often shielded from liability, however there are exceptions, particularly when an operator is violating the specific directions and guidance provided by a federal entity through a contract.<sup>5</sup>

In the case of civil detention facilities, both the federal agency and private contractors have agreed upon specific standards within their contracts, and any deviation from those standards, particularly those that result in negligence or harm, should create clear liability on behalf of the operator. However, ICE has shown little to no willingness to hold private operators accountable for violations of minimum standards, even when their negligence results in death.<sup>6</sup>

Currently, an estimated 90% of those detained in California are in the care of for-profit institutions, whose duty is to shareholders as opposed to public safety. The fifth facility is the Yuba County Jail, a facility which has been under a court-ordered consent decree for nearly forty years due to inadequate conditions.<sup>7</sup>

California is home to one of the largest detention facilities in the country, the Adelanto detention facility which currently houses up to 1,900 individuals and may soon expand to hold nearly 2,700. The facility is also one of the deadliest in the nation for those inside.<sup>8</sup> Adelanto provides a compelling case study as to the problematic nature of these facilities:

- In April 2019, Jose Luis Ibarra Bucio, 27, died in the Adelanto Detention Facility when a brain hemorrhage caused him to collapse while he was en route to his immigration court hearing.<sup>9</sup>
- A September 2018 report from the U.S. Department of Homeland Security's Office of the Inspector General, found significant health and safety risks at the facility, including a shocking number of nooses made of bed sheets hanging within cells. There were a total of three detainee deaths and six unsuccessful suicide attempts at Adelanto during fiscal 2017, according to the report. "ICE's

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<sup>4</sup> California Department of Justice's Review of Immigration Detention in California, February 2019, pg 13.

<sup>5</sup> See *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 663, 673 (2016).

<sup>6</sup> ICE Failed to Hold Detention Center Contractors Accountable, Report Finds, By Charles Lane, NPR February 1, 2019 <https://www.npr.org/2019/02/01/690690056/ice-failed-to-hold-detention-center-contractors-accountable-report-finds>

<sup>7</sup> Inmates sue over conditions at Yuba County jail, By Denny Walsh, Sacramento Bee October 25 2016, <https://www.sacbee.com/news/local/crime/article110349777.html>

<sup>8</sup> Third Death in Immigration Detention Makes the Adelanto Detention Center the Deadliest Facility in 2017, Detention Watch Network, June 6, 2017 <https://www.detentionwatchnetwork.org/pressroom/releases/2017/third-death-immigration-detention-makes-adelanto-detention-center-deadliest>

<sup>9</sup> Family seeks answers in immigrant's death after detention, By Amy Taxin, April 10 2019, Associated Press <https://apnews.com/8775303f79ee4d44a5959c34a8f3d99d>

lack of response to address this matter at the Adelanto Center shows a disregard for detainee health and safety,” the report said.<sup>10</sup>

- A 2018 report from the Department of Homeland Security's Office for Civil Rights and Civil Liberties, found, among other issues: The facility failed to meet ICE's own standards for using solitary confinement. One detainee, for instance, cumulatively spent nearly 2.5 years in solitary. It was "more likely than not" that problems with medical care "contributed to medical injuries, including bone deformities and detainee deaths." And government experts were so alarmed that they recommended "immediately" transferring "at-risk" detainees to another facility to protect their health and safety.<sup>11</sup>
- In October of 2019, Nebane Abienwi, a 37-year-old man from Cameroon died after sustaining a brain hemorrhage in the Otay Mesa Detention facility in San Diego.<sup>12</sup>

Despite these issues arising in many private facilities, ICE has been reluctant to terminate contracts with operators who routinely violate the standards set forth in their contracts, or to provide meaningful levels of oversight or enforcement. As a result, private operators violate basic minimum standards with no consequences.

#### **b. COVID-19 threatens the lives of all detainees**

To date, there have been dozens of confirmed cases of COVID-19 in the Otay Mesa detention facility which holds approximately 1,500 individuals.<sup>13</sup> Due to the virus' high rate of transmissibility coupled with the unsafe, and overcrowded conditions of these corporate facilities, the number of infected detainees grows each day. The true number of detainees with COVID-19 across all facilities in California is likely exponentially higher as ICE has failed to introduce any consistent method or plan for testing or protecting individuals.

A supervisor in the Otay Mesa facility has come forward to expose the fact that CoreCivic is not providing protection to employees or staff. Her comments highlight the reality that the officers working in this facility put not just those detained inside at risk, but likewise place the health of

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<sup>10</sup> Office of the Inspector General: Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California, September 27 2018, OIG-18-86

<sup>11</sup> Office for Civil Rights and Civil Liberties (CRCL), Review of Adelanto, April 25 2018, available at <https://www.documentcloud.org/documents/6331345-CRCL-Adelanto-Docs-Part-1.html#document/p57/a522739>

<sup>12</sup> Migrant in ICE custody removed from life support over family's objections, By Alan Gomez, USA TODAY, November 4 2019, <https://www.usatoday.com/story/news/nation/2019/11/04/migrant-ice-custody-removed-life-support-without-family-approval/4154071002/>

<sup>13</sup> ACLU sues to release detainees at controversial detention center, by Salvador Rivera, Border Report April 22 2020 <https://www.krqe.com/news/border-report/aclu-sues-to-release-detainees-at-controversial-detention-center/>

the community at large at risk.<sup>14</sup> The situation in Otay Mesa should be considered alongside the fact that the facility's for-profit operator, CoreCivic is facing challenges with containing the spread of COVID-19 across multiple facilities around the country and is proving ineffective in providing an effective response.

Detainees in the Otay Mesa facility have not been provided basic medical protections such as face masks. Reports from the facility have included allegations that CoreCivic staff attempted to pressure detainees into signing liability waivers before they were provided masks.<sup>15</sup> Detainees have also alleged they were pepper sprayed when they protested these unsafe conditions.<sup>16</sup>

Allegations of inadequate medical protections and use of force have emerged from other private facilities.<sup>17</sup> Those detained in the GEO operated Mesa Verde and Adelanto detention facilities have claimed that the facilities lack masks, soap or any plans to enable social distancing.

Similar issues have arisen in the Yuba County jail, where detainees have noted a lack of basic hygienic necessities such as soap and masks. This facility has historically been plagued by issues related to sanitation, cleanliness and welfare as evidenced by the multiple hunger strikes that have taken place to protest conditions in this facility.<sup>18</sup> Alarming, attorneys report that this facility has continued to receive detainees being transferred from the Santa Rita Jail, whose jail population has had thirty five confirmed cases of COVID-19.<sup>19</sup>

Most of these facilities are structurally incapable of providing any form of social distancing, with multiple individuals confined into a single room or cell, and often dozens of individuals living in a shared pod. ICE itself relies on a detention system in which individuals facing deportation or removal may be transferred between multiple facilities quickly, and without oversight. The current structure and operations of these facilities within California enable the rapid spread of this deadly disease.

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<sup>14</sup> Employee Critical of Anti-Coronavirus Measures at Otay Mesa Detention Center, By Dave Summers NBC SAN DIEGO, April 1, 2020 <https://www.nbcsandiego.com/news/local/employee-critical-of-anti-coronavirus-measures-at-otay-mesa-detention-center/2298001/>

<sup>15</sup> Detained Immigrants Plead for Masks, Protection From Virus, By Nomaan Merchant, The Associated Press, April 14 2020, <https://apnews.com/1ea169603b3c1e6b62bde8c5a8d658d>

<sup>16</sup> Senators Want to Know if ICE Detainees Were Pepper Sprayed After Requesting Masks, By Tyche Hendricks, KQED April 17 2020 <https://www.kqed.org/news/11812701/senators-want-to-know-if-ice-detainees-were-pepper-sprayed-after-requesting-masks>

<sup>17</sup> 'This Virus Kills Way Too Many People.' Hunger-Striking ICE Detainees Demand Answers, By Marcia Brown, The American Prospect April 17 2020 <https://prospect.org/justice/hunger-striking-ice-detainees-demand-coronavirus-answers/>

<sup>18</sup> Immigrant detainees begin hunger strike in Yuba County jail for improved conditions, By Elliot Wailoo, July 04, 2019 The Sacramento Bee <https://www.sacbee.com/news/local/article232261867.html>

<sup>19</sup> Assistant sheriff says 9 inmates at Santa Rita Jail currently have COVID-19 Bay City News Service, Pleasanton Weekly, April 28, 2020 <https://www.pleasantonweekly.com/news/2020/04/28/assistant-sheriff-says-9-inmates-at-santa-rita-jail-currently-have-covid-19>

The failure of these private operators to provide the basic protections for those detained, and the failure of ICE as a federal agency to provide meaningful oversight or guidance raises the serious prospect that these facilities will soon become a site for mass infection and consequently death.

### **III. Advocates and detainees have called for urgent action on the issue**

A large coalition of legal organizations and advocacy groups have called for action on the issue of immigrant detention and the end of transfers into ICE custody. On March 20th, 150 immigrant rights, civil rights, and health organizations sent a letter to Governor Gavin Newsom, citing the “Federal administration’s erratic and irresponsible behavior with respect to COVID-19 and the health, safety and welfare of individuals in immigration detention.” This letter urges Governor Newsom to take executive action to protect the lives of people in detention – and by extension, the health of all Californians. The call to action was subsequently echoed by an editorial written by advocates which appeared in the Sacramento Bee.<sup>20</sup>

On April 6th, the California Latino Legislative Caucus sent a letter to the California Department of Public Health with respect to the outbreak of COVID-19 in the Otay Mesa Detention facility and asked the department to issue directives with respect to the oversight of that facility.

Advocates have also organized car rallies and protests throughout the state to call attention to the issue. These rallies have taken place in Yuba, San Francisco, San Diego and Los Angeles. Activists have also targeted local jails to demand they end their policies of transferring individuals directly into ICE detention.<sup>21</sup>

Detainees held at Mesa Verde, Otay Mesa and Adelanto have begun hunger strikes in an effort to protest the conditions of confinement and bring attention to their plight.<sup>22</sup> A statement supporting the hunger strike and calling for action, including demanding an end to transfers, was signed by nearly 80 organizations from across the state.<sup>23</sup>

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<sup>20</sup> Immigrants face coronavirus in ‘death trap’ detention centers. California must act, By Jackie Gonzalez and Jennie Pasquarella, The Sacramento Bee, March 27 2020 <https://www.sacbee.com/opinion/california-forum/article241514156.html>

<sup>21</sup> Protesters rally from their cars, call for end to ICE notifications and transfers from San Mateo County jails, By Randy Vazquez, The Mercury News, April 22 2020 <https://www.mercurynews.com/2020/04/22/protesters-hold-car-rally-to-call-for-an-end-to-ice-notifications-and-transfers-from-san-mateo-county-jails/>

<sup>22</sup> Advocates say hundreds of immigrants detained in California are on hunger strike. ICE says only two, By Andrea Castillo, The Los Angeles Times, April 19 2020 <https://www.latimes.com/california/story/2020-04-19/advocates-say-hundreds-of-immigrants-detained-in-california-are-on-hunger-strike-ice-says-just-two-are>

<sup>23</sup> Immigrants in California detention centers launch hunger strikes to call for COVID-19 protections, advocates say, By Rebecca Plevin, The Desert Sun April 19 2020 <https://www.desertsun.com/story/news/health/2020/04/19/immigrants-california-detention-centers-launch-hunger-strikes-call-covid-19-protections-advocates-sa/5162354002/>

Detainees have demanded that operators do more to protect those inside the facility, and have cited the threat that new admissions pose for all those involved. According to Pablo Ramirez, a detainee held at Mesa Verde, ICE has done little to screen for COVID-19. “They don't test us for anything. They say they screen, they don't even take our temperature.”<sup>24</sup>

#### IV. Conclusion


It is likely, if not certain, that COVID-19 is roaring through every immigration detention facility in California. But ICE only reporting confirmed cases in the Otay Mesa facility—which is the only California facility whose health care service is run by ICE, it is impossible to know the level of infection in the other four facilities. While there are clear state oversight mechanisms in place for county jails and prisons, there is no clear accountability in the privately-operated immigrant detention facilities which exist in the state. A primary concern among advocates is that the for-profit entities operating these facilities will delay widespread testing for as long as possible, as their primary concern is their stock valuation and shareholder confidence, as opposed to the lives of those held inside. In short, mass infection will likely occur before any action is taken.

Ending the transfer of new individuals into these facilities will not only protect the lives of those inside these facilities, limiting potential contamination by new arrivals, but will also prevent the public health catastrophe that will inevitably result if these facilities are contaminated. The potential consequences of mass infection in each of these facilities will undoubtedly spillover into an already overburdened healthcare system.

Allowing the transfer of individuals into the custody of for-profit entities, with no plan in place to prevent the spread of COVID-19 is dangerous, negligent, and immoral. Now more than ever immigrant detention is amounting to a potential death sentence for those inside.

Dated: 4/28/20

Respectfully submitted,  
Immigrant Defense Advocates

By:   
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Hamid Yazdan Panah, Esq.  
SBN 283539  
Attorney for *Amici Curiae*

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<sup>24</sup> Senators Want to Know if ICE Detainees Were Pepper Sprayed After Requesting Masks, By Tyche Hendricks, KQED



## Appendix A

Complete list of eighty-five Amici.

1. A. L. Costa Community Development Center
2. ACLU North East Bay Chapter
3. Asian Americans Advancing Justice - Asian Law Caucus
4. Asian Prisoner Support Committee
5. Asians4BlackLives
6. Berkeley Citizens for Compassion
7. Buen Vecino
8. CAIR California
9. California Central Valley Journey for Justice
10. California Immigrant Policy Center
11. California Immigrant Youth Justice Alliance
12. California League of United Latin American Citizens (LULAC)
13. CALMA: Collective Action for Laborers, Migrants & Asylum Seekers
14. Center for Empowering Refugees and Immigrants
15. Central Valley Immigrant Integration Collaborative (CVIIC)
16. Chula Vista Partners in Courage
17. Clergy and Laity United for Economic Justice
18. Community Presbyterian Church of Pittsburg, CA
19. Community Works
20. Desert Support for Asylum Seekers
21. Do No Harm Coalition
22. Doctors for America, Immigrant Health Justice Working Group
23. Ella Baker Center for Human Rights
24. Espacio Migrante
25. Faith In Action Bay Area
26. Familia: Trans Queer Liberation Movement
27. Fathers and Families of San Joaquin
28. Filipino Community Center (San Francisco)
29. First Presbyterian Church of Palo Alto
30. Freedom for Immigrants
31. Ground Game LA
32. Haitian Bridge Alliance
33. Health Justice Commons
34. ICE Out of Marin
35. Immigrant Advocacy Group
36. Immigrant Defense Advocates

37. Immigration Task Force (Monterey)
38. Indivisible Conejo
39. Indivisible San Francisco
40. Indivisible Ventura
41. Inland Coalition for Immigrant Justice
42. Interfaith Council of Contra Costa County
43. Interfaith Movement for Human Integrity
44. Kehilla Community Synagogue
45. Kern Welcoming and Extending Solidarity to Immigrants (KWESI)
46. Khmer Girls in Action
47. La Colectiva de Mujeres y Day Labor Program
48. League of United Latin American Citizens (LULAC)
49. Legal Aid at Work
50. Long Beach Immigrant Rights Coalition
51. National Council of Jewish Women, Sacramento Section
52. National Immigration Law Center
53. Never Again Action - Bay Area
54. Nicaragua Center for Community Action
55. NorCal Resist
56. Ola Raza
57. Orange County Friends Meeting
58. Pacifica Social Justice
59. Peninsula Progressive Action Group
60. PICO California
61. POWER
62. Rapid Response Network of Kern
63. Rapid Response Network of Monterey County
64. Resilience Orange County
65. Restaurant Opportunities Center of The Bay
66. Root & Rebound
67. Sacred Heart Community Service
68. San Bernardino Community Service Center
69. San Francisco Immigrant Legal & Education Network
70. San Francisco Peninsula People Power (SFPPP)
71. Sanctuary Long Beach Coalition
72. Secure Justice
73. Silicon Valley De-Bug
74. Social Action Committee, UUFRC (Unitarian Universalist Fellowship of Redwood City)
75. South Bay People Power
76. The First Unitarian Universalist Society of San Francisco

77. The LGBTQ Center OC
78. TODEC Legal Center
79. Unitarian Universalist Justice Ministry of California
80. Unitarian Universalists of San Mateo
81. United We Dream
82. UUSF Close the Camps campaign
83. Wellstone Democratic Renewal Club
84. Your Allied Rapid Response - Santa Cruz
85. Youth Justice Coalition

## PROOF OF SERVICE

I am employed in the County of Alameda, California. I am over the age of 18 and not a party to the within action. My business address is: PO BOX 21826 El Sobrante, CA 94820.

On April 29<sup>th</sup> 2020 I served the foregoing document(s), described as:

- **AMICUS LETTER IN SUPPORT OF Support of Petition for Writ of Mandate in *California Attorneys for Criminal Justice and American Immigration Lawyers Association, Southern California Chapter v. Gavin Newsom, California Governor and Xavier Becerra, California Attorney General, Supreme Ct. No. S261829***

on the interested parties in this action by e-mail or electronic service [C.C.P. § 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this April 29<sup>th</sup> 2020 at Oakland, CA.



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Hamid Yazdan Panah

## SERVICE LIST

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### PROOF OF SERVICE

I am employed in the County of Alameda, California. I am over the age of 18 and not a party to the within action. My business address is: PO BOX 21826 El Sobrante, CA 94820.

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on the interested parties in this action by e-mail or electronic service [C.C.P. § 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this April 29<sup>th</sup> 2020 at Oakland, CA.



---

Hamid Yazdan Panah

## SERVICE LIST

Respondent	E-Mail
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