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**IN THE SECOND DISTRICT COURT- WEBER COUNTY,
STATE OF UTAH**

**DANIEL JOSEPH LUCERO, and all
others similarly situated,**

Petitioners,

vs.

**STATE OF UTAH, WEBER COUNTY,
and OGDEN CITY,**

Respondents.

**Memorandum of Authorities in
Support of Class Petition for Relief
Under the
Post-Conviction Remedies Act
Utah Code Section 78B-9-101, et seq.,
Utah Rule of Civil Procedure 65C**

Case No. _____
Judge _____

In support of his Class Petition to vacate a his conviction, certify a class action, and vacate all relevant convictions pursuant to the Post-Conviction Remedies Act, Utah Code Section 78B-9-101, et seq. and Utah Rules of Civil Procedure 65(C)(d), 23(a), and 23(b)(2), Daniel Joseph Lucero, through his attorneys, submits this memorandum of authorities.

FACTUAL BACKGROUND

On August 20, 2010, Weber County filed a complaint in the Second District Court of Utah against the Ogden Trece gang in Case Number 100906446. Weber County

claimed that the gang could be sued as an “unincorporated association” and requested an injunction declaring the gang a public nuisance and abating a public nuisance. As the Utah Supreme Court would later rule, Weber County did not properly effectuate service on the gang, but instead employed alternative service that was ineffectual. As the Court would find in a decision dated October 18, 2013, because the district court never obtained jurisdiction in the case, the court’s orders over the course of the case were void *ab initio*. *See Weber Cnty. v. Ogden Trece*, 2013 UT 62, ¶¶ 43-60, 321 P.3d 1067.

Prior to that ruling, however, the case continued. On August 20, 2010, the same day the complaint was filed, the district court issued a temporary restraining order against the Ogden Trece gang, which order the court later extended. On September 28, 2010, the County obtained a preliminary injunction against the Ogden Trece, which was made permanent in August 2012. (This Petition will refer to both the preliminary and permanent injunctions as the “Injunction” unless otherwise specified. A copy of the preliminary injunction is attached as Exhibit 1; a copy of the permanent injunction is attached as Exhibit 2.)

Persons subject to the Injunction had various restrictions placed on their constitutionally protected activities when they were within an area of twenty-five square miles, consisting of virtually the entire Ogden City limits. For example, those subject to the Injunction were not allowed to be in any public place between 11 p.m. and 5 a.m. except to attend church, work, school, or an admission-charging “entertainment event,” or because of an emergency. (Ex. 1, at 4.) Persons served were further not allowed to drive, sit, stand, walk, gather, or appear anywhere in public (except in school or church) with any “known member” of Ogden Trece. (*Id.* at 2.)

The Injunction did not require a pre-service hearing to determine whether a person to be served with the injunction was actually an agent of or otherwise affiliated with the Ogden Trece gang. Rather, the Injunction's restrictions became effective on the person immediately upon service, and the burden was placed on the individual served to initiate proceedings to disprove the propriety of subjecting him or her to the Injunction's restrictions, also called the "Opt Out" provision. *Id.* at 6-7. The Injunction stated that even an individual was eligible to "Opt Out," he or she could not raise that eligibility as a defense to a charge of criminal contempt for violating the Injunction. *Id.* at 6. Accordingly, even people with absolutely no connection to the Ogden Trece gang could be subject to conviction of criminal contempt merely being served with the Injunction and failing to abide by all of its terms.

Several individuals served with the preliminary Injunction brought a writ of extraordinary relief in the nuisance suit, arguing that the Injunction and permanent injunction should be vacated for various reasons, including the above-mentioned ineffective service. On October 18, 2013, the Utah Supreme Court issued an opinion ruling that the Injunction was void. *See Weber Cnty. v. Ogden Trece*, 2013 UT 62, ¶¶ 43-60, 321 P.3d 1067. As mentioned, the Court reasoned that because Weber County had not properly served the Ogden Trece with process to initiate the suit, the Court had no jurisdiction in the suit and therefore the court's orders, and specifically the Injunction and the permanent injunction, were void *ab initio*. *See id.* The Court's Order was remitted to the district court on November 6, 2013. (Remittitur, attached as Exhibit 3.)

FACTS REGARDING MR. LUCERO

Mr. Lucero is currently incarcerated at the Central Utah Correctional Facility. He is serving a sentence on a conviction not at issue in this Petition, but has also served 6 months previously for the conviction against him for violating the Injunction.

Despite not being a member of the Ogden Trece gang, Mr. Lucero was served with a copy of the preliminary Injunction. (Lucero Affidavit ¶ 1, attached as Exhibit 4.) On October 10, 2012, in Case Number 121902249 in the Second District Court for the State of Utah- Ogden, the State of Utah charged Mr. Lucero with violating Utah Code Section 76-10-807, violation of an order enjoining a public nuisance (*i.e.*, the preliminary Injunction), a class B misdemeanor. The alleged violation of the preliminary Injunction stemmed from Mr. Lucero being in public in Ogden after 11 p.m, and, separately, allegedly being in possession of drugs. (*See* Probable Cause Affidavit, attached as Exhibit 5.) In the same case, Mr. Lucero was also charged with violating Utah Code Section 58-37-8(2)(A)(I), possession or use of a controlled substance, a third degree felony, Utah Code Section 76-8-301.5, failure to disclose identity, a class B misdemeanor, Utah Code Section 53-3-202(1)(A), no valid license- expired, a class C misdemeanor, and Utah Code Section 76-8-305, interference with arresting officer, a class B misdemeanor. (*See* Docket Sheet in Case No. 121902249, attached as Exhibit 6.)

On July 16, 2013, Mr. Lucero pleaded guilty to the charge of violating the preliminary Injunction as well as to the charge of interfering with an arresting officer. Pursuant to a plea agreement, the State dismissed the other three charges, including the charge of allegedly possessing drugs, against Mr. Lucero without prejudice. (*Id.*) Mr. Lucero received a sentence of six months for his violation of the preliminary Injunction, with credit for time previously served; the sentencing court also noted that the time

should run concurrently with the sentence in an unrelated case. (*Id.*) Mr. Lucero received the same sentence for the other misdemeanor charge in case 121902249. (*Id.*)

When Mr. Lucero arrived at the Utah State Prison in August 2013, he was given a copy of the permanent Injunction. (Lucero Affidavit ¶ 2.) When Mr. Lucero told the gang unit officer handing him the injunction that he was not part of the Ogden Trece gang, the gang unit officer responded that he did not know why Mr. Lucero was on the list, since the gang unit officer was not familiar with Mr. Lucero. (*Id.* ¶ 3.)

FACTS REGARDING PROPOSED CLASS

According to an affidavit filed by Weber County in the *Ogden Trece* suit in September 2010, the County believed that there were about 485 members of the Ogden Trece gang. (Affidavit in Support of Alternative Service by Publication, attached as Exhibit 7.) At present, there is no publicly available list of the identities of all of the individuals who were served with the Injunction. On information and belief, however, hundreds of people were served with the Injunction and over 50 people were convicted one or more times of violating the Injunction. Moreover, on information and belief, because the Injunction was effective only in Ogden, the only two governmental entities prosecuting people accused of violating the Injunction were Weber County and Ogden City.

ARGUMENT

A. MR. LUCERO MEETS THE REQUIREMENTS TO VACATE HIS INJUNCTION-RELATED CONVICTION UNDER SECTION 78B-9-104

Under Utah Code Section 78B-9-104,

“[A] person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-

conviction relief to vacate or modify the conviction or sentence upon the following grounds:

(a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;

(b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected; [or]...

(f) the petitioner can prove entitlement to relief under a rule announced by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction and sentence became final on direct appeal, and that:

(i) the rule was dictated by precedent existing at the time the petitioner's conviction or sentence became final; or

(ii) the rule decriminalizes the conduct that comprises the elements of the crime for which the petitioner was convicted.”

Here, Mr. Lucero’s conviction for violation of the Injunction should be vacated under subsections (a), (b), and (f).

First, Mr. Lucero’s conviction for violating the Injunction violated the Utah and United States Constitutions because the district court issuing the Injunction did not establish personal jurisdiction over the Ogden Trece gang, the party that it was purporting to enjoin. *See Ogden Trece* at ¶64. Under Utah law, “[i]t is fundamental that disobedience of an order of court which was issued without jurisdiction cannot be the basis of a finding and judgment for contempt.” *Mellor v. Cook*, 597 P.2d 882, 884 (Utah 1979) (footnote citations omitted). Such is likewise true under the United States Constitution: “It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt.” *United States v. Shipp*, 203 U.S. 563, 573 (1906) (citations omitted).

This proposition holds true, of course, because constitutional due process demands that a court have power over a person before making decisions that implicate the person's rights. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) ("Due process requires that the defendant be given adequate notice of the suit and be subject to the personal jurisdiction of the court.") (internal citations omitted); *see also Jackson Const. Co. v. Marrs*, 2004 UT 89 ¶ 8 (stating that "if jurisdiction is lacking, the judgment cannot stand without denying due process to the one against whom it runs.") (internal quotation marks and citations omitted). Accordingly, allowing Mr. Lucero to be punished for violating the Injunction would violate his due process rights because the district court had no power to issue that order in the first instance.

That the Injunction is void for lack of jurisdiction is alone enough to vacate Mr. Lucero's conviction for violating the Injunction. There are three alternative grounds to do so, however, in this case. First, in addition to the due process violation just described, Mr. Lucero was also denied due process because he was not given a chance to contest his supposed membership in the gang before being subjected to the Injunction's restrictions on his liberty. This lack of pre-deprivation process was unconstitutional both on its face and as applied to Mr. Lucero.

As to the facial problem with the Injunction, the Ninth Circuit recently addressed this question in a case involving another so-called "gang injunction," *Vasquez v. Rackauckas*, 734 F.3d 1025 (9th Cir. 2013). In *Vasquez*, the court held that because the gang injunction there placed substantial rights at risk but denied the enjoined persons adequate pre-deprivation process, the injunction could not be enforced because it was unconstitutional. *Id.* at 1052.

Likewise here, the Injunction imposed restrictions implicating many constitutional rights, including free expression and free association, but gave no pre-deprivation process whatsoever to protect them. Rather, authorities needed only to serve a copy of the Injunction to a person and by its terms, the Injunction's restrictions bound that person. In fact, by making eligibility to opt out a non-defense to criminal prosecution for violating its terms, the Injunction expressly considered and approved situations where people totally unconnected to the Ogden Trece gang could be successfully prosecuted for contempt for violating the Injunction.

The Injunction's lack of pre-deprivation process was also unconstitutional as applied to Mr. Lucero because he was not a member of the Ogden Trece gang at the time he received the preliminary Injunction. Even by the time he was being given the permanent Injunction in August 2013, the gang unit officer giving the papers to Mr. Lucero acknowledged he was unfamiliar with Mr. Lucero. Had Mr. Lucero been given process before he was subjected to it, he would have been able to prove that he was not a gang member.

The second alternative ground for setting aside Mr. Lucero's conviction is under subsection (b). That is, Mr. Lucero was prosecuted for activity that was constitutionally protected.¹ In particular, Mr. Lucero's contempt charge was based in part on his being in a public place in Ogden past 11 p.m. in violation of the Injunction. That conduct was clearly within Mr. Lucero's First Amendment and due process rights. *See, e.g., Ruff v. Marshall*, 438 F. Supp. 303, 305 (D. Georgia 1977) (striking down broad curfew law as

¹ While the police alleged that Mr. Lucero illegally possessed a controlled substance as an alternative ground to charge him for violating the Injunction, the State has not proven this allegation.

inconsistent with the constitution). *See also In re J.M.*, 768 P.2d 219, 221 (Colo. 1989) (“Because these liberty interests are fundamental, the state must establish a compelling interest before it may curtail the exercise of such rights by adults . . .”); *Anonymous v. City of Rochester*, 915 N.E.2d 593, 598 (N.Y. 2010) (distinguishing strict scrutiny applicable to adult curfews from intermediate scrutiny applicable to minor curfews).

The final alternative ground for setting aside Mr. Lucero’s conviction is under subsection (f). Specifically, in *Ogden Trece*, the Utah Supreme Court ruled that the Ogden Trece gang was an unincorporated association that was amenable to service, but that the County had failed to properly serve the gang as an entity, and as a result, the Injunction was void. *See Ogden Trece*, ¶¶ 60, 64. This ruling was compelled by prior precedent involving the requirements of service of process under Utah law. Moreover, because it voided the Injunction, the ruling directly decriminalized the behavior that subjected Mr. Lucero to the criminal contempt conviction, in particular, the ability to be out in public in Ogden past 11 p.m. after being served with the Injunction.

B. NONE OF THE BARS TO RELIEF UNDER SECTION 78B-9-106 APPLY TO MR. LUCERO

Mr. Lucero’s present petition is not barred under Utah Code Section 78B-9-106. Under Section 106, a petition may be denied if it is based on a ground that “(a) may still be raised on direct appeal or by a post-trial motion; (b) was raised or addressed at trial or on appeal; (c) could have been but was not raised at trial or on appeal; (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or (e) is barred by the limitation period established in Section 78B-9-107.”

None of these bars preclude relief here. In this case, the Utah Supreme Court has already ruled that nobody except the Ogden Trece gang had the right to appeal the issuance of the Injunction. *Ogden Trece*, 2013 UT 62, ¶¶ 26, 28. Thus, Mr. Lucero had no standing to directly appeal the Injunction during his criminal proceedings in this court or in the district court proceedings relating to the Injunction itself. Moreover, the Injunction precluded Mr. Lucero from raising the fact that he was not a member of the Ogden Trece gang as a defense to the charge of violating the Injunction. Further, the Court did not find the Injunction void for lack of jurisdiction until October 18, 2013 and that order was not remanded to the district court until November 6, 2013, months after Mr. Lucero's criminal proceedings in this court were concluded and after the time for an appeal elapsed.

Accordingly, as of October 10, 2012, when he was charged, and as of July 16, 2013, when he pled guilty, Mr. Lucero had no standing to directly appeal the Injunction's propriety. He thus could not have, and did not, raise it at that time. Nor has he filed any previous motions to vacate this conviction. Moreover, it was not until November 6, 2013 — less than a year ago — that the Utah Supreme Court's decision ruling that the Injunction was void was remitted to the district court, so this Petition meets Section 107's one-year statute of limitations.

THE PROPOSED CLASS SHOULD BE CERTIFIED

Mr. Lucero seeks to represent a class defined as follows: "All individuals convicted of violating Utah Code Section 76-10-807 stemming from violations of the Injunction" (the "Proposed Class"). On behalf of the Proposed Class, Mr. Lucero petitions to vacate all convictions for violating the Injunction.

Petitions under the Post-Conviction Remedies Act are civil in nature and are governed by the rules of civil procedure. Utah Code Section 78B-9-102. Under the Utah Rules of Civil Procedure, to be certified as a class action, the court must be satisfied that the action meets the four requirements of Rule 23(a) and at least one requirement of Rule 23(b). *Jaques v. Midway Auto Plaza, Inc.*, 2010 UT 54. ¶¶ 23-24. This matter may properly proceed as a class action under Rule 23(a) and Rule (b)(2).

First, the Proposed Class is so numerous that joined of all members is impracticable. On information and belief, the Proposed Class is made up of over 50 people. Federal courts have noted that in considering numerosity, there is “no set formula” as to what number is numerous under the rule, and that the inquiry must be made “in the particular circumstances of the case.” *Rex v. Owens ex rel. State of Okl.* 585 F.2d 432, 436 (10th Cir. 1978). The number of individuals in the class is an important consideration, though the sheer numbers can vary. *See id.* (citing to certifications of various classes sized between as few as 17 and as many as 358 individuals). Some courts have presumed that numerosity will certainly be met if the class is composed of 40 members or more. *See, e.g., Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2nd Cir. 1995) (“numerosity is presumed at a level of 40 members”); *Stewart v. Avraham*, 275 F.3d 220, 227 (3rd Cir. 2001) (“generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met”); James Wm. Moore et al., *Moore's Federal Practice* § 23.22[3][a] (Matthew Bender 3d ed.1999). Other considerations in assessing numerosity include “the nature of the action, the size of the individual claims, the inconvenience of trying

individual suits, and any other factor relevant to the practicability of joining all of the putative class members.” *Paxton v. Union Nat. Bank*, 688 F.2d 552, 559 (8th Cir. 1982).

Absent discovery, information and belief support an estimate that over 50 individuals were convicted of violating the injunction. Specifically, Weber County believed that there were at least 485 members of the gang in 2010, and likely served hundreds of people with the Injunction during the over three years before it was struck down. All that a person served with the Injunction needed to do to be subject to prosecution and conviction was to be contacted by a policeman in Ogden past 11 p.m. A list of people served with the Injunction is not publicly available, nor is there any known list of people convicted of violating it. Based upon preliminary searching with limited information, Mr. Lucero’s counsel has located over a dozen individuals who were convicted of violating the Injunction. Common sense supports a projection that at least 50 people were convicted of such violations.

Moreover, several other factors render certifying the putative class the most practicable solution here. It is not clear that all of the members of the Proposed Class realize that they would be eligible for the relief of having their Injunction-related convictions vacated upon a Petition. Some may no longer live in Utah, or may be presently incarcerated and cut off from information and legal resources. Others may be discouraged from seeking to vacate a misdemeanor conviction if they feel there may not be much practical benefit to them in doing so. These considerations further bolster a finding of numerosity.

Second, there are questions of law and fact common to the members of the Proposed Class. “Commonality requires only that a single issue of fact or law be

common to each class member. To have a common issue, there must be a ‘discrete legal question of some kind.’” *Jaques*, 2010 UT 54 at ¶27 (citations omitted.)

Here, there is at least one issue of fact or law common to each class member. That is, the main question in this matter is whether the convictions relating to violations of the Injunction were obtained in violation of the Utah and United States Constitutions and should be vacated under Utah Code Section 78B-9-104(a). Each member of the Proposed Class can assert at least two common arguments that these convictions are unconstitutional. First, each class member can assert that it is a federal and state due process violation to punish a person for violating an injunction issued in the absence of jurisdiction. *See Mellor v. Cook*, 597 P.2d 882, 884 (Utah 1979) (“It is fundamental that disobedience of an order of court which was issued without jurisdiction cannot be the basis of a finding and judgment for contempt.” (footnote citations omitted) and *United States v. Shipp*, 203 U.S. 563, 573 (1906) (“It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt.”) (citations omitted). Second, every class member can argue that the Injunction’s lack of pre-deprivation process rendered the Injunction unconstitutional on its face and thus any conviction of it would likewise violate the constitution. *See Vasquez v. Rackauckas*, 734 F.3d 1025 (9th Cir. 2013).

The question of whether a conviction for violating the Injunction is constitutional is vital to the interests of every Proposed Class member, all of whose criminal records contain one or more such convictions. While that issue suffices, there are, of course, many other common issues here. For example, all members of the Proposed Class can argue that the new rule announced in the *Ogden Trece* case is grounds to vacate their

convictions under Utah Code Section 78B-9-104(f). Moreover, it will be a common fact that all of the Proposed Class members were convicted of violating the Injunction.

Third, Mr. Lucero's claims are typical to those of the Proposed Class. "The question of typicality ... is closely related to the preceding question of commonality. A named plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and [is] based on the same legal theory." *Jaques*, 2010 UT 54 at ¶36 (citation omitted). "Furthermore, 'minor factual variations will not defeat the formation of the class.'" *Id.* (citation omitted.)

Here, typicality is met because the same practice of prosecuting those served with the Injunction for violations of the Injunction applied to all Proposed Class members and the central claim of all class members is that no conviction of the Injunction comported with the Utah or United States Constitutions. Moreover, all members of the Proposed Class can advance the same arguments under Utah Code Section 78B-9-104(a) and (f) that their convictions should be overturned.

It seems likely that some Proposed Class members will have additional arguments to make about the invalidity of convictions that other members may not validly assert. For example, some class members like Mr. Lucero will have evidence that their conviction was for otherwise lawful conduct like being out past 11 p.m. in Ogden, while others will not. But these additional arguments do not detract from the main issues, which are common to all members, and do not defeat typicality.

Fourth, Mr. Lucero and his counsel will fairly and adequately protect the interests of the class. "The two factors that must be considered in determining whether the class representatives will fairly and adequately represent the interests of the class members are

(1) ‘whether the [representatives] have interests antagonistic to those of the class’ and (2) ‘the class attorney's qualifications, experience, and ability to conduct the litigation.’”

Jaques, 2010 UT 54 at ¶38 (citation omitted).

Here, Mr. Lucero’s sole interest in bringing this Petition is to wipe his slate clean of his conviction for violating the Injunction. This interest is not antagonistic to the interest of other members of the Proposed Class. To the contrary, his interest here is identical to that of the Proposed Class members, all of whom have criminal convictions for violating the Injunction, and all of whom would only be benefitted if those convictions were vacated. None of the members of the Proposed Class have any reason to oppose the theories and relief Mr. Lucero pursues here. In terms of attorney qualifications, Mr. Lucero’s counsel is well qualified to represent the Proposed Class. Randall Richards has over 25 years of legal experience in complex civil and criminal matters. John Mejia has been practicing law for over 10 years, with a focus on civil rights litigation for over two years, and has brought several civil rights class action suits during that time. Leah Farrell has litigated civil rights cases over her two year legal career, including class actions.

Finally, the Proposed Class can be maintained under Utah Rule of Civil Procedure 23(b)(2) because Weber County and Ogden City acted on grounds generally applicable to the Proposed Class. Rule 23(b)(2) requires a showing that “The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.”

The United State Supreme Court has ruled that Rule 23(b)(2) certification is appropriate when “a single injunction or declaratory judgment would provide relief to each member of the class.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. ___, 131 S.Ct. 2541, 2557 (2011). Further, Rule 23(b)(2) certification “is an especially appropriate vehicle for civil rights actions.” *Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980), *see also Redmond v. Bigelow*, Case No. 2:13-CV-393DAK, 2014 WL 2765469, *7 (D. Utah, June 18, 2014).

Here, the Defendants pursued a course of action general applicable to the entire Proposed Class, which was to pursue and obtain convictions against the members of the Proposed Class related to violations of the Injunction. A single ruling that these convictions violated the constitution and order vacating those convictions would provide relief to every member of the Proposed Class. Moreover, because this matter touches on the civil rights of each member of the Proposed Class, certification is particularly appropriate.

THE CONVICTIONS OF THE PROPOSED CLASS SHOULD BE VACATED

All of the convictions of the members of the Proposed Class should be vacated. Specifically, all of the convictions should be convicted under Utah Code Section 78B-9-104(a) and (f). As explained above, under subsection (a), all convictions for violating the Injunction are unconstitutional because the district court had no power to properly issue the Injunction. In the alternative, all of these convictions are unconstitutional because the Injunction provided no pre-deprivation process to protect the rights abridged by the Injunction. Finally, all of the convictions should also vacated in the alternative under subsection (f), because of the new rule announced by the Court in *Ogden Trece*.

As in Mr. Lucero's case, there are no known bars to the Petition on behalf of the Proposed Class. As with Mr. Lucero, no individual member of the Proposed Class would have had standing to challenge the Injunction in his or her criminal proceeding. Moreover, since no one could be convicted of violating the Injunction after November 6, 2013, the time for appeals of any conviction has run. Further, there are no known reported cases of anyone appealing or seeking post conviction relief of any sort of his or her conviction for violating the Injunction. Nor are the Proposed Class members' claims based on newly discovered evidence. Finally, there is no statute of limitations issue for any Proposed Class member.

CONCLUSION

For the foregoing reasons, Mr. Lucero's Class Petition should be granted. His criminal contempt conviction for violating the Injunction should be vacated. Moreover, the Proposed Class should be certified and the convictions of all members of the Proposed class for violating the Injunction should be vacated.

Respectfully submitted this 28th day of October, 2014

SIGNED

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