

STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Court File Numbers: 93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

FOURTH SUPPLEMENT TO  
DEFENDANT'S FIRST AMENDED  
MOTION FOR APPROPRIATE RELIEF

DANIEL ANDRE GREEN

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NOW COMES the Defendant, Daniel Green, by and through undersigned counsel, who files this Fourth Supplement to his First Amended Motion for Appropriate Relief. This filing supplements previously filed claims concerning the State's failure to disclose—and its efforts to actively conceal—information and evidence regarding Hubert Larry Deese, a convicted drug trafficker who was under investigation at the time of Mr. Jordan's murder and who is the son of the late Sheriff Hubert Stone. *See generally* Claim III, Defendant's First Amended Motion for Appropriate Relief (March 31, 2015); Second Supplement to First Amended Motion for Appropriate Relief (December 16, 2016).

#### **BACKGROUND**

A previous Order of this Court directed the Robeson County Sheriff's Department and State Bureau of Investigation to produce "any statements made by Hubert Larry Deese . . . regarding any drug activity . . . that occurred between January 1, 1990, and August 15, 1993." The Court also ordered the production of "any documents . . . implicating Sheriff Hubert Stone in the coverup of drug activities." Order, The Honorable Michael E. Beale, January 4, 2017. The Court's Order directed the S.B.I. to produce the documents within 60 days, or the first week of

March 2017. At a separate hearing prior to the issuance of the Order, the Court instructed the S.B.I. to produce, for in camera inspection, “all records in the possession of the S.B.I. involving . . . Hubert Stone.”

Subsequent to the issuance of these Orders, the State produced to undersigned counsel a letter from Major Anthony Thompson of the Robeson County Sheriff’s Office, which stated that the department did not possess any files responsive to the Order. The State also produced, from the S.B.I., documents discussing “Operation Porkchop,” an interagency drug investigation in which Hubert Larry Deese was a named target. At a subsequent hearing, the State represented that it had produced all of the documents that were responsive to the Court’s Order.

On May 4, 2017, one month prior to the then-deadline set by this Court for the filing of any remaining motions, and months after the discovery deadline set by the Court, defense counsel received a set of 147 additional documents from the S.B.I., totaling hundreds of pages. These documents further detail State investigations into Hubert Larry Deese’s drug trafficking activities. Some of them lend support to claims pending before this Court concerning the selective investigation into James Jordan’s murder and the State’s failure to disclose material information and evidence regarding Mr. Deese.<sup>1</sup> The documents are hereby incorporated by reference to Defendant’s First Amended M.A.R. Their contents and Mr. Thompson’s recent letter are discussed below.

**IN A LETTER, THE R.C.S.O. ACKNOWLEDGES FOR THE FIRST TIME A CONFLICT OF INTEREST REGARDING INVESTIGATIONS INTO HUBERT DEESE.**

On December 8, 2016, Jordan case detective Anthony Thompson of the Robeson County Sheriff’s Office (“RCSO”) wrote a letter in response to the aforementioned Order of this Court.

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<sup>1</sup> For example, on the very day that Mr. Jordan was killed and a call was placed from his phone to Hubert Larry Deese, agents at the State Bureau of Investigation wrote a memorandum concerning their drug conspiracy investigation into Mr. Deese. *See* Exhibit I23, Interview with Davis Smiling, July 12, 1993 (dictated July 23, 1993).

The letter, hereby incorporated by reference as Defendant's Exhibit 125, asserts that there are "no written reports being held by this agency concerning this information."<sup>2</sup> The letter explains that "[a]ll Robeson County Sheriff's Office drug files were seized during the Tarnished Badge Investigation."<sup>3</sup>

Although the RCSO did not produce any new files, its letter does provide this Court with a significant new piece of information: an admission from the investigating agency that a "**conflict of interest**" existed with respect to the RCSO and investigations involving Hubert Larry Deese.<sup>4</sup> The letter indicates that the conflict arose because Hubert Larry Deese was the son of Sheriff Hubert Stone and state and federal agencies had placed Mr. Deese under investigation for drug trafficking. **That investigation officially began on January 14, 1993.**<sup>5</sup> **The conflict of interest thus arose on that date.** Mr. Deese later appeared on James Jordan's phone records on **July 23, 1993**, the date of the murder, and a copy of the records were obtained by investigators in August.<sup>6</sup> This conflict of interest that existed in January also existed in August. While detectives say they thought the conflict of interest significant enough to keep the information from Sheriff Stone, the State nonetheless maintains it was appropriate for Stone, just

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<sup>2</sup> Exhibit 125, Memorandum, Ref: State of North Carolina v. Daniel Andre Green, written by Anthony Thompson, Chief of Detectives, Robeson County Sheriff's Office, December 8, 2016.

<sup>3</sup> *Id.* Operation Tarnished Badge, which was discussed briefly in Defendant's M.A.R., culminated in the arrest of twenty-two officers in the Robeson County Sheriff's Office—the largest police-corruption scandal in state history—for crimes including drug trafficking, kidnapping, armed robbery, and money laundering, over a time period that included the year leading up to Mr. Green's 1996 trial. *See generally*, Ali Rockett, *Operation Tarnished Badge: Years Later, Tarnish Remains*, FAYETTEVILLE OBSERVER, June 10, 2013. Although not in the hands of the Robeson County Sheriff's Department, these files are in the hands of the State of North Carolina after "being seized."

<sup>4</sup> *See* Exhibit 125 ("There were also rumors that Hubert Larry Deese was the son of then Sheriff Hubert Stone. Since this was a potential conflict of interest the Drug Enforcement Agency was contacted to investigate. *At no time was Sheriff Stone made aware of this information.*").

<sup>5</sup> *See* Exhibit 126, at v.

<sup>6</sup> *See* Exhibits 38 & 39.

months later, to oversee a high-profile *murder* investigation in which his son was called from the victim's phone.<sup>7</sup>

In sum, the documents disclosed by the SBI make clear that when Deese's number was identified on James Jordan's phone records in July 1993, RCSO Detectives were well aware of his involvement in drug trafficking, the ongoing investigation into his activities, and his relationship to the Sheriff. Detective Thompson's letter, when read against the background of these new documents, shows that RCSO detectives had already reached the conclusion, prior to Mr. Jordan's murder, that Stone should not be "made aware of . . . information" concerning investigations into his son's criminal activities. This position is difficult to reconcile with the active role Sheriff Stone played in the Jordan murder investigation and as an expert witness against Mr. Green.

**THE S.B.I. DOCUMENTS CONTRADICT R.C.S.O. CLAIMS THAT SHERIFF STONE WAS KEPT IN THE DARK ABOUT THE DRUG CONSPIRACY INVESTIGATION INVOLVING HIS SON, AND THEY SHED LIGHT ON THE DEPARTMENT'S IMPROPER RELATIONSHIP WITH HUBERT LARRY DEESE.**

While Mr. Thompson is correct that it would have been a conflict of interest for the Sheriff to investigate his son, the SBI files indicate that, in fact, Stone was *not* kept in the dark about the drug investigation. The documents also contradict the self-serving claims of RCSO officials that it was they who brought Mr. Deese to the DEA's attention.<sup>8</sup> Detective Locklear,

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<sup>7</sup> Prior to this Court's Order that the State disclose the documents, the State characterized the assertion that Sheriff Stone had "a motive . . . to cover up the connection of Deese to the Jordan killing" as "baseless." *See* State's Answer to Defendant's First Amended M.A.R., at 94-95. Although the N.C. Attorney General's Office continues to defend the integrity of the police work done by Sheriff Stone and his employees in the context of this case, it has elsewhere taken a less sanguine view of the Sheriff. In 2015, acting on new evidence, Attorney General Roy Cooper, now Governor, "asked the State Bureau of Investigation to reopen" the 29-year old murder of a Robeson County attorney and candidate for Superior Court Judge, Julian Pierce, to determine whether his murder had been orchestrated by Sheriff Stone. At the time of his death, Pierce, who posthumously won the election, was "campaign[ing] against drug trafficking" and had alleged "that the sheriff's office was corrupt and protected local drug dealers." *See generally* Joseph Neff, *28 Years Later, A Question Resurfaces: Who Killed Julian Pierce?*, NEWS & OBSERVER, February 19, 2017, A1.

<sup>8</sup> In an interview with Mr. Green's defense counsel Ian Mance, a transcript and recording of which has been filed with this Court, Mr. Locklear stated: "We arrested Jerry Porter, and during the interview process, that's all he could

who has admitted to being close friends with Deese, as well as to being deeply embarrassed by the relationship, has repeatedly claimed he initiated the investigation into Deese, and that he “wanted him buried.”<sup>9</sup> However, even if this were true—and the documents suggest it is not<sup>10</sup>—it would make his failure to pursue the phone call<sup>11</sup> in the Jordan case all the more troubling and inexplicable.

The State has asserted that it produced all of the documents in its possession responsive to this Court’s Order concerning the investigation into Hubert Deese. If it was true that the RCSO had initiated the investigation, this information should have been included in the large volume of SBI reports produced to the defense over the past year. However, there are no documents in the SBI investigative file indicating that Detective Locklear provided the information that initiated the investigation into Mr. Deese. Similarly, if it were true that a conflict of interest was believed to exist at the time of the task force investigation, then this too would have been reflected in the reports and it would have provided the SBI a basis for excluding the Sheriff’s Office from participating in the investigation. But the SBI documents do not indicate that anyone ever agreed to withhold information from Sheriff Stone.

If the SBI had in fact noted a conflict of interest between Sheriff Stone and the investigation into his son’s drug trafficking, then presumably the agency would have interviewed Stone about the situation, at the very least after Deese had been taken into custody in early 1994. However, there are no documents anywhere in the SBI reports either noting the existence of a

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talk about was [Hubert] Larry Deese. . . . That arrest kind of, I guess, somewhat spearheaded things. . . . He weren’t no street dealer; that rascal was dealing pounds and kilos, is what the information [was that] we started gathering. So, you know, knowing, that one, he buddied around with us, [and] secondly, everybody knew what the rumor was [about Sheriff Stone being his father]. . . . Mike [Grimes and] the DEA got involved. . . . So we turned pretty much all of our information over to the DEA and they headed up the investigation. I never really kept track of it.” See Exhibit 124, Transcript, Interview with Mark Locklear, March 11, 2015.

<sup>9</sup> See *id.*; see also Exhibit 125 (Mr. Thompson repeats Locklear’s account).

<sup>10</sup> See Exhibit 126, Report of Criminal Specialist J.B. [*last name illegible*], at iii & vi.

<sup>11</sup> See Exhibit 124, at 17 (quoting Detective Locklear as saying “maybe [the phone call to Deese] was brought up in conversation at the time, and I just wrote it off”).

conflict of interest or detailing any conversation between the SBI and Stone about his son and his extensive relationships with sheriff's deputies. If it were true that the conflict of interest was such that it prevented the sheriff's office from participating in the Deese investigation, then no Sheriff's employees should have been involved in the investigation. And yet, the SBI reports indicate that Robeson County deputies and investigators were present at most of the interviews related to the investigation into Deese,<sup>12</sup> and that the District Attorney, Johnson Britt, was copied on some of these reports.<sup>13</sup> These interviews continued to include RCSO officials for months after a Federal Bureau of Investigation teletype documented communications with the SBI that put that agency on notice of the connection between Sheriff Stone, his drug trafficking son, and the Jordan case.<sup>14</sup> None of these documents were ever produced to defense counsel.

These documents are relevant to this Court's evaluation of Mr. Green's *Brady* claims, as well as his claims related to investigators' failure to interview Hubert Deese about the phone call placed to his home after the murder. Among other things, the documents reveal that Deese fell under DEA and SBI suspicion in 1992, after he was implicated by a man named Eddie Robinson, and that this occurred more than a year before Mark Locklear and the drug task force arrested Jerry Porter.<sup>15</sup> The formal operation targeting Deese began officially on January 14, 1993, more than six months before Mr. Jordan's murder, and it continued after the arrest of Daniel Green and Larry Demery.<sup>16</sup> The investigation, entitled "Operation Porkchop," was a joint effort involving

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<sup>12</sup> See Exhibits 123, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136 (RCSO Deputies Von Hackney, Strickland and Lovin present during arrest of Hubert Larry Deese).

<sup>13</sup> See Exhibit 116, Report to Britt regarding Deese paying for protection from Sheriff's deputies, sent to Britt during the Green Trial, Jan 23, 1996.

<sup>14</sup> See Exhibit 108

<sup>15</sup> See Exhibit 126, at iii.

<sup>16</sup> See *id.* at v.

the DEA, SBI, and the Robeson County Sheriff's Office, at a time when Deese's father served as sheriff.<sup>17</sup>

The documents show that multiple people working for Sheriff Stone were involved in and privy to information about the investigation.<sup>18</sup> Among the officers involved was C.T. Strickland, a supervisor of the narcotics unit who was later convicted of what a federal judge called "outrageous" drug-related corruption.<sup>19</sup> Multiple S.B.I. reports indicate that during the course of the investigation, Hubert Deese seemed to have access to confidential information about upcoming task force activities, and that at times he even sold information to other drug suspects about impending raids conducted by Strickland, Locklear, and others.<sup>20</sup> Other S.B.I. reports indicate that Sheriff Stone himself at times warned Deese about the investigation and told him he was in danger of being arrested.<sup>21</sup> All of these activities took place primarily in 1993 and coincided with the investigation of the James Jordan murder. The records also reflect that District Attorney Johnson Britt, who prosecuted Daniel Green, was sent memoranda about the progress of the Deese investigation prior to and during Mr. Green's trial.<sup>22</sup> None of these files were shared with the defense, despite the fact that the District Attorney was fully aware at the

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<sup>17</sup> See, e.g., Exhibit 127, Letter to Karen Wright from Erich Von Hackney, Narcotics Detective, Robeson Co. Sheriff's Dept., March 15, 1993, at 1 (detailing history of task force investigation).

<sup>18</sup> See, e.g., Exhibit 128, Interview with Marshall Randell Deese, January 21, 1993; Exhibit 129, Interview with Tommy Ray Strickland, January 26, 1993; Exhibit 130, Interview with Eddie Robinson, February 2, 1993; Exhibit 131, Interview with Hubert Covington, March 8, 1993; Exhibit 132, Interview with Eddie Robinson, March 26, 1993; Exhibit 133, Interview with James Craig Tew, March 29, 1993; Exhibit 123, Interview with Davis Smiling, July 12, 1993; Exhibit 134, Surveillance Activity on September 30, 1993; Exhibit 135, Search Warrant Activity, January 7, 1994; Exhibit 136, DEA Report of Investigation, Arrest of Hubert Larry Deese February 8, 1994.

<sup>19</sup> See, e.g., Exhibit 129, Interview with Tommy Ray Strickland, January 26, 1993; *Judge Rejects Prosecutors' Sentencing for 2 Ex-Robeson Lawmen*, WRAL, May 29, 2008, available at <http://www.wral.com/judge-rejects-prosecutors-sentencing-for-2-ex-robesson-lawmen/2954215>.

<sup>20</sup> See, e.g., Exhibit 128, Interview with Marshall Randell Deese, January 21, 1993, at 4; Exhibit 129, Interview with Tommy Ray Strickland, January 26, 1993, at 6.

<sup>21</sup> See Exhibits 114–15.

<sup>22</sup> See, e.g., Exhibit 116.

time that the defense theory of the case was that Mr. Jordan's murder had a nexus to Deese's drug trafficking activities.<sup>23</sup>

These documents constitute material evidence that, had they been disclosed, could have been used to impeach the credibility of the entire investigation into Mr. Jordan's murder and "put the whole case in such a different light." State v. Williams, 362 N.C. 628, 637, 669 S.E.2d 290, 297 (2008) (quoting Kyles v. Whitley, 514 U.S. 419, 435 (1995)).<sup>24</sup> Specifically, the documents could have been used to argue that the Robeson County Sheriff's Office was conspiring to protect Hubert Deese from the scrutiny of outside investigators, in both the drug conspiracy case and the murder investigation. If jurors had been made aware of Detective Locklear's close friendship with Deese and been privy to these reports indicating Deese had foreknowledge of Locklear's law enforcement activities and personally profited from the sale of this information,<sup>25</sup> Mr. Green's lawyers could have argued that Locklear—who, with Stone, oversaw the RCSO's investigation into the Jordan murder—was untrustworthy, or even corrupt, and that he had acted to protect his friend and own self-interest. In sum, the reports cast in a much more sinister light investigators' failure to pursue the phone call to Deese—and their misrepresentation to the FBI that they would.<sup>26</sup>

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<sup>23</sup> See Exhibit 137, Transcript, Interview with L. Johnson Britt, III, January 8, 2015, at 2 (discussing drug trafficking allegations and stating "I know that 20 years ago when this occurred . . . that was part of [the] whole theory, that was part of what [defense counsel] Woody Bowen and [Angus] Thompson tried to, um, they wanted to prove.").

<sup>24</sup> The Supreme Court has explicitly "disavowed any difference between exculpatory and impeachment evidence for *Brady* purposes[.]" Kyles, 514 U.S. at 433. "The suppression of material evidence justifies a new trial." Giglio v. United States, 405 U.S. 150, 153 (1972). "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting [the witness's] credibility falls within this general rule." Id. at 154 (quoting Napue v. Illinois, 360 U.S. 264, 269 (1959)). The "Due Process Clause of the Fourteenth Amendment, as interpreted in *Brady*, makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence," Arizona v. Youngblood, 488 U.S. 51, 57 (1988).

<sup>25</sup> Exhibit 128, Interview with Marshall Randell Deese, January 21, 1993; Exhibit 126, Report of Criminal Specialist J.B. [last name illegible], at v; Exhibit 129, Interview with Tommy Ray Strickland, January 26, 1993; Exhibit 133, Interview with James Craig Tew, March 29, 1993; Exhibit 138, Interview with Sanford Clark, July 6, 1993; Exhibit 139, Interview with Credence Harris, December 20, 1993.

<sup>26</sup> See Exhibit 108.

**DISTRICT ATTORNEY BRITT'S FAILURE TO DISCLOSE AND CORRECT THE RECORD AT TRIAL REGARDING THE CONFLICT OF INTEREST BETWEEN THE SHERIFF AND THE DRUG INVESTIGATION INTO THE SHERIFF'S SON CONSTITUTES A SEPARATE DUE PROCESS VIOLATION.**

According to the United States Supreme Court, prosecutorial misconduct resulting in a due process violation occurs when the prosecutor's conduct "so infect[s] the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637 (1974)). Both the Fourth Circuit and the North Carolina Supreme Court have applied this standard. See State v. McCollum, 334 N.C. 208, 224, 433 S.E.2d 144, 152 (1993) (quoting Wainwright at 181), United States v. Scheetz, 293 F.3d 175, 185 (4th Cir. 2002) (quoting United States v. Morsley, 64 F.3d 907, 913 (4th Cir.1995)).

"A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal." North Carolina State Bar Rule of Professional Conduct 3.3 Sect. 1(a)13. "As any attorney knows, an affirmative statement is not necessary to create a misrepresentation. Where there is a duty to speak, silence can also be a misrepresentation." In re Burton, 442 B.R. 421, 460 (Bankr. W.D.N.C. 2009). Under professional standards, the failure of the State to inform a trial judge of the material fact that evidence existed which supported the defense's proposed theory was clearly improper conduct.

Prosecutor Britt was aware that Hubert Larry Deese was the son of Sheriff Stone.<sup>27</sup> He was also aware that Hubert Larry Deese was under federal investigation prior to the Jordan murder.<sup>28</sup> Mr. Britt knew Hubert Larry Deese was named in the Jordan cell phone records.<sup>29</sup> Mr. Britt was therefore aware of the conflict of interest between the Sheriff's Department and

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<sup>27</sup> See Exhibit 117, ¶¶100-127.

<sup>28</sup> See Exhibit 117, ¶¶100-127.

<sup>29</sup> See Exhibits 38 and 39.

investigations involving Hubert Larry Deese during the trial of this matter. Yet, Mr. Britt remained silent when the judge commented that there was no evidence connecting Sheriff Stone to Hubert Larry Deese.<sup>30</sup>

In fact, Prosecutor Britt called Sheriff Stone to testify as an expert in this matter.<sup>31</sup> And in his closing argument, Mr. Britt noted the failure of the defense to show that information was withheld and that there was a selective investigation into this matter: *“Then they turn around and they told you that this was a selective investigation. That it focused in on their client and their client only. Is that what the evidence in this case showed? Selective. They then even claim that they were going to show you evidence that the State, that I had withheld evidence from them during the course of this investigation, during the course of the history of this trial. Was there any evidence of that? No.”*<sup>32</sup>

Prosecutor Britt’s silence at this crucial juncture of the trial, coupled with his failure to disclose the conflict of interest, violated Mr. Green’s constitutional right to due process of law. Mr. Green was prejudiced by this violation because it prevented him from putting on the theory of his defense, as previously described, that his codefendant Demery committed the murder in connection with the drug trafficking activities of Hubert Larry Deese. Finally, Mr. Britt argued in closing that the defense had failed to show a selective investigation and failure to disclose evidence when Prosecutor Britt had, himself, failed to disclose the information which would have shown a selective investigation. For these reasons, Mr. Green deserves a new trial.

#### **FILING OF TRANSCRIPTS AND RECORDINGS**

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<sup>30</sup> See Tr. 5748–55.

<sup>31</sup> See Exhibit 48.

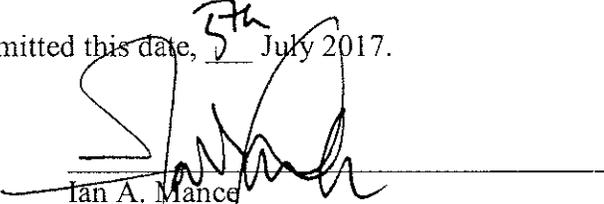
<sup>32</sup> See Tr. 7317–18.

Filed along with this supplement, and incorporated by reference are the audio (Exhibit 140) and transcribed recordings of interviews with Mark Locklear (Exhibit 124), Johnson Britt (Exhibits 137 and 143), Jennifer Elwell, (Exhibit 142) and Art Binder (Exhibit 140).

### CONCLUSION

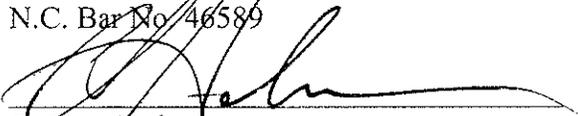
This Supplement and its Exhibits are hereby incorporated by reference to Defendant's First Amended MAR. For the above stated reasons, as well as those presented in Defendant's M.A.R., and his First, Second, and Third Supplements, this Court should grant Defendant a new trial. In the alternative, this Court should order an evidentiary hearing so that Defendant may present evidence of his innocence and deficiencies in his trial that rendered it unfair and unjust.

Respectfully submitted this date, <sup>5<sup>th</sup></sup> July 2017.



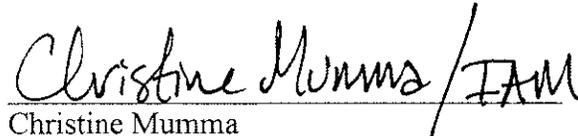
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**CERTIFICATE OF SERVICE**

I, the undersigned attorney, do hereby certify that copies of the foregoing in the above entitled action were served by email and United States Mail, delivery as follows:

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This date 5 July 2017

  
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