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15
 16 IN THE UNITED STATES DISTRICT COURT
 17 FOR THE DISTRICT OF ARIZONA

19 United States of America,
 20 Plaintiff,
 21 vs.
 22 Michael Lacey, *et al.*,
 23 Defendants.

Case No. 2:18-cr-00422-PHX-DJH

DEFENDANTS' NOTICE OF APPEAL

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1 Defendants Michael Lacey, James Larkin, John Brunst, Scott Spear, Andrew Padilla, and
 2 Joye Vaught, by and through their counsel, appeal to the United States Court of Appeals for the
 3 Ninth Circuit from the Order (Dkt. 1444) filed December 29, 2021. The Order denied
 4 Defendants' Motion to Dismiss with Prejudice (Dkt. 1355) filed October 20, 2021, which asserted,
 5 *inter alia*, that the Double Jeopardy clause of the Fifth Amendment to the United States
 6 Constitution precludes a retrial.

7 The appeal of an order denying a double jeopardy motion constitutes an immediately
 8 appealable final decision. *Abney v. United States*, 431 U.S. 651, 661-62 (1977). This is because:

9 the guarantee against double jeopardy assures an individual that, among other things,
 10 he will not be forced, with certain exceptions, to endure the personal strain, public
 11 embarrassment, and expense of a criminal trial more than once for the same offense.
 12 . . . Obviously, these aspects of the guarantee's protections would be lost if the
 13 accused were forced to "run the gauntlet" a second time before an appeal could be
 taken . . . Consequently, if a criminal defendant is to avoid exposure to double
 jeopardy and thereby enjoy the full protection of the Clause, his double jeopardy
 challenge to the indictment must be reviewable before that subsequent exposure
 occurs.

14 *Id.* Moreover, because Defendants' Motion to Dismiss with Prejudice was not frivolous, and the
 15 Court's lengthy Order denying the motion does not even suggest otherwise, "the district court is
 16 automatically divested of jurisdiction to proceed with trial pending appeal." *Chuman v. Wright*, 960
 17 F.2d 104, 105 (9th Cir. 1992). *See also United States v. LaMere*, 951 F.2d 1106, 1108 (9th Cir. 1991);
 18 *United States v. Dunbar*, 611 F.2d 985, 988 (5th Cir.) (1980) (absent "written findings determining []
 19 the [double jeopardy] motion is frivolous . . . the trial cannot proceed until a determination is made
 20 of the merits of an appeal").

21
 22 RESPECTFULLY SUBMITTED this 3rd day of January, 2022,

23 BIENERT KATZMAN LITRELL
 24 WILLIAMS LLP
 25 s/ Whitney Z. Bernstein
 26 Thomas H. Bienert, Jr.
 Whitney Z. Bernstein
 Attorneys for James Larkin

27 Pursuant to the District's Electronic Case Filing Administrative Policies and Procedures Manual (Oct. 2020) §
 28 II(C)(3), Whitney Z. Bernstein hereby attests that all other signatories listed, and on whose behalf this filing is
 submitted, concur in the filing's content and have authorized its filing.

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

/s/ Toni Thomas
Toni Thomas

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