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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14 United States of America,

15 Plaintiff,

16 vs.

17 Michael Lacey, *et al.*,

18 Defendants.
19

NO. CR-18-00422-PHX-SMB

**DEFENDANT MICHAEL LACEY'S
UNOPPOSED MOTION TO AMEND
HIS CONDITIONS OF RELEASE**

(Oral argument requested)

20
21 Defendant Michael Lacey, by and through his undersigned attorneys, hereby moves under
22 18 U.S.C. § 3142(c)(1)(B) & (3) for an order amending his conditions of pretrial release as set forth
23 in the Court's April 13, 2018 Order (Doc. 67). During a recent home visit, Ian Scott, the Pretrial
24 Services Officer assigned to Mr. Lacey, suggested that Mr. Lacey petition this Court to have his ankle
25 bracelet removed. Undersigned counsel spoke with the government about this request, and the
26 government does not object to the removal of the ankle bracelet.
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1 As discussed in greater detail below, the condition of release requiring continued electronic
2 monitoring is not the least restrictive condition that will reasonably ensure Mr. Lacey's presence at
3 trial and the safety of the community. Further, electronic monitoring prevents Mr. Lacey from
4 engaging in the form of exercise that he has relied upon his entire life – swimming – to ameliorate
5 the effects of a heart condition, maintain physical fitness, and alleviate stress.

6 This unopposed motion is based on the attached Memorandum of Points and Authorities,
7 the Court's file, and any evidence or argument presented at the hearing on this matter. U.S. Pretrial
8 Services has no objection to the removal of Mr. Lacey's electronic monitoring ankle bracelet, and,
9 in fact, suggested that he move the Court to have it removed. The government does not object.

10 Excludable delay under 18 U.S.C. § 3161(h)(1) may occur as a result of this Motion or of an
11 order based thereon.

12 RESPECTFULLY SUBMITTED this 7th day of April, 2023,

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14 Paul J. Cambria, Jr.
15 Erin McCampbell Paris
16 LIPSITZ GREEN SCIME CAMBRIA LLP

17 By: /s/ Paul J. Cambria, Jr.
18 Paul J. Cambria, Jr.
19 Attorneys for Michael Lacey
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 As set forth in greater detail below, Michael Lacey moves to amend the order setting his
3 conditions of supervised release (Doc. 67) to strike the condition requiring electronic monitoring.

4 **BACKGROUND**

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6 **I. Mr. Lacey is a 74-year-old, long-term resident of Arizona, with deep ties to this District.**

7 Mr. Lacey is an honored journalist who has been an active member of the Arizona
8 community for fifty-seven years. In 1966, Mr. Lacey moved to Arizona to attend Arizona State
9 University. In 1970, Mr. Lacey co-founded an alternative newspaper originally called the *Arizona*
10 *Times* and subsequently renamed the *Phoenix New Times*. The newspaper became and has remained
11 a prominent voice for free speech and journalism in Arizona for forty-nine years. In addition to
12 founding the *Phoenix New Times*, Mr. Lacey and his partners acquired sixteen other newspapers,
13 forming a nationwide conglomerate which they operated under Village Voice Media Holdings, LLC
14 (“VVMH”). Collectively, the newspapers, which provided their publications free of charge, had
15 more than 1.8 million readers. Because the newspapers did not require subscriptions, the publication
16 of classified advertisements evolved as a key part of the revenue supporting the newspapers.

17 Mr. Lacey, who served as the editor-in-chief of the newspapers, oversaw investigative
18 journalism covering a broad array of topics. During his tenure, the newspapers won hundreds of
19 awards, including the Pulitzer Prize. Indeed, Mr. Lacey has been honored numerous times for his
20 excellence in journalism.¹

21
22 ¹ Mr. Lacey won the 2011 Clarion Award from the Association for Women in
23 Communications for his story about a diabetic woman who died in jail custody. See Michael
24 Lacey, *What's Mom Worth?: When a Woman Became Deathly Ill in Sheriff Joe Arpaio's Jail, Guards and*
25 *Nurse Ignored Her Agony*, PHOENIX NEW TIMES (Dec. 9, 2010),
26 [http://www.phoenixnewtimes.com/news/whats-mom-worth-when-a-woman-became-](http://www.phoenixnewtimes.com/news/whats-mom-worth-when-a-woman-became-deathly-ill-in-sheriff-joe-arpaios-jail-guards-and-nurses-ignored-her-agony-6446744)
27 [deathly-ill-in-sheriff-joe-arpaios-jail-guards-and-nurses-ignored-her-agony-6446744](http://www.phoenixnewtimes.com/news/whats-mom-worth-when-a-woman-became-deathly-ill-in-sheriff-joe-arpaios-jail-guards-and-nurses-ignored-her-agony-6446744). Mr.
28 Lacey was awarded the 2010 Best in the West journalism competition award for Immigration
and Minority Affairs Reporting (along with Stephen Lemons and Paul Rubins of the *New Times*) for a series concerning immigration enforcement tactics of the Maricopa County
Sheriffs County sheriff's office. See Michael Lacey, *Are Your Papers In Order?*, *Phoenix New Times* (March. 12, 2009), <http://www.phoenixnewtimes.com/news/are-your-papers-in->

1 In addition to his commitment to providing free access to trail-blazing journalism, Mr. Lacey
2 has been very generous to the Arizona community. For example, from 2014-2017, Mr. Lacey and
3 his co-defendant James Larkin donated \$3.75 million dollars to various non-profit organizations that
4 assist immigrants and refugees.² Mr. Lacey has also donated to various non-profit organizations
5 including those focused on encouraging minorities to vote. Further, Mr. Lacey (through VVMH),
6 created paid digital fellowships for minority journalists in conjunction with the Walter Cronkite
7 School of Journalism and Mass Communication at Arizona State University (and the Medill School
8 of Journalism at Northwestern University). These programs were instrumental in providing aspiring
9 minority journalists with a jump start on their careers. These are just examples of the many
10 philanthropic activities in which Mr. Lacey has participated.

11 Mr. Lacey has significant personal ties to Arizona and the United States. Mr. Lacey is a long-
12 term resident of Arizona and resides in Arizona. He owns numerous properties in Arizona,
13 including his primary residence, where he has resided since 2005. Additionally, he owns several
14 properties in the State of California. He has two sons, one who lives with him at his primarily
15

16 order-6426683. He led a VVM series called *Amongst Us*, deploying reporters across the country
17 to report stories of the travails and contributions of Latinos, which won the 2011 James
18 Aronson Award for Social Justice Journalism. See http://brie.hunter.cuny.edu/aronson/?page_id=1169. Mr. Lacey has also received the Valley of the Sun Society of Professional Journalists'
19 President's Award, and has been honored by the Arizona chapters of the American Civil Liberties Union and the NAACP.

20 ² These funds represent the settlement that Mr. Lacey and Mr. Larkin obtained after
21 filing a successful Civil Rights Act suit against former Maricopa County Sheriff Joe Arpaio for
22 their wrongful arrests. The events that led to this lawsuit are indicative of Mr. Lacey's
23 commitment to vindication of his constitutional rights and defending himself against bogus
24 criminal charges. Beginning in 2004, the *Phoenix New Times* published a series of articles critical
25 of Sheriff Arpaio. These articles led to the arrests of Mr. Lacey and Mr. Larkin in the dead of
26 night, see David Carr, *A Knock in the Night in Phoenix*, *New York Times* (May 12, 2008),
27 <http://nytimes.com/2008/05/12/business/media/12carr.html>; however, all of the charges
28 against them were promptly dismissed. Subsequently, they filed the civil action, and prevailed
with an *en banc* victory in the Ninth Circuit, in which the Court recognized that "[i]t is hard to
conceive of a more direct assault on the First Amendment than public officials ordering the
immediate arrests of their critics." *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 917 (9th Cir. 2012)
(*en banc*).

1 residence in Arizona, and is preparing to attend graduate school in Phoenix, and one who lives in
2 California. Mr. Lacey also has a brother who lives in Kansas, and a sister who lives in New York.
3 He has always and continues to maintain strong relationships with his children and siblings.

4 **II. The charges pending against Mr. Lacey.**

5 On March 28, 2018, a grand jury sitting in this District indicted Mr. Lacey and his co-
6 defendants for allegedly conspiring to violate the Travel Act (18 U.S.C. §§ 371, 1952), as well as
7 violations of the Travel Act (18 U.S.C. §1952), and the money laundering statutes (18 U.S.C. §§ 1956,
8 1957). (*See* Indict., Doc. 3.) On July 25, 2018, the government obtained a superseding indictment,
9 which is the operative indictment in this case. (*See* Super. Indict., Doc. 230.) The superseding
10 indictment included the original charges, as well as additional charges under the Travel Act and
11 money laundering statutes. (*See id.*) In August 2021, the parties proceeded to trial, which ended in
12 the Court granting the Defendants' oral motion for a mistrial. The new trial is scheduled to begin
13 on August 8, 2023. At this time, there is a motion to dismiss pending. (*See* Doc. 1557.)

14 During the more than five years that this case has been pending, Mr. Lacey has complied
15 with all conditions of release, has attended all necessary Court appearances, including the first trial,
16 and has been in constant contact with his attorneys.

17 Additionally, prior to issuance of the indictment in this case, the Attorney General of the
18 State of California filed a criminal complaint against Messrs. Lacey, Larkin, and Ferrer, charging them
19 with one count of conspiracy and nine counts of pimping. On December 9, 2016, the court
20 granted defendants' demurrer, dismissing all counts and recognizing that "providing a forum
21 for online publishing is a recognized legal purpose." *People v. Ferrer*, No. 16FE019224 (Sup. Ct.
22 Sacramento Cnty. Dec. 9, 2016), slip op. at 13. Although the California Attorney General filed a
23 new criminal complaint, all charges, including pimping, were dismissed except for bank fraud
24 charges. *See People v. Ferrer*, No. 16FE024013 (Sup. Ct. Sacramento Cnty. Aug. 23, 2017).

25 Throughout the California proceedings, Mr. Lacey has been released on bail without the
26 requirement of use of an electronic monitoring anklet or other forms of monitoring.

1 **III. The current conditions of pretrial release were more restrictive than necessary and**
2 **should be revisited.**

3 For five years, Mr. Lacey has been monitored by Pretrial Services, during which time he
4 has fully complied with his pretrial release conditions. At this time, his Pretrial Services Officer,
5 the person in the best position to opine on his risk of flight and danger to public safety, has
6 suggested that he seek an order from this Court amending his conditions or release to strike the
7 condition requiring the electronic monitoring anklet. The government does not oppose this
8 request.

9 **IV. The condition requiring use of an electronic monitoring anklet prohibits Mr. Lacey**
10 **from swimming, which he relies upon to maintain health and alleviate stress.**

11 Mr. Lacey is 74 years old. Prior to his arrest, he regularly swam to maintain his health,
12 manage his weight, and alleviate stress. This discipline is the one form of exercise to which he
13 has been able to successfully commit. He has been unable to swim since his arrest because he
14 is required to wear an electronic monitoring anklet. In light of Mr. Lacey's advanced age, and
15 the stress of having lived under an indictment for five years, makes the ability to swim much
16 more important to his overall health and well being.

17 **ARGUMENT**

18 Based on all of the above and the opinion of Mr. Lacey's Pretrial Services officer,
19 electronic monitoring is not a necessary condition to ensure his presence at trial or public safety.
20 For that reason, Mr. Lacey respectfully requests that this Court amend the Order to strike the
21 condition requiring the continued use of an electronic monitoring anklet. This Court is
22 empowered to "at any time[,] amend the order to impose additional or different conditions of
23 release." 18 U.S.C. § 3142(c)(3). Further, conditions of release must be the "least restrictive"
24 conditions necessary to "reasonably assure" the defendant's appearance and the community's
25 safety." 18 U.S.C. § 3142(c)(1)(B). The requirement that the conditions "reasonably assure"
26 appearance and safety do not require a guarantee of safety or non-flight. *See United States v.*
27 *Hir*, 517 F.3d 1081, 1086, 1092 n.2 (9th Cir. 2008); *United States v. Gentry*, 455 F. Supp. 2d

1 1018, 1032 (D. Ariz. 2006). In making a determination on the appropriateness of the conditions
2 of release, courts must consider: the defendant's history and characteristics; danger to the
3 community; and nature of the offense and weight of the evidence. *See* 18 U.S.C. § 3142(g).

4
5 **I. Mr. Lacey's history and characteristics weigh in favor of amending the Order to
omit the condition requiring continued use of an electronic monitoring anklet.**

6 Mr. Lacey's history and characteristics weigh in favor of removal of the anklet because
7 he presents no risk of flight. He is 74 years old and has resided in this District since 1966. He
8 has strong familial ties to this District and owns numerous properties in this District, in addition
9 to properties in California.

10 For more than five years, Mr. Lacey has fully complied with all conditions of release and
11 has appeared at every court appearance, including the first trial.

12 More importantly, Mr. Lacey's Pretrial Services Officer suggested to Mr. Lacey that he
13 file the instant motion seeking authorization to remove the anklet, which the government does
14 not oppose. This factor, alone, weighs heavily in favor of removal of the anklet.

15
16 **II. The removal of Mr. Lacey's anklet does not increase the risk of danger to the
community.**

17 This factor is a non-issue for this Court. The only risk that Mr. Lacey purportedly
18 presented to the public concerns his purported involvement with the website
19 www.backpage.com, which the government shut down more than five years ago.

20 **III. The government's case.**

21 The government's case has been pending for more than five years, during which time the
22 first trial ended in mistrial. At this time, a motion to dismiss is pending. (Doc. 1557.)

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2 **CONCLUSION**

3 In light of the unopposed motion to amend, Mr. Lacey respectfully requests that this
4 Court amend the Order to remove the condition requiring use of an electronic monitoring
5 anklet. Given that this motion is unopposed, and was encouraged by Pretrial Services,
6 undersigned counsel does not believe that oral argument would benefit the Court, but certainly
7 would appear, to the extent that the Court would like to hear from the parties.

8 RESPECTFULLY SUBMITTED this 7th day of April, 2023,

9
10 /s/ Paul J. Cambria, Jr.
11 LIPSITZ GREEN SCIME CAMBRIA LLP
12 Attorneys for Defendant Michael Lacey
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14 On April 7, 2023, a PDF version
15 of this document was filed with
16 Clerk of the Court using the CM/ECF
17 System for filing and for Transmittal
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Michael Lacey, *et al.*,

Defendants.

NO. CR-18-00422-PHX-SMB

[PROPOSED] ORDER

Upon Motion of the Defendant, with good cause appearing and with no objection from the Government,

IT IS ORDERED that Michael Lacey's pretrial release conditions are amended to strike the condition requiring him to wear an electronic monitoring ankle bracelet.

SO ORDERED this _____ day of _____, 2023.

United States District Judge