

No. 1-25-0643

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**IN THE APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT**

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CHICAGO JUSTICE PROJECT,

*Plaintiff-Appellant,*

v.

ILLINOIS DEPARTMENT OF  
CORRECTIONS,

*Defendant-Appellee.*

Appeal from the Circuit Court of Cook Co.,  
Illinois, County Dept., County Division

Circuit Court No. 2022 CH 05381

Hon. Allen Price Walker, Judge Presiding

Date of Notice of Appeal: April 9, 2025

Date of Judgment:  
March 12, 2025

Date of Post-Judgment Ruling: N/A

Illinois Supreme Court Rules 301 and 303

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**REPLY BRIEF OF PLAINTIFF-APPELLANT  
CHICAGO JUSTICE PROJECT**

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**ORAL ARGUMENT REQUESTED**

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## INTRODUCTION

An agency cannot avoid FOIA by identifying one exempt location if the same data may exist elsewhere. This appeal turns on a narrow but important error: IDOC obtained summary judgment solely on a declaration that neither described any search nor established that all responsive records exist exclusively in exempt repositories. C352 (“Diers Declaration”) ¶ 70 (Joel Diers declaring that records responsive to Requests L, M, N.1, and N.2 “would be contained” in inmates’ master files or the gang intelligence unit). IDOC argues that, in light of this declaration alone, those records are categorically exempt from disclosure and no further inquiry was required. That assertion misstates both the law and the record. As the public body resisting disclosure, the burden was on IDOC to establish that a search had been undertaken and all responsive records were exempt. But IDOC never even attempted to show that *all* responsive records reside *exclusively* in exempt locations, never conducted (or described) any search outside those locations, and never addressed CJP’s unrebutted evidence that aggregate responsive data exists elsewhere. The circuit court’s acceptance of the Diers Declaration at face value, without discovery or adversary testing, was error. IDOC offers three principal defenses of the court’s judgment, all of which are wrong.

*First*, IDOC contends that the Diers Declaration “established” the responsive records were exempt. Brief of Defendant-Appellee (“AE Br.”) 17, 18. This is false. The Diers Declaration said only that responsive records *would be* maintained in exempt locations. It never states that responsive records exist *only* in those locations, never describes any search for responsive documents, and does not even try to deny the existence of non-exempt records elsewhere. That is precisely the kind of “conclusory, overly vague” submission that is legally insufficient to carry a public body’s burden of proving exemption by clear and convincing evidence. *See Ballew v.*

*Chicago Police Dep't*, 2022 IL App (1st) 210715, ¶ 19, 213 N.E.3d 363, 369. IDOC's brief all but admits that Diers conducted *no* search by arguing that no search was required on the face of the FOIA requests. AE Br. 21–23. This cannot be the right result under FOIA.

**Second**, IDOC argues that its own publicly available website data—which shows that at least some responsive information was stored outside of exempt locations—is mere “speculation.” AE Br. 24–25. But IDOC's own publications (its Individual in Custody search tool, population data sets, and quarterly reports) are not “speculation.” They are concrete, judicially noticeable evidence that IDOC maintains responsive data outside of the exempt inmate master files identified by Diers, flatly contradicting the Diers Declaration's implication (and the district court's finding) that all responsive information was exempt. IDOC's response that website data is “different” from the data CJP requested (AE Br. 2, 14), is exactly the point. It underscores that at least some responsive information resides outside the exempt locations and emphasizes the need for discovery to determine exactly what *other* responsive records exist and where they are maintained.

**Third**, IDOC contends that CJP's failure to file a Rule 191(b) affidavit forfeits its discovery argument. But CJP had a pending motion to compel that the circuit court never ruled on, and IDOC's own refusal to respond to agreed-upon discovery created the information asymmetry that has plagued this case. CJP served targeted interrogatories and requests for production aimed at the exact issues IDOC now says are dispositive: where responsive information is stored, what searches were performed, what records exist outside exempt repositories, what the “gang intelligence unit” is, and whether gang-affiliation information is ever reported outside that unit. C197–220. IDOC agreed to such discovery, then stonewalled. The trial court entered and continued CJP's motion to compel, never ruled on it, and then granted summary judgment based on the very factual assertions CJP sought discovery to test. C553–55. Deciding summary judgment in IDOC's favor based on

Rule 191(b) under these circumstances just rewards IDOC for its own obstruction and further insulates its untested claims from scrutiny.

## ARGUMENT

### **I. The Diers Declaration Does Not Establish That All Responsive Records Are Exempt, and IDOC's Attempts to Bolster It Should Be Rejected.**

The burden was and remains on IDOC to determine and disclose the existence of any and all non-exempt responsive information. A public body claiming a FOIA exemption must prove by “clear and convincing evidence” that every responsive record is exempt. 5 ILCS 140/11(f). “The public body must provide a detailed justification for its claim of exemption and address the requested documents specifically and in a manner that allows for adequate adversary testing.” *Ballew*, 2022 IL App (1st) 210715, ¶ 18 (citing *Ill. Educ. Ass'n v. Ill. State Bd. of Educ.*, 204 Ill. 2d 456, 464, 274 Ill. Dec. 430, 791 N.E.2d 522).

IDOC thus devotes considerable effort to defending the sufficiency of the Diers Declaration. But the Diers Declaration does not come close, because it says nothing about whether responsive records exist outside exempt locations. IDOC frames the issue as whether it “established” that the responsive records were exempt. AE Br. 16–23. But that is hardly “clear and convincing evidence” that all responsive records are exempt. 5 ILCS 140/11(f).

Diers Paragraph 70—the only paragraph addressing Requests L, M, N.1, and N.2—states:

Based on my 15 years of experience, I know that the records responsive to FOIA requests L and M **would be** maintained by the gang intelligence unit. I also know that the records responsive to FOIA requests N.1, and N.2 **would be** contained in the inmate's master files.

C352 (emphasis added). This paragraph only vaguely states where certain records “would be” located. It does claim that responsive records exist **only** in those locations. It does not describe any

search. It does not negate the existence of responsive records elsewhere. And it does not explain why IDOC never looked beyond the exempt locations it identified.

IDOC argues that this conclusory paragraph shifted the burden to CJP to produce evidence of non-exempt records. AE Br. 32 (citing *DiFranco v. Fallon*, 2023 IL App (1st) 220785, ¶ 66). But IDOC’s initial burden was never met. IDOC provided no “detailed justification for its claim of exemption [nor] address[ed] the requested documents specifically and in a manner that allows for adequate adversary testing.” *Ballew*, 2022 IL App (1st) 210715, ¶ 18. IDOC’s brief never tries to explain how the Diers Declaration meets this standard. Rather, it simply argues that the conciseness of Diers Paragraph 70 is “unsurprising,” given the plain language of the FOIA requests themselves, and then hinges the sufficiency of the single paragraph on a single word—“*the* records”—as if this established that Diers meant *all* responsive records reside in exempt locations. AE Br. 19 (emphasis added). That is not what Diers said, and a single word in a single paragraph does not meet IDOC’s burden of clear and convincing evidence. Notably, because CJP was denied any discovery whatsoever, CJP never got to ask Diers about this statement either.

IDOC goes on to argue in greater detail that select data from the requests was plainly exempt. AE Br. at 19–20. But none of this detail appears in the Diers Declaration—it is offered now by counsel for the first time and, if anything, proves the deficiency of the Diers Declaration. More glaring, like Diers, IDOC’s counsel also refuses to aver that responsive records exist *only* in exempt locations and fails to describe *any* search performed by IDOC. Affidavits that are “conclusory, overly vague or sweeping, or merely recite statutory standards” are insufficient. *Ballew*, 2022 IL App (1st) 210715, ¶ 19. A single paragraph that identifies where records “would be” kept, without attesting that a search was conducted, without describing the scope of any search,

and without confirming whether responsive records (also) exist in non-exempt locations, is the ultimate conclusory submission.

IDOC also misrepresents CJP's statement of material facts. CJP responded to Paragraph 70 of the Diers Declaration by stating it is "[u]ndisputed and *irrelevant* because FOIA requests L, M, N.1, and N.2 did not seek information from the gang intelligence unit or any inmate's master file." C441 (emphasis added). It is not "undisputed" that the Diers Declaration is sufficient (it is not) or that all records sought by CJP exist only in exempt locations (they do not). AE Br. 14, 17, 38, 39. Rather, CJP's response gets to the heart of the declaration's insufficiency—CJP never sought exempt documents, so Diers's explanation is irrelevant. CJP has always sought documents in non-exempt locations that IDOC never searched.

IDOC cites *Chicago Recycling Coalition v. City of Chicago Dep't of Streets & Sanitation*, 2023 IL App (1st) 220154, 239 N.E.3d 584 to suggest that no search for responsive documents was required for FOIA requests L, M, N.1, and N.2 because it was "futile." AE Br. 21. But *Chicago Recycling Coalition* applied to an issue different from what the Court faces here. In that case, the Chicago Recycling Coalition sought documents through FOIA from the City of Chicago Department of Streets and Sanitation, but the Department's affidavits established that it "does not compile or keep" the data sought by the FOIA request. *Chi. Recycling Coal.*, 2023 IL App (1st) 220154, ¶ 40. Naturally, the Department was not required to search for records it did not maintain. *Id.*; see also *Whitaker v. Dep't of Com.*, 970 F.3d 200, 207 (2d Cir. 2020) ("It is clear beyond cavil that an agency cannot improperly withhold records that it does not maintain, and that 'where the Government's declarations establish that a search would be futile, the reasonable search required by FOIA may be no search at all'" (citation omitted)). In contrast, the Diers Declaration does not state IDOC does *not* compile or keep the data sought by CJP—it states only that some responsive

documents exist in exempt locations. The Diers Declaration candidly admits IDOC *does* maintain responsive data. And the district court had before it evidence that IDOC maintains public-facing responsive information. The Diers Declaration therefore cannot establish that a search would be futile. *Chicago Recycling Coalition* simply does not apply.

By contrast, *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57 (D.C. Cir. 1990) is precisely on point. In that case, as in this one, the trial court denied a FOIA request based on a single affidavit from the government stating that it searched in the location “most likely” to contain the requested information. *Id.* at 68. The D.C. Circuit overturned that decision because “the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Id.* Here, too, the Diers Declaration merely states that responsive documents “would be” (*i.e.*, are “most likely”) to be found in exempt databases. But, per *Oglesby*, IDOC was required to search elsewhere or “[a]t the very least, . . . to explain in its affidavit that no other record system was likely to produce responsive documents.” *Id.*

IDOC’s attempts to distinguish *Oglesby* fail. Without citing to anything from the case itself, IDOC recasts it to be about vague requests made by the requester (“[t]he responding agency could not tell from the plain text of the requests where the responsive records were located”) that therefore necessitated more detailed affidavits by the government. AE Br. 23. That is not an accurate portrayal of the case. According to the *Oglesby* court:

[An agency] cannot limit its search to only one record system if there are others that are likely to turn up the information requested. It is not clear from State’s affidavit that the Central Records system is the *only* possible place that responsive records are likely to be located. At the very least, [the] State was required to explain in its affidavit that no other record system was likely to produce responsive documents.

920 F.2d at 68. The court did not lay blame at the foot of the requester. Like the affidavit in *Oglesby*, the Diers Declaration is insufficient.

IDOC's recasting of *Kowal* is also inaccurate. The issue there was not the vagueness of the FOIA request but the sufficiency of the agencies' searches. *Kowal v. United States Dep't of Just.*, 490 F. Supp. 3d 53, 62–67 (D.D.C. 2020). At bottom, both cases concern entities that *searched* for responsive documents, and the court had to decide whether that search was adequate. Diers describes no search at all, and IDOC now argues—incorrectly—that it was *not required* to search. The law says precisely the opposite: IDOC must search for responsive records. *See Chi. Recycling Coal.*, 2023 IL App (1st) 220154, ¶ 26 (“To prevail on a summary judgment motion in a FOIA case, the defending agency has the burden of showing that its search [for the requested records] was adequate,” and the public body “must search all locations that are reasonably likely to contain responsive records”).

## **II. IDOC's Own Website Publications Are Not “Speculation”—They Are Concrete Evidence That Non-Exempt Responsive Records Exist.**

IDOC dismisses CJP's reliance on IDOC's publicly available data as “speculation,” arguing that the website data is “different” from what CJP requested and that voluntary disclosure of some data does not “waive” the exemption for other data. AE Br. 2, 25–30. This argument deliberately misconstrues CJP's position and ignores what the website data actually proves. CJP has never argued that IDOC “waived” the FOIA exemption for master files by publishing data on its website. Rather, CJP contends that IDOC failed to meet its burden of showing that responsive records exist only in exempt locations and/or formats. And the public data on IDOC's website proves that IDOC maintains non-exempt records containing mittimus, parole, and technical violation information outside the master files. AT Br. 17. That is, the website data proves the existence of non-exempt responsive records that IDOC never searched for and never produced. The data is the opposite of speculation—it is publicly available, judicially noticeable evidence. *See*

*People v. Goods*, 2016 IL App (1st) 140511, ¶ 56, 62 N.E.3d 1168, 1187 (the court can take judicial notice of government websites).

IDOC's response that the website data is "different" from what CJP requested only strengthens CJP's argument: IDOC undeniably maintains databases and reports containing the requested data—including data about mittimus, technical violations, admissions, and parole and release—separate from master files. AT Br. at 16–17. Even if the data is "different," IDOC cannot deny that it is (1) responsive to CJP's requests and (2) non-exempt, proving the need for a search for documents that IDOC did not conduct. *See* AE Br. 27 ("the population data sets identify whether a person was recommitted for a technical violation"). 730 ILCS 5/3-5-1(b) simply does not immunize from production every piece of data that happens to also appear in a master file wherever that data is found. Nor is CJP asking IDOC to create new records, AE Br. 29, only to search for and produce existing records. IDOC concedes that CJP requests more-detailed data than appears on the websites, AE Br. 27, which is plain from CJP's FOIA request because it seeks nonpublic data. The IDOC website demonstrates that records with the requested information already exist in electronic databases and published reports. CJP remains in the dark as to the extent of responsive documents existing outside of exempt locations because IDOC never searched. That IDOC chose to publicly post some of this data while refusing to provide it in response to CJP's FOIA requests only underscores the unreasonableness of IDOC's position.

IDOC's suggestion that requiring disclosure of responsive, non-exempt documents would "disincentiviz[e]" agencies from sharing information with the public turns FOIA on its head. AE Br. at 29. FOIA exists to promote transparency, not to punish it. The legislature could not have intended that a government agency's voluntary publication of selected data would shield all similar or related data from public scrutiny. And agencies also should not be incentivized to commingle

public and private data in exempt databases simply to avoid disclosure. *See Hites v. Waubonsee Cmty. Coll.*, 2016 IL App (2d) 150836, ¶ 68, 56 N.E.3d 1049, 1064 (“WCC should not be able to input information from public records into a databased and, in turn, shed its duty to disclose that same information under FOIA.”).

IDOC’s argument that sharing some gang intelligence information internally does not waive exemption over other documents is, likewise, inapposite. AE Br. 30–31. Again, CJP never argued waiver of FOIA exemptions—CJP is asking IDOC to search for and produce records responsive to its FOIA requests. If gang affiliation data is reported to IDOC’s Director, correctional officers, administrative officers, or other staff, as it logically must be for IDOC to manage its prison population safely, then copies of that data must exist outside the gang intelligence unit. IDOC’s reliance on the dictionary definition of “maintain” does not address this point; it merely confirms that the exemption applies to the information the unit itself *keeps*, not to information disseminated elsewhere. AE Br. 31. IDOC’s arguments again underscore the many material and disputed questions of fact as to the sufficiency of IDOC’s purported search for documents. IDOC now argues “[d]epartment employees can access information ‘maintained,’ or kept, by the gang intelligence unit.” AE Br. 31. The extent of this access and what information IDOC now refers to, and the details of employee access to it, are not even mentioned in the Diers Declaration, nor did IDOC answer any discovery addressing these topics. The Court should not rely on cherry-picked dictionary definitions where the Diers Declaration provides no detail on what responsive records are maintained by the gang intelligence unit, what information department employees accessed, and what a search (if it were conducted) for any documents *not* maintained by the gang intelligence unit would have turned up. Diers already failed once to account for public, responsive data outside of inmate master files regarding requests N.1 and N.2. For requests L and

M, there is again a genuine dispute as to material fact regarding whether IDOC searched all locations likely to contain responsive records.

Regarding the redaction of exempt data and production of non-exempt data, IDOC faults CJP for not “explain[ing] what non-exempt information could be redacted.” AE Br. 38. It goes without saying that CJP does not have access to the records for which IDOC has claimed exemptions. It is IDOC’s burden to prove its exemptions by clear and convincing evidence. 5 ILCS 140/11(f); AT Br. 14. CJP has cited judicially noticeable evidence that responsive, non-exempt data exists. AT Br. 16–18. It is not CJP’s responsibility to determine what information does or does not apply to IDOC’s claimed exemptions. Rather, it is IDOC’s responsibility under FOIA to redact the exempt information and produce the non-exempt, responsive information. 5 ILCS 140/7(1); AT Br. 4, 9, 13, 23–24. IDOC cannot shield itself by arguing “all” information in master files and the gang intelligence unit is exempt, AE Br. 38–39, when CJP has provided evidence of the existence of non-exempt responsive information elsewhere.

### **III. CJP’s Pending Motion to Compel and IDOC’s Obstruction of Agreed-Upon Discovery Distinguish This Case from IDOC’s Rule 191(b) Arguments.**

IDOC’s principal procedural argument is that CJP failed to file a Rule 191(b) affidavit and therefore forfeited its arguments as to lack of discovery. AE Br. 33–36. But this argument ignores the procedural reality of this case.

*First*, IDOC is wrong that CJP “conceded that the facts were undisputed” by filing a cross-motion for summary judgment. AE Br. 33. As discussed above, it is not “undisputed” that the Diers Declaration is sufficient or that all records sought by CJP exist only in exempt locations. AE Br. 14, 17, 38, 39. CJP has disputed and continues to dispute those points. CJP’s opposition and cross-motion explicitly requested denial of IDOC’s motion for summary judgment but stated “if the Court finds an absence of genuine dispute as to material facts, then *in the alternative*, it should

grant summary judgment to CJP rather than IDOC (and CJP hereby so moves).” C403 (emphasis added). This is not a concession that the existing record was complete, and the court was permitted to still find issues of material fact, as it of course did in denying summary judgment on certain counts. C553; *Pielet v. Pielet*, 2012 IL 112064, ¶ 28, 978 N.E.2d 1000, 1007 (“[T]he mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment.”). Further, CJP’s issue with the Diers Declaration is also a matter of law—whether IDOC performed an adequate search. *See Ballew*, 2022 IL App (1st) 210715, ¶ 18 (search must be adequate). Thus, even if some responsive documents “*would be*” contained in exempt locations as a matter of fact, the district court still erred by considering IDOC’s search sufficient as a matter of law.

**Second**, CJP did not sit idly by while IDOC sought summary judgment. Nor did it first raise the need for discovery on appeal. At the February 3, 2023, status conference, the parties explicitly agreed to written discovery, and the court ordered that discovery to take place. C186. IDOC itself drafted the order memorializing that agreement. *Id.* CJP immediately served interrogatories and requests for production aimed at the precise disputed issues in this case, including where responsive information is stored, how it is maintained and updated, what searches for responsive documents were performed, who performed them, and whether gang-related information is ever reported outside the gang intelligence unit. C. 197–219. This was not a “fishing expedition” (AE Br. 35)—it was agreed, well-targeted, specific discovery to gather information on the core issues of this case. When IDOC reneged on the agreement and refused to respond, CJP moved to compel. C. 184–92. CJP’s motion to compel was continued but never ruled upon. C555. The Tracy Siska Declaration, submitted with CJP’s summary judgment opposition and cross-motion, makes explicit reference to this needed discovery. C455 (“Without discovery, CJP has no

way to determine what documents responsive to Request L, M, N.1 and N.2 are within IDOC's possession, custody or control, nor which of those documents are exempt or not-exempt.”). The circuit court then ruled on the parties' summary judgment motions—including granting IDOC's motion as to requests L, M, N.1, and N.2—while the motion to compel was still pending. C537–53. CJP's motion to compel sought the very discovery that was agreed upon by the parties at the February 3, 2023 status conference. IDOC's argument that “agreeing to a discovery schedule” did not prohibit it from “objecting to dozens of premature, irrelevant discovery requests,” AE Br. 37, is remarkable. IDOC agreed to written discovery, then refused to answer a single interrogatory or produce a single document and moved for summary judgment based on the information asymmetry its own stonewalling created.

Third, IDOC's attempt to distinguish *Cole Taylor Bank v. Corrigan*, 230 Ill. App. 3d 122 (2d Dist. 1992), by arguing that CJP “never explained how the discovery it sought would help it respond to IDOC's summary judgment motion” (AE Br. 37) is belied by the record. CJP's discovery requests were specifically designed to determine whether responsive documents exist outside the exempt locations, what searches IDOC conducted, and the factual basis for IDOC's claimed exemptions. C. 189–91, 201–05, 214–18. CJP's still-pending motion to compel went into exhaustive detail about what discovery was sought, and why. C. 189–90. The Tracy Siska Declaration explicitly again explained why the discovery was needed—to determine what responsive documents were within IDOC's possession, custody or control, and which were exempt or non-exempt. C455. These are precisely the “ultimate facts necessary for judgment.” *Cole Taylor Bank*, 230 Ill. App. 3d at 127.

Finally, IDOC falls back to its arguments that the Diers Declaration was “adequate on [its] face.” AE Br. 36 (citation omitted). But for all of the reasons discussed above and in CJP's opening

brief, the Diers Declaration is inadequate, totally lacking in detail, and fails to evidence any search for responsive documents at all.

### **CONCLUSION**

IDOC concedes that “the purpose of FOIA is to open governmental records to the light of public scrutiny.” AE Br. 16. It has not done so here. For the foregoing reasons, the judgment should be reversed. At minimum, the matter should be remanded with directions that IDOC provide competent affidavits describing a reasonable search, produce all non-exempt responsive records, and respond to targeted discovery necessary to test any claimed exemptions. Specifically, Chicago Justice Project respectfully requests that this Court reverse the circuit court’s grant of summary judgment in favor of IDOC on Count I (Requests N.1 and N.2) and Count IV (Requests L and M), reverse the circuit court’s effective denial of CJP’s motion to compel discovery, and remand this matter to the circuit court for further proceedings, including discovery into IDOC’s recordkeeping systems and a search for responsive, non-exempt records.

Dated: May 6, 2026

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

By: /s/ Paul R. Steadman  
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*Defendant-Appellee.*

Appeal from the Circuit Court of Cook Co.,  
Illinois, County Dept., County Division

Circuit Court No. 2022 CH 05381

Hon. Allen Price Walker, Judge Presiding

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PLEASE TAKE NOTICE that on May 6, 2026, I caused the **Reply Brief of Plaintiff-Appellant Chicago Justice Project** in the above captioned case to be submitted to the Clerk of the Illinois Appellate Court, First Judicial District by using the Court's electronic filing system.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2026, I electronically filed the foregoing **Brief of Plaintiff-Appellant** with the Clerk of the Appellate Court, First Judicial District using the Odyssey eFileIL System.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

By: /s/ Paul R. Steadman  
Paul R. Steadman