COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-13108
Appeals Court No. 2021-P-0190

OFER NEMIROVSKY,
Plaintiff-Appellee,

v.

DAIKIN NORTH AMERICA, LLC,
Defendant-Appellant.

On Direct Appellate Review from a Judgment of the Superior Court for Suffolk County, No. 1684cv02022

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT DAIKIN NORTH AMERICA, LLC AND REVERSAL

Jennifer B. Dickey
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, D.C. 20062
(202) 463-5337

Of Counsel

Patrick Strawbridge (BBO #678274)
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South, PMB #706
Boston, MA 02109
(617) 227-0548
patrick@consovoymccarthy.com

Counsel for Amicus Curiae *Chamber of Commerce of the United States of America*

September 14, 2021

RULE 1:21 CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America (the "Chamber") is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held corporation has 10% or greater ownership in the Chamber.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, it regularly files *amicus* briefs in cases that raise issues of concern to the nation's business community.

This is such a case. The Superior Court held Daikin North America, LLC ("Daikin NA") liable for damage caused by a design defect in a product that it did not design, manufacture, or supply. Daikin NA merely supplied replacement component parts for the overall integrated product, which was designed by related—but separate—corporate entities. By imposing liability on Daikin NA for a defect for which it bears no responsibility, the Superior Court misapplied products liability law and undermined

[1] Pursuant to Mass. R. App. P. 17(c)(5), the Chamber declares that no party or counsel for a party authored this brief in whole or in part and that no person other than the Chamber, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief. The Chamber and its counsel further declare that they have not represented one of the parties to the present appeal in any proceeding involving similar issues, nor have they been a party or represented a party in a proceeding or transaction that is at issue in the present appeal.

the bedrock principle of separate corporate personality. The Chamber's members have a vital interest in the correct and consistent application of these legal rules.

ARGUMENT

The Superior Court in this case entered a multi-million-dollar judgment based on a flagrant error of law: that the mere supplier of a non-defective component can be held strictly liable for a design defect in an integrated product designed by independent entities without the supplier's participation. The judgment conflicts with the well-settled rule that—in Massachusetts and throughout the country—"[w]hen a component of an integrated product is not itself defective, the maker of the component is not liable for injury that results from a defect in the integrated product." *Cipollone v. Yale Indus. Prods., Inc.*, 202 F.3d 376, 379 (1st Cir. 2000) (citing *Mitchell v. Sky Climber, Inc.*, 487 N.E.2d 1374, 1376 (Mass. 1986); *Murray v. Goodrich Eng'g Corp.*, 566 N.E.2d 631, 632 (Mass. App. Ct. 1991); *Freitas v. Emhart Corp.*, 715 F.Supp. 1149, 1152 (D. Mass. 1989); *Restatement (Third) of Torts: Products Liability* §5 (Am. Law. Inst. 1998)); *see also Pantazis v. Mack Trucks, Inc.*, 87 N.E.3d 1191, 1195-97 (Mass. App. Ct. 2017); *Davis v. Komatsu Am. Indus. Corp.*, 42 S.W.3d 34, 38-43 (Tenn. 2001) (canvassing "the overwhelming weight of authority" consistent with the *Restatement (Third)* articulation of the doctrine).

The judgment also conflicts with two federal-court decisions properly applying the correct rule to the very same defendant—Daikin NA—and the very same allegedly defective products—Daikin-brand HVAC units. *See Egan v. Daikin N. Am., LLC*, 2019 WL 438341, at *5 (D. Mass. Feb. 4, 2019); *Evans v. Daikin N. Am., LLC*, 2019 WL

438340, at *5 (D. Mass. Feb. 4, 2019). According to the plaintiffs' expert in each of these cases, the Daikin units' Styrofoam drain pan traps stray electrons within the unit and thus causes the premature corrosion of internal fan coils, which would not occur with a metal (that is, conductive) drain pan. *See Egan*, 2019 WL 438341, at *4-5; *Evans*, 2019 WL 438340, at *4-5. As the *Egan* and *Evans* court recognized, this alleged defect "trace[s] the problem to the Styrofoam drain pan, not the coils." *Egan*, 2019 WL 438341, at *5; *Evans*, 2019 WL 438340, at *5. It is undisputed that Daikin NA, as an entity, did no more than supply replacement coils, which were not in themselves defective. It therefore cannot be held liable for this alleged defect. *Egan*, 2019 WL 438341, at *5; *Evans*, 2019 WL 438340, at *5.

The Superior Court reached the opposite result here only by inventing a novel—and utterly unsupported—exception to the universally recognized component parts doctrine. The court reasoned that the doctrine did not apply because Daikin NA's "coils are produced specifically for the Daikin-brand VRV system and distributed exclusively for use in that system. … They are not independent of the VRV system, but a part of it, and that system had a defect which rendered the coils unfit for their ordinary purpose." A2/7-A2/8. In effect, the Superior Court imputed the drain-pan design defect to the coils themselves—thereby imposing the entire liability for the allegedly defective unit upon Daikin NA, even though it supplied only the component coils and bears no responsibility for the drain pan or the integrated product as a whole. That result has no basis in the rationales for strict products liability, and it undermines the

bedrock corporate-law principle of corporate separateness. This Court should reverse the district court's ruling to correct these mistakes and uphold the longstanding consensus that generally limits the liability of component-suppliers to defects within their components.

I. The Superior Court's Disregard of the Component Parts Doctrine Has No Basis in the Rationales for Strict Products Liability.

Under black-letter products liability law, a supplier of a component part for an integrated product is not liable for harm caused by the integrated product unless: (a) "the component is defective in itself" and that defect "causes the harm"; or (b) the component supplier "substantially participates in the integration of the component into the design of the [integrated] product," "the integration of the component causes the product to be defective," and that defect "causes the harm." *Restatement (Third) of Torts: Products Liability* §5. This "streamlined and simplified statement of the doctrine" applied by "the overwhelming weight of authority" is firmly rooted in the rationales underpinning strict products liability. *Davis*, 42 S.W.3d at 40. As the *Restatement* explains:

> If the component is not itself defective, it would be unjust and inefficient to impose liability solely on the ground that the manufacturer of the integrated product utilizes the component in a manner that renders the integrated product defective. Imposing liability would require the component seller to scrutinize another's product which the component seller has no role in developing. This would require the component seller to develop sufficient sophistication to review the decisions of the business entity that is already charged with responsibility for the integrated product.

Restatement (Third) of Torts: Products Liability §5 cmt. a.

Here, the Superior Court refused to apply this well-settled doctrine. Instead—citing no authority for support (as none exists)—it held Daikin NA liable simply because (1) the Daikin NA coils were made specifically for the integrated Daikin-brand unit and (2) that unit had a design defect that impaired the coils' performance. A2/7-A2/8. Such a result stretches products liability law to the breaking point. As the California Supreme Court has aptly explained, "the strict liability doctrine derives from judicially perceived public policy considerations and should not be expanded beyond the purview of those policies." *O'Neil v. Crane Co.*, 266 P.3d 987, 1005 (Cal. 2012) (cleaned up). The judgment below, however, does just that. Not one of the policies underlying the strict products liability regime supports the irrational result of imposing liability on a component supplier for a design defect in an integrated product that it neither designed, manufactured, nor sold.

Product safety. As this Court has recognized, the principal justification for imposing strict products liability is to encourage manufacturers and sellers to make their products as safe as reasonably possible for consumers who are less well positioned to guard against product defects. *See, e.g.*, *Colter v. Barber-Greene Co.*, 525 N.E.2d 1305, 1310 (Mass. 1988) ("We hold a manufacturer liable for defectively designed products because the manufacturer is in the best position to recognize and eliminate the design defects."); *Correia v. Firestone Tire & Rubber Co.*, 446 N.E.2d 1033, 1040 (Mass. 1983) ("[T]the seller is in the best position to ensure product safety."). It is self-evident that this rationale does not support imposing liability on a component supplier that neither designs,

manufactures, nor sells the defective product. Component suppliers are in little better position than consumers to protect against defects in another entity's product. *See Restatement (Third) of Torts: Products Liability* §5 cmt. a (recognizing the "inefficien[cy]" of "requir[ing] the component seller to scrutinize another's product which the component seller has no role in developing"); *Crossfield v. Quality Ctrl. Equip. Co.*, 1 F.3d 701, 704 (8th Cir.1993) ("Mere suppliers cannot be expected to guarantee the safety of other manufacturers' machinery"). Likewise, placing liability on the supplier for the design mistakes of the integrated-product manufacturer does nothing to encourage the latter to design a safer product. Indeed, if anything, it undermines that goal by spreading liability among additional entities, thus reducing the likelihood that the manufacturer of the integrated product will be forced to internalize the costs of defects.

It is *already* questionable how much strict products liability actually furthers product safety, given legal uncertainty and change, interjurisdictional differences, imperfect information about potential dangers and precautions, the unpredictability of juries, and many other factors. *See, e.g.*, Stephen D. Sugarman, *Doing Away with Tort Law*, 73 Cal. L. Rev. 555, 566-67 (1995) (explaining that, due to these factors, "many parties will probably ignore the tiny possibility of a crushing financial loss, like the chance of being hit by lightning"); *see generally* Stephen F. Williams, *Second Best: The Soft Underbelly of Deterrence Theory in Tort*, 106 Harv. L. Rev. 932 (1993). And the connection is far more tenuous when a company is held strictly liable for a defective product that it never designed, manufactured, or sold.

Corporate responsibility. A closely related rationale for strict products liability is that it enforces corporate responsibility for the products a business has placed into the stream of commerce. *See Correia*, 446 N.E.2d at 1040 ("[T]he seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it" (quoting *Restatement (Second) of Torts* §402A, cmt. c. (Am. Law. Inst. 1965)). This rationale likewise does not extend to a component supplier that did not inject the defective product into the stream of commerce. *Cf. Crossfield*, 1 F.3d at 704 ("To impose responsibility on the supplier of the chain in the context of the larger defectively designed machine system would simply extend liability too far."). And, contrary to the Superior Court's reasoning, it makes no difference whether the components in question can function as "standalone products" or are merely "part of" an integrated product with a defect that impairs the components' functioning. A2/7-A2/8. In either case, common sense dictates that the liable party should be "the business entity that is already charged with responsibility for the integrated product." *Restatement (Third) of Torts: Products Liability* §5 cmt. a.

Risk-spreading. A third rationale often advanced by courts and commentators is that, "as the manufacturer created the risk" from a product, "it properly falls to the manufacturer to distribute the risk by allocating the costs of accidents throughout the pricing to his customers." 1 David G. Owen & Mary J. Davis, *Owen & Davis on Products Liability* §7:14 n.4 (4th ed.); *accord Brown v. Superior Court*, 44 Cal. 3d 1049, 1056 (1988)

(noting that "the cost of injury may be an overwhelming misfortune to the person injured whereas the manufacturer can insure against the risk and distribute the cost among the consuming public"); William L. Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 Yale L.J. 1099, 1120 (1960) (noting that risk spreading "maintains that the manufacturers, as a group and an industry, should absorb the inevitable losses which must result in a complex civilization from the use of their products, because they are in the better position to do so, and through their prices to pass such losses on to the community at large").

As with the product-safety rationale, there is reason to doubt how much strict products liability actually advances this goal, as market forces may make it implausible for a business to simply increase product prices to spread the cost of compensating an injured plaintiff. 1 Owen & Davis, *supra*, at 5:11 (explaining that because "competition often prevents manufacturers from raising prices significantly," some portion of injury compensation will fall to "the enterprise that made and sold the defective product"). But even assuming that strict products liability generally furthers cost-spreading, this rationale presumes that the costs will be spread by the manufacturer *responsible* for the defect. A separate components supplier such as Daikin NA is in a far inferior position to estimate the costs of another entity's defective product and to factor those costs into the price of its non-defective product. *See Restatement (Third) of Torts: Products Liability* §5 cmt. a. And even if it could do so effectively, such a price increase would unfairly place the supplier at a competitive disadvantage for something over which it had no authority

or control. *See O'Neil*, 266 P.3d at 1006. Thus, even if the cost-spreading rationale justifies strict products liability, it does not justify imposing that liability on a components supplier like Daikin NA.

II. The Superior Court's Decision Works an End-Run Around the Principle of Corporate Separateness.

"One of the basic tenets of [corporate] law is that corporations—notwithstanding relationships between or among them—ordinarily are regarded as separate and district entities." *Scott v. NG U.S. 1, Inc.*, 881 N.E.2d 1125, 1131 (Mass. 2008); *accord United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (describing the "general principle of corporate law deeply 'ingrained in our economic and legal systems'" that parent corporations are not liable for acts of their subsidiaries). Hence, "[t]he rule in the Commonwealth is that corporations are to be regarded as separate entities where there is no compelling reason of equity 'to look beyond the corporate form[.]'" *Berger v. H.P. Hood, Inc.*, 624 N.E.2d 947, 950 (Mass. 1993). Massachusetts law is particularly "strict … in respecting the separate entities of different corporations." *Birbara v. Locke*, 99 F.3d 1233, 1238 (1st Cir. 1996) (internal quotation marks omitted) (quoting *My Bread Baking Co. v. Cumberland Farms, Inc.*, 233 N.E.2d 748, 752 (Mass. 1968)).

As reflected by Massachusetts' courts strict adherence to this principle, corporate separateness is no empty formalism. Rather, it is essential for complex business operations to be able to effectively "subdivid[e] risk." Stephen B. Presser, *Thwarting the Killing of the Corporation: Limited Liability, Democracy, and Economics*, 87 Nw. U. L. Rev. 148,

173 (1992). Treating related but formally separate corporations as distinct entities serves several beneficial purposes, *e.g.*, capital formation, credit extension, optimal risk allocation, efficient asset use, and legal compliance. *See generally* Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 Cornell L. Rev. 1036, 1039-41 (1991) (describing the purposes behind the principle of corporate separateness); James J. White, *Corporate Judgment Proofing: A Response to Lynn LoPucki's* The Death of Liability, 107 Yale L.J. 1363, 1389-91 (1998) (describing the purposes of subsidiaries).

To be sure, in "'rare particular situations,'" courts may "pierce" the "corporate veil" to impose liability on a related entity. *Scott*, 881 N.E.2d at 1132. But those circumstances are exceedingly narrow; under Massachusetts law, "control, even pervasive control, without more, is not enough for a court to ignore corporate formalities." *Id.* In addition to control, there must also be "'an element of dubious manipulation and contrivance [and] finagling'" such that to treat the entities as separate would effectively be to ratify fraud or other improper conduct. *Id.* (brackets in original) (quoting *Evans v. Multicon Constr. Corp.*, 574 N.E.2d 395, 400 (Mass. App. Ct. 1991)).

The Superior Court did not pretend that the facts in this case meet the high bar for veil-piercing—in fact, it expressly ruled that they do *not*. *See* Super. Ct. Doc. 81 at 3 (granting summary judgment "dismissing the claims to pierce the corporate veil of the defendants"). But the court's misapplication of the component parts doctrine only achieved the same result by a different means. Again, the only defect alleged in this case "traced the problem to the Styrofoam drain pan, not the coils." *Egan*, 2019 WL 438341,

at *5; *Evans*, 2019 WL 438340, at *5. By the Superior Court's logic, however, the alleged defect in the drain pan meant that the fan coils were *also* defective. *See* A2/8 (reasoning that "th[e] system *had a defect* [*i.e.*, in the drain pan] *which rendered the coils unfit for their ordinary purpose*" (emphasis added)). In other words, the Superior Court effectively imputed an alleged defect in *one* aspect of the integrated product's design to *each* component within the product—thus spreading liability for the integrated product's failure to the supplier of each and every such component.

It seems unlikely that the Superior Court would have thought this reasoning appropriate if, rather than Daikin NA, the replacement coils had been provided by an entirely unrelated entity working to the specifications of the Daikin-unit manufacturer. *See Cipollone*, 202 F.3d at 379 (finding no liability for a component manufacturer that "designed to FedEx's specifications a lift, which FedEx later integrated into a larger package-handling system" that was allegedly defective because of how the lift was integrated into the system); *Restatement (Third) of Torts: Products Liability* §5 cmt. e ("A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable."). Thus—to the extent that the Superior Court's reasoning has any surface plausibility whatsoever—it stems entirely from the fact that the relevant entities here all share the Daikin name and brand. *See, e.g.*, A2/7-A2/8 (stressing the close relationship between the "Daikin-brand VRV system" and the "Daikin-brand coils"); A2/137 (same). But absent veil-piercing, Daikin NA is a separate entity from

every other "Daikin-brand" business, in just the same way that the lift manufacturer in *Cipollone* was a separate entity from FedEx. *Cf. Evans*, 2019 WL 438340, at *3 ("there is insufficient evidence to overcome the reluctance of the Massachusetts courts to authorize a piercing of the corporate form" of Daikin NA).

At bottom, then, the only way the Superior Court's reasoning makes sense is by blurring the separate legal personalities of Daikin NA and other Daikin entities, so as to hold Daikin NA responsible for any alleged defect in a "Daikin-brand" system containing "Daikin-brand" coils. This end-run around corporate separateness—a bedrock principle of American corporate law—underscores the Superior Court's errors and the importance of correcting them. Without such correction, enterprises operating in Massachusetts cannot have confidence that their separate corporate structures will be respected by courts and that they will not be held liable for other, separate entities' alleged design mistakes. That will depress both enterprise confidence and corresponding consumer benefits, while doing nothing to foster safer products.

III. Plaintiff's Belated Arguments Do Not Resuscitate the Superior Court's Novel and Erroneous Ruling.

Plaintiff makes several arguments on appeal in a last-ditch effort to salvage the Superior Court's erroneous application of Massachusetts products liability law.

First, Plaintiff (at 33-34) asks this Court to hold that the component parts doctrine does not even apply to contract-based products liability claims. Such a holding would be as unprecedented as it is counterintuitive. The purposes behind the

component parts doctrine apply across the board to all implied warranty claims, without distinction between contract and tort. And the exemption from the doctrine that Plaintiff seeks to create would mean that there is a greater chance of recovery in a contract-based action for economic loss than in a tort action for physical injury. This would upend the fundamentals of product liability law. *Cf. Bay State-Spray & Provincetown S.S., Inc. v. Caterpillar Tractor Co.*, 533 N.E.2d 1350, 1355 (Mass. 1989) ("There is ... justification for placing a greater responsibility on a manufacturer for physical injuries caused by a product not meeting standards imposed by the law than there is in placing broad liability on the manufacturer for economic loss to the product's owner resulting from a defect in the product.").

Second, Plaintiff contends (at 41) that the component parts doctrine does not apply to "replacement parts that are identical to a product's original parts." But the rationales behind the component parts doctrine apply equally to replacement parts. *See, e.g.*, *Crossfield*, 1 F.3d at 706 ("'[E]xtending the duty to make a [replacement part] safe to the manufacturer of a non-defective component part would be tantamount to charging [the] manufacturer with knowledge that is superior to that of the completed product manufacturer.'"). And Plaintiff can cite no case refusing to apply the component parts doctrine to replacement parts. *Cf. id.* ("The [replacement] chain is not unreasonably dangerous in and of itself, but is only a constituent of a dangerously designed product."); *Wright v. Fed. Mach. Co.*, 535 F. Supp. 645, 650 (E.D. Pa. 1982) ("[T]he law does not impose a duty on the seller of replacement parts to undertake an independent safety

investigation of their intended use."); *Gentile v. City of Cleveland*, 1985 WL 8963, at *10 (Ohio Ct. App. May 2, 1985) (same).

Third, Plaintiff asserts (at 41) that the component parts doctrine does not apply "where the part is sold exclusively for use in an original system." But it is black-letter law that the component parts doctrine applies to parts manufactured for a specific purpose. *Restatement (Third) of Torts: Products Liability* §5 cmt. e ("A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable within the meaning of Subsection (b)."); *Cipollone*, 202 F.3d at 379; *Est. of Thompson v. Kawasaki Heavy Indus., Ltd.*, 922 F. Supp. 2d 780, 795 (N.D. Iowa 2013) (no liability for specifically designed product unless "component manufacturer actually ha[s] some control over the design of the integrated product"); *Gudmundson v. Del Ozone*, 232 P.3d 1059, 1074 (Utah 2010) (component parts manufacturer's "knowledge of the ultimate design" insufficient for liability).

Fourth, Plaintiff (at 40-41) seeks to obfuscate the unprecedented nature of his arguments by asserting that the Superior Court's novel ruling "is consistent with precedent." But each case Plaintiff cites involved a component part that was *itself* defective. *See In re Temporomandibular Joint (TMJ) Implants Products Liability Litigation*, 97 F.3d 1050, 1057 (8th Cir. 1996) ("Making suppliers of inherently safe raw materials and component parts pay for the mistakes of the finished product manufacturer would not only be unfair, but it also would impose an intolerable burden on the business world.");

Fleck v. KDI Sylvan Pools, Inc., 981 F.2d 107, 112 (3d Cir. 1992) (involving pool liner that was itself defective); *Heco v. Midstate Dodge LLC*, 2013 WL 6978697 (Vt. Super. Ct. Mar. 14, 2013) (car seat that was itself defective); *Maake v. Ross Operating Valve Co.*, 717 P.2d 923 (Ariz. Ct. App. 1985) (valve that was itself defective). Neither Plaintiff nor the Superior Court can identify a case in which a component parts manufacturer was held liable for a non-defective part.

Finally, Plaintiff (at 42-43) makes clear what the Superior Court attempted to avoid—to impose liability on Daikin NA would require ignoring the corporate separateness of Daikin NA and Daikin: "There is no risk of unforeseeable use when the system manufacturer also manufactured the component in question." There can be no question that treating Daikin NA and Daikin as the same corporate entity would jettison the corporate separateness doctrine. *See supra* Sec. II. That Plaintiff urges the Court to do so demonstrates the dangers of the Superior Court's line of reasoning. Despite refusing to pierce the veil, the Superior Court reached precisely the same result by creating a novel exception to the component parts doctrine. Accordingly, reversal is required to preserve not only the component parts doctrine but also corporate separateness.

CONCLUSION

The Court should reverse the judgment of the Superior Court.

Dated: September 14, 2021

Respectfully submitted,

Jennifer B. Dickey
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, D.C. 20062
(202) 463-5337

Of Counsel

/s/ Patrick Strawbridge
Patrick Strawbridge (BBO #678274)
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South, PMB #706
Boston, MA 02109
(617) 227-0548
patrick@consovoymccarthy.com

Counsel for Amicus Curiae *Chamber of Commerce of the United States of America*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 17(c)(9), I certify that this brief complies with the requirements of Massachusetts Rules of Appellate Procedure 17 and 20. I further certify that this brief has been prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font, and that it contains 4,105 words, excluding the parts that can be excluded.

Dated: September 14, 2021 */s/ Patrick Strawbridge*

CERTIFICATE OF SERVICE

I, Patrick Strawbridge, hereby certify under penalty of perjury that I filed a true and accurate copy of the foregoing Brief of the Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Defendant-Appellant, in *Ofer Nemirovsky v. Daikin North America, LLC*, No. SJC-13108, on behalf of *Amicus Curiae* the Chamber of Commerce of the United States of America, via the Massachusetts Odyssey File & Serve site:

Jay S. Gregory, Esq.
Tara E. Lynch, Esq.
James Messenger, Esq.
John Moran, Esq.
Gordon Rees Scully Mansukhani, LLP
21 Custom House Street, 5th Floor
Boston, MA 02110
JGregory@grsm.com
TLynch@grsm.com
JMessenger@grsm.com
JMoran@grsm.com

Mark C. Fleming, Esq.
Felicia H. Ellsworth, Esq.
James Bor-Zale, Esq.
Charles C. Kelsh, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Mark.Fleming@wilmerhale.com
Felicia.Elsworth@wilmerhale.com
James.Bor-Zale@wilmerhale.com
Chaz.Kelsh@wilmerhale.com

Don Willenburg, Esq.
Gordon Rees Scully Mansukhani, LLP
1111 Broadway, Suite 1700
Oakland, CA 94607
DWillenburg@grsm.com

David Robert Fox, Esq.
Jones Day
100 High Street, 21st Floor
Boston, MA 02110-1781
drfox@jonesday.com

Theodore M. Grossman, Esq.
Jones Day
250 Vesey Street
New York, NY 10281-1047
tgrossman@jonesday.com

Dated: September 14, 2021

/s/ Patrick Strawbridge
Patrick Strawbridge (BBO #678274)

CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South, PMB #706
Boston, MA 02109
(617) 227-0548
patrick@consovoymccarthy.com