No. 17-17246

In the United States Court of Appeals for the Ninth Circuit

STEVEN MCARDLE,

Plaintiff-Appellee,

v.

AT&T MOBILITY LLC; NEW CINGULAR WIRELESS PCS LLC; NEW CINGULAR WIRELESS SERVICES, INC.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California, No. 4:09-cv-01117-CW

BRIEF *AMICI CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANTS-APPELLANTS

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a nonprofit corporation organized under the laws of the District of Columbia. It has no parent corporation. No publicly held corporation owns ten percent or more of its stock.

The National Association of Manufacturers is a nonprofit corporation organized under the laws of New York State. It has no parent corporation. No publicly held corporation owns ten percent or more of its stock.

The California Chamber of Commerce is a nonprofit business association organized under the laws of California. It has no parent corporation. No publicly held corporation owns ten percent or more of its stock.

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INTERESTS OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest federation of businesses and associations. The Chamber represents three hundred thousand direct members and indirectly represents an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

To that end, the Chamber and NAM regularly file *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community, including cases involving the enforceability of arbitration agreements. *See, e.g.*, *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Kilgore v. KeyBank, N.A.*, 718 F.3d 1052 (9th Cir. 2013) (en banc); *Sakkab v. Luxottica Retail N.A.*, 803 F.3d 425 (9th Cir. 2015); *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928 (9th Cir. 2013).

Many of the Chamber's and NAM's members regularly employ arbitration agreements in their contracts. Arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with traditional litigation. Arbitration is speedy, fair, inexpensive, and less adversarial than litigation in court. Based on the legislative policies reflected in the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA"), and this Court's consistent endorsement of arbitration, the Chamber's members have structured millions of contractual relationships around arbitration agreements.

The California Chamber of Commerce ("CalChamber") is a non-profit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the state of California. For over 100 years, the CalChamber has been the voice of California business. While the CalChamber represents several of the largest corporations in California, 75 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues. CalChamber often advocates before the state and federal courts by filing *amicus curiae* briefs in cases, like this one, involving issues of paramount concern to the business community. *See, e.g.*, *Sakkab v. Luxottica Retail N.A.*, 803 F.3d 425 (9th Cir 2015).

Amici thus have a strong interest in the faithful and consistent application of this Court's FAA jurisprudence, in particular, the "liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983).

STATEMENT OF COMPLIANCE WITH RULE 29

All parties have consented to the filing of this brief. No counsel for a party authored any part of this brief. And no one other than the *amici curiae*, their members, or their counsel financed the preparation or submission or this brief.

SUMMARY OF THE ARGUMENT

Amici agree with Defendants-Appellants ("AT&T") that the FAA preempts *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017). *See* Opening Brief of Defendants-Appellants ("AT&T Br.") at 24-65. Put simply, the *McGill* rule is an end run around *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). *Amici* write separately to explain that the rule and rationale of *Concepcion* apply four-square to Plaintiff's claim for public-injunctive relief under California's Unfair Competition Law ("UCL") and to underscore that the arbitration of claims for public-injunctive relief is class arbitration by another name.

ARGUMENT

I. *Concepcion* Holds That Class Proceedings Are Fundamentally Incompatible With Traditional Arbitration As Protected By The FAA.

In *Concepcion*, the Supreme Court held that the FAA prohibits States from "conditioning the enforceability of certain arbitration

agreements on the availability of classwide arbitration procedures." 563 U.S. at 336. That is because "[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." *Id.* at 344.

The Court concluded that class proceedings are incompatible with the FAA because, like class litigation, class arbitration "sacrifices the principal advantage of arbitration—its informality"—thereby "mak[ing] the process slower, more costly, and more likely to generate procedural morass than final judgment." *Id.* at 348. Simply put, "arbitration as envisioned by the FAA" is conventional bilateral arbitration, not class arbitration, which "lacks its benefits." *Id.* at 351; *see also Coneff v. AT&T Corp.*, 673 F.3d 1155, 1158 (9th Cir. 2012) (noting that the Court "observed that individualized proceedings are an inherent and necessary element of arbitration" (citing *Concepcion*, 563 U.S. at 348-50)).

Class arbitration, the Court further explained, actually "*requires* procedural formality." *Concepcion*, 563 U.S. at 349. Indeed, the Court noted that "the AAA's rules governing class arbitrations mimic the Federal Rules of Civil Procedure for class litigation." *Id.*

Further, class arbitration involves the same high stakes as a judicial class action but without multilayered appellate review, making it "more likely that errors will go uncorrected." *Id.* at 350. Companies "are willing to accept the costs of these errors in [conventional] arbitration, since their impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts." *Id.* But when hundreds or thousands of claims "are aggregated and decided at once, the risk of an error will often become unacceptable." *Id.* at 350.

As the Court observed, it is "hard to believe that defendants would bet the company with no effective means of review, and even harder to believe that Congress would have intended to allow state courts to force such a decision." *Id.* at 351. Accordingly, conditioning the enforceability of an arbitration agreement on the availability of class procedures (without a contractual basis for doing so) effectively prohibits arbitration altogether—a result that is fundamentally at odds with the FAA's purpose and objective "to promote arbitration." *Id.* at 345; *see also Coneff*, 673 F.3d at 1160.

For these reasons, *Concepcion* held that courts may not refuse to enforce arbitration agreements on the ground that they require arbitration to be conducted on an individual basis. Notably, the FAA bars States from conditioning access to the arbitral forum on the availability of collective or class-action proceedings, even if doing so would be "desirable for unrelated reasons." 563 U.S. at 351.

II. Claims For Public-Injunctive Relief Are Equally Incompatible With The FAA.

The central holding of *Concepcion* was that arbitration as envisioned and protected by the FAA is conventional bilateral arbitration. Bilateral arbitration is the benchmark against which the Supreme Court measured the *Discover Bank* rule, and the refusal to allow the same speed, efficiency, and limited risk as bilateral arbitration is what made the *Discover Bank* rule incompatible with the FAA. *Concepcion*, 563 U.S. at 348-50.

Claims for public-injunctive relief likewise are incompatible with "arbitration as envisioned by the FAA" and "lack[] its benefits," 563 U.S. at 351—for the very reasons explained in *Concepcion*. This is why "the vast majority of federal courts in California to consider the issue have held that the FAA requires compelling arbitration on an

individual basis in cases where the plaintiffs had sought to pursue a claim for a public injunction." AT&T Br. at 47-48 & n.10 (citing cases); *see also Arellano v. T–Mobile USA, Inc.*, No. 10-cv-5663, 2011 WL 1842712, at *2 (N.D. Cal. May 16, 2011). In fact, in this very case, the district court initially held the same, ordering that Plaintiff's claim for public injunctive relief must be adjudicated via arbitration. *McArdle v. AT&T Mobility LLC*, No. 09-cv-1117, 2013 WL 5372338, at *3 (N.D. Cal. Sept. 25, 2013) ("[T]he *Broughton-Cruz* rule is preempted by the FAA in light of *Concepcion*.").

The reason why all of these courts have so held is very simple: it is because a claim for public-injunctive relief shares precisely the same characteristics of class actions that led the Supreme Court to hold in *Concepcion* that the FAA prevents States from conditioning the enforcement of arbitration agreements on the availability of class procedures. That is, to require the availability of claims for public-injunctive relief would (1) "sacrifice[] the principal advantage of arbitration—its informality—and make[] the process slower, more costly, and more likely to generate procedural morass than final judgment"; (2) "*require[]* procedural formality" such as class procedures

that tend to "mimic the Federal Rules of Civil Procedure for class litigation"; and (3) "greatly increase risks to defendants" while depriving them of meaningful appellate review. *Concepcion*, 563 U.S. at 348-50.

A. Public-injunction arbitration proceedings would sacrifice informality and make arbitration "slower, more costly, and more likely to generate procedural morass."

Public-injunction proceedings are quite unlike traditional bilateral arbitration. As the California courts have recognized, public-injunctive relief is not about the individual plaintiff and his or her claims; it is "injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." *McGill*, 2 Cal. 5th at 951 (citing *Cruz v. PacifiCare Health Systems, Inc.*, 30 Cal. 4th 303, 315-16 (2003), and *Broughton v. Cigna Healthplans*, 21 Cal. 4th 1066, 1077 (1999)). Indeed, *Broughton* candidly acknowledges that such relief benefits the individual plaintiff "if at all, only incidentally, … as a member of the general public." 21 Cal. 4th at 1080 n.5.

The focus of any claim for public injunctive relief thus is far broader than the typical bilateral arbitration. *See McGill*, 2 Cal. 5th at 961 ("Its 'evident purpose,' the [California Supreme] Court said in

Broughton, is 'to remedy a public wrong,' 'not to resolve a private dispute.'") (quoting *Broughton*, 21 Cal. 4th at 1080). It is only natural, then, that arbitrating a public-injunction proceeding will trade the informalities of traditional bilateral arbitration for much more costly, time-consuming procedures.

Public-injunction "claimants are entitled to introduce evidence not only of practices which affect them individually, but also similar practices involving other members of the public who are not parties to the action." *Cisneros v. U.D. Registry, Inc.*, 39 Cal. App. 4th 548, 564 (1995) (remanding case for retrial because the trial court improperly "restricted the scope of the evidence introduced at trial to that directly relevant to each individual plaintiff"). As a practical matter, public-injunction claimants must show not only similar practices affecting non-party members of the public but also evidence demonstrating that such practices are likely to cause future harm. *See Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal. App. 4th 997, 1012 (2005) ("[The] injunctive remedy should not be exercised 'in the absence of any evidence that the acts are likely to be repeated in the future.'") (quoting *Cisneros*, 39 Cal. App. 4th at 574). This means more discovery, more witnesses, and

inevitably more complexity—"necessitating additional and different procedures and involving higher stakes." *Concepcion*, 563 U.S. at 348. And, of course, the larger the class affected by the conduct at issue, the more evidence required to justify public-injunctive relief. Clearly then, adjudicating a public-injunction claim via arbitration would sacrifice informality "and make[] the process slower, more costly, and more likely to generate procedural morass than final judgment." *Concepcion*, 563 U.S. at 348.

B. Arbitrating public-injunction proceedings would actually "require procedural formalities."

The complexity of arbitrating public-injunctive relief predictably requires procedural formalities. Indeed, the typical case involving a request for public-injunctive relief is understood to "qualify for treatment as a 'complex' case" under California court rules. William L. Stern, *Rutter Business & Professions Code Section 17200 Practice* § 7:268 (Supp. 2018); *see also* Jonathan Gertler & Dan Gildor, *Navigating California Courts' Complex Case Departments*, Plaintiff Magazine (Jan. 2012), https://bit.ly/2q27ohc ("[C]ases worthy of the designation 'complex' often … involve issues of importance to many people and

society as a whole [and] may involve requests for broad injunctive relief.").

Moreover, as AT&T points out, "arbitrators would likely apply arbitral class-certification procedures to a request for a public injunction," AT&T Br. at 39-40 (citing Rule 5(c) of AAA's Supplementary Rules for Class Arbitrations, which contemplates class certification for "claims seeking injunctive relief"). These certification procedures "are akin to Federal Rule of Civil Procedure 23(b)(2)." AT&T Br. at 40; *see also Concepcion*, 563 U.S. at 349 ("The AAA's rules governing class arbitrations mimic the Federal Rules of Civil Procedure for class litigation."). It is no wonder, then, that UCL public-injunction proceedings have been described as "nonclass class action[s]." *Court Strategy*, 40 San Diego L. Rev. 115, 139 (2003); *see also* William L. Stern, *Rutter Business & Professions Code Section 17200 Practice* § 7:38 (Supp. 2018).

C. Arbitrating public-injunction proceedings would "greatly increase risks to defendants" while depriving them of meaningful appellate review.

As explained above, the shift from bilateral arbitration to arbitration of a request for public-injunctive relief dramatically

increases the complexity of the arbitral proceeding. This is, of course, a function of moving from a narrow focus on an individual plaintiff to broadly seeking relief on behalf of the "general public." *McGill*, 2 Cal. 5th at 951. But the shift to arbitration of public-injunctive relief magnifies the risks to a defendant even more.

As AT&T notes, "a public injunction can force a defendant to alter its business practices, products, or services for every one of its California customers—and as a practical matter, perhaps all of its customers, potentially at great cost." AT&T Br. at 44. The risk of such a massive public injunction is exactly what is at play when a defendant faces a Rule 23(b)(2) class action. This is precisely why claims for public injunctive relief are deemed "nonclass classes" and often subject to class procedures. *See supra* 12. And the threat of potentially inconsistent injunctions only exacerbates the risks facing defendants.

As if the stakes facing defendants were not high enough, the absence of meaningful appellate review only magnifies them. "Informal procedures do of course have a cost: The absence of multilayered review makes it more likely that errors will go uncorrected." *Concepcion*, 563 U.S. at 350. When arbitration is bilateral, defendants are "willing to

accept the costs of these errors" because "their impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts." *Id.* But when a defendant's business practices with respect to the general public are at issue, "the risk of an error will often become unacceptable" and defendants may "be pressured into settling questionable claims." *Id.* As is the case with class arbitration, it is "hard to believe that defendants would bet the company with no effective means of review, and even harder to believe that Congress would have intended to allow state courts to force such a decision." *Id.* at 351.

III. A Review Of Actual Public-Injunction Actions Shows Them To Be Just As Incompatible With The FAA As Class Arbitration.

AT&T's description of what would have been required in this case if arbitration were expanded to include public-injunction proceedings illustrates the fact that "the 'changes brought about by the shift from bilateral arbitration to [the arbitration of public injunctive relief]' are 'fundamental.'" *Concepcion*, 563 U.S. at 347 (quoting *Stolt-Nielsen N.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 686 (2010)). As AT&T explains, arbitration proceedings would have been transformed from a simple, straightforward review of Plaintiff's bills from a trip to Italy and

the disclosures that AT&T made to him into something much, much different. The arbitrator would have had to evaluate technological changes made with respect to hundreds of wireless carriers; whether those technological changes eliminated the potential for international roaming charges; and the sufficiency of the oral and written disclosures that AT&T made to its wireless customers through contracts, brochures, web pages, and oral conversations with sales and customer service personnel. Naturally, all of this would require extensive discovery and numerous witnesses. AT&T Br. 34-36. And it would have required the arbitrator to determine not only whether a sufficient segment of those customers had been harmed to warrant broad equitable relief but also the likelihood of continued harm going forward. *See Cisneros*, 39 Cal. App. 4th at 574; *Feitelberg*, 134 Cal. App. 4th at 1012. "These additional proceedings would have greatly multiplied the stakes, cost, and scope of McArdle's individual arbitration." AT&T Br. at 38-39. On top of that, AT&T would have been at real risk of multiple—and perhaps inconsistent—public injunctions. AT&T Br. at 37 & n.8.

AT&T's illustration of how McArdle's public-injunction claim would proceed through arbitration is no outlier. Simply reviewing a run-of-the-mine complaint seeking public-injunctive relief under the UCL confirms that the changes brought by the shift to arbitration of public-injunction proceedings are no less "fundamental" than those arising from the shift from bilateral to class arbitration.

Take, for example, *Arriaga v. Cross Country Bank*, 163 F. Supp. 2d 1189 (S.D. Cal. 2001). In that case, a plaintiff credit card holder sued a bank and card issuer for unfair and deceptive business practices relating to allegedly fraudulent statements and disclosures made in the advertising of credit cards, the alleged imposition of excessive and insufficiently disclosed fees in connection with the issuance of credit cards, and the alleged use of threats in connection with the collection of outstanding balances. *See generally* Complaint, *Arriaga v. Cross Country Bank*, No. 01-cv-498, at ¶ 7 (S.D. Cal. Mar. 21, 2001). And she sought public-injunctive relief under the UCL.

Similar to AT&T's example, bilateral arbitration of this claim would be fairly simple, focusing on the statements and disclosures made to plaintiff, the extent of the fees imposed on her, and the nature of any

threats made to her in connection with the collection of any outstanding balances. Adjudicating a request for public-injunctive relief, on the other hand, would have been something entirely different, as the defendants had approximately 3 million cardholders across the country. *See id.* at ¶ 7. An arbitrator would have had to evaluate iterations upon iterations of statements and disclosures the defendants had made to its cardholders over a period of years; weigh those statements and disclosures against the fees imposed on individual cardholders; and identify and evaluate the nature of any alleged threats made to cardholders in connection with collection efforts. *See Cisneros*, 39 Cal. App. 4th at 574. Again, the arbitrator would have to evaluate "any evidence that the acts are likely to be repeated in the future." *Feitelberg*, 134 Cal. App. 4th at 1012.

Ferguson v. Corinthian Colleges, Inc., 823 F. Supp. 2d 1025 (C.D. Cal. 2011), is perhaps an even starker example of public-injunctive relief being incompatible with the FAA. In that case, the plaintiff alleged that the defendants made numerous misrepresentations to him to induce him to attend the Everest Institute of Miami, one of several dozen academic institutions operated by the defendants in the United

States and Canada. Specifically, the plaintiff alleged that the defendants made misrepresentations to him concerning Everest's accreditations; the ability to transfer credits to Everest; the true cost of attendance; the ability of Everest to qualify its graduates for professional certificates and licenses; the availability of and eligibility for grants and loans; the financial aid process; the services offered by Everest's career placement personnel; and students' post-graduation employability and earnings potential. *See generally* Complaint, *Ferguson v. Corinthian Colleges, Inc.*, No. 8:11-cv-127 (C.D. Cal. Jan. 24, 2011). Plaintiff Ferguson asserted claims under various tort and contract theories, as well as statutory claims that included a UCL claim for public injunctive relief. *See id.* at ¶ 154. He sought class treatment under Federal Rule 23(b)(1) and (b)(2). *See id.* at ¶¶ 52-53.

Bilateral arbitration of the plaintiff's claims, of course, would have been fairly straightforward. It would have required review and assessment of the accuracy of the representations and sufficiency of the specific disclosures the defendants made to him as compared with the value of the education and opportunities he received from the defendants. Arbitration of the plaintiff's claims for public injunctive

relief, on the other hand, would have yielded proceedings of significantly greater magnitude and complexity given that the defendants enrolled tens of thousands of students at Everest at the time. *See id.* at ¶ 2. Specifically, such an arbitration would have required evaluation of every iteration of the representations and disclosures the defendants made over a period of years (and, of course, broad discovery and witness testimony to yield all of this evidence), as well as extensive evidence regarding the education and opportunities provided to many thousands of students (including, perhaps, expert reports and testimony) and the likelihood of continued harm going forward. *See Cisneros*, 39 Cal. App. 4th at 574; *Feitelberg*, 134 Cal. App. 4th at 1012. Moreover, because the parties had contracted for the arbitration to be conducted by AAA, the arbitrator likely would have employed arbitral class-certification procedures that "mimic the Federal Rules" to Ferguson's claims for public injunction, *see* AAA Supp. R. for Class Arb. 5(c); *Concepcion*, 563 U.S. at 349.

In other words, the arbitration of Ferguson's public injunctive relief claims would have proceeded in almost the exact same manner as the arbitration (or litigation) of his class claims. In either case,

Ferguson would have been entitled to classwide discovery, and the arbitrator would have adjudicated his claims using procedural rules that approximate the class action rules set out in Rule 23. *Concepcion*, 563 U.S. at 349. To be sure, Ferguson's class claims would have been certified under arbitral class procedures that mimicked Rule 23(b)(1) (since he sought certification under both Rule 23(b)(1) and (b)(2) in his complaint), whereas his claims for public-injunctive relief would have been certified under procedures more akin to Rule 23(b)(2). But this is a distinction without a difference, at least insofar as the FAA's preemption analysis is concerned. Ferguson's claims for public-injunctive relief would have been arbitrated as a "nonclass class"—trading the informalities of bilateral arbitration for classwide discovery, the formalities of procedures approximating Rule 23's class-certification rules, and the heightened stakes that arise from the increased risk of a massive public injunction and the lack of meaningful appellate review.

IV. To Hold That The FAA Does Not Preempt The *McGill* Rule Would End Run *Concepcion*.

As illustrated above, the arbitration of public-injunction claims is class arbitration by another name. Accordingly, to hold that the *McGill* rule escapes the preemptive sweep of the FAA would end run

Concepcion. It would allow a plaintiff to evade *Concepcion* and FAA preemption in any case in which he or she could include a UCL claim for public-injunctive relief.

Given the extraordinary breadth of California's UCL, this is virtually every case. "The UCL covers a wide range of conduct." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003). "Section 17200 borrows violations from other laws by making them independently actionable as unfair competitive practices. In addition, under section 17200, a practice may be deemed unfair even if not specifically proscribed by some other law." *Feitelberg*, 134 Cal. App. 4th at 1009 (internal quotations omitted). Accordingly, "[v]irtually any federal, state, or local law can serve as the predicate for a [UCL public-injunction] action." Mathieu Blackston, *California's Unfair Competition Law—Making Sure the Avenger Is Not Guilty of the Greater Crime*, 41 San Diego L. Rev. 1833, 1839 (2004). This means that a UCL public-injunction claim can be easily tacked onto nearly any California complaint. Given the breadth of the UCL, then, a holding that the FAA does not preempt the *McGill* rule would practically nullify *Concepcion* (at least within California federal and state courts).

It is worth noting that the arbitration agreement at issue is "the very arbitration agreement considered and approved by the U.S. Supreme Court seven years ago in *AT&T Mobility LLC v. Concepcion*." AT&T Br. at 3. It is unthinkable that the Supreme Court would enforce this agreement over the *Discover Bank* rule in *Concepcion* only so that it could be gutted here simply because McArdle happened to include a UCL claim for public-injunctive relief in his complaint—especially given that the *Concepcion* plaintiffs sought that very same relief. *See* AT&T Br. at 10 & n.2.

CONCLUSION

The Court should reverse the decision below and remand to the district court with instructions to confirm the arbitration award.

Respectfully submitted.

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Dated: April 2, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2018, I filed the foregoing Amicus Brief via the CM/ECF system and served the foregoing via the CM/ECF system on all counsel who are registered CM/ECF users.

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/s/ Thomas R. McCarthy
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Dated: April 2, 2018