No. 18-35791

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KATHERINE MOUSSOURIS, et al.,
Plaintiffs-Appellants
v.
MICROSOFT CORPORATION,
Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Washington
No. 2:15-cv-01483-JLR, Hon. James L. Robart

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE RETAIL LITIGATION CENTER, INC. AS *AMICI CURIAE* IN SUPPORT OF APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Amici curiae certify that they have no outstanding shares or debt securities in the hands of the public, and they do not have a parent company. No publicly held corporation has a 10% or greater ownership in *amici curiae*.

/s/ Adam G. Unikowsky

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All parties consent to the filing of this amicus brief.[1]

STATEMENT OF INTEREST

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

The Retail Litigation Center, Inc. (the "RLC") is the only public policy organization dedicated to representing the retail industry in the judiciary. The RLC's members include many of the country's largest and most innovative retailers. They employ millions of workers throughout the United States, provide goods and services to tens of millions of consumers, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues impacting its members, and to highlight the potential

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* affirm that no party or counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

industry-wide consequences of significant pending cases. Since its founding in 2010, the Retail Litigation Center has participated as an amicus in nearly 150 judicial proceedings of importance to retailers.

The members of the Chamber and the RLC depend on courts undertaking "a rigorous analysis" before certifying a class. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). The district court properly did just that here. Plaintiffs[2] contend that the court should have certified a class so as to resolve thousands of discretionary pay and promotion decisions in a single proceeding. Accepting that contention would eviscerate Rule 23's commonality requirement and invite circumvention of the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). The Chamber, the RLC, and their members have a vital interest in ensuring that Plaintiffs' theories are rebuffed and that the district court's careful analysis—faithfully applying Supreme Court precedent—is upheld.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under the Supreme Court's controlling decision in *Wal-Mart*, this is an easy case. *First*, Plaintiffs have failed to establish any common policy of discrimination

[2] "Plaintiffs" refers to the putative class representatives, who are Appellants in this Court.

that would justify linking the fate of their claims to those of thousands of other Microsoft employees.[3] *Second*, the practicalities of this case confirm that it is fundamentally ill-suited for class adjudication. Precisely because there is no common legal question posed by the thousands of claims assertedly at issue here, a "classwide" proceeding would devolve into thousands of mini-trials that would bog down the district court and Microsoft for years—while delivering none of the asserted benefits of representative litigation.

I. In order to justify class certification, Plaintiffs were required to establish "the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 350 (quotation marks and emphasis omitted). With respect to Plaintiffs' disparate impact claim, that meant—at a minimum—identifying a "specific employment practice" that ties together all class members' claims by serving as the common mechanism of their alleged sex-based disadvantage. But *Wal-Mart* holds that discretionary decisions by managers cannot be that common mechanism. And the fact that discretionary decisions are made through a "common" process cannot supply the needed commonality either, unless *that process* is shown to be the cause of the asserted discrimination. Here,

[3] The District Court denied class certification on the basis of typical and adequacy as well. *Amici* agree with the District Court's disposition of those issues, but will focus on the commonality question in this brief.

Plaintiffs attempt to distinguish this case from *Wal-Mart* by purporting to identify company-wide policies governing pay and promotion decisions. But Plaintiffs make no serious claim that the policies with which they take issue—as opposed to the more basic vesting of discretion in managers—are the cause of any disparate impact on the basis of gender. As such, *Wal-Mart* forecloses class certification of Plaintiffs' disparate impact claim.

For similar reasons, Plaintiffs' disparate treatment claim is no more amenable to "common answers apt to drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 350 (quotation marks omitted). Because disparate-treatment claims necessarily turn on the motives for individual personnel decisions, they are very rarely suited for classwide adjudication when (as here) many distinct decisionmakers are involved. Plaintiffs invoke the one narrow exception to this general rule: a "systemic" or "pattern or practice" theory of liability, through which a plaintiff shows such a robust corporate norm of making decisions with discriminatory intent that the presence of such intent in each particular decision can be presumed. But Plaintiffs cannot show that their disparate treatment claims give rise to common questions without *actually proving* such a robust "pattern or practice" of discrimination. *See Wal-Mart*, 564 U.S. at 352 (noting the "overlap[]" of "proof" in this situation). And as the district court correctly determined, Plaintiffs have not come close to showing

that Microsoft has the requisite "standard operating procedure" of intentionally discriminating on the basis of sex. *Id.* at 352 n.7 (quotation marks omitted). Thus, there is no warrant for bundling Plaintiffs' disparate-treatment claims—based on decisions made at their own review meetings—with thousands of others made by other people, about other people, at other offices and other times.

II. What *Wal-Mart* establishes, common sense confirms. At bottom, a class-certification motion ought to fail if "the maintenance of [the plaintiff's] action as a class action d[oes] not advance 'the *efficiency and economy of litigation* which is a principal purpose of the procedure.'" *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 159 (1982) (quoting *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553 (1974) (emphasis added)). In other words, Rule 23's commonality requirement asks a critical real-world question—whether there is "cause to believe that all [class members'] claims can productively be litigated at once." *Wal-Mart*, 564 U.S. at 350.

Here, any attempt to adjudicate all class members' claims in one proceeding would give rise to a procedural quagmire, with no meaningful economies of scale to justify the mammoth endeavor. Before the district court could award any class member backpay or damages, the court would need to determine whether *each* discretionary pay or promotion decision about *that* plaintiff was infected by gender bias. *See Wal-Mart*, 564 U.S. at 352 ("[I]n resolving an individual's Title VII claim, the crux of the inquiry is 'the reason for a particular employment decision.'" (quoting

Cooper v. Fed. Reserve Bank of Richmond, 467 U.S. 867, 876 (1984))). That will inevitably require hearing evidence on the particulars of each personnel meeting, the expressed comments and attitudes of the various attendees, and myriad other matters of particularized fact. In substance, these "remedial phase" proceedings would replicate individual Title VII trials for each of the thousands of class members—a queue that Microsoft and the district court will be left to grind through for many years to come. Nothing could be further from the design of Rule 23. And worse, there is a very real risk that Microsoft would face substantial economic pressure to settle meritless claims in gross rather than bear these extraordinary litigation costs.

This is a case where Rule 23's commonality requirement worked exactly as it is supposed to do. Plaintiffs failed to establish that there is any "glue holding the alleged *reasons* for all [of Microsoft's challenged] decisions together." *Wal-Mart*, 564 U.S. at 352. And the district court therefore found it "impossible to say that examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored*." *Id.* That decision should be affirmed.

ARGUMENT

I. PLAINTIFFS FAILED TO ESTABLISH COMMONALITY UNDER RULE 23 AND *WAL-MART*.

To satisfy Rule 23's commonality requirement, a putative class representative must prove that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). As the Supreme Court has explained, however, "[t]hat language is easy to misread, since any competently crafted class complaint literally raises common 'questions.'" *Wal-Mart*, 564 U.S. at 349 (internal quotation marks and alterations omitted). What commonality actually requires is that "that the class members '*have suffered the same injury*'"—meaning not merely that they have suffered "a violation of the same provision of law," but that their claim rests on "a common contention," such as "the assertion of discriminatory bias on the part of the same supervisor." *Id.* at 350 (emphasis added). "That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.*

Plaintiffs have failed to establish that either their disparate impact claims or their disparate treatment claims can be resolved in this common fashion. As to each type of claim, the district court correctly found that Plaintiffs' attempts to generalize

from their particular cases to systemic policies of discrimination—of the kind that could theoretically support classwide resolution—failed for lack of proof.

A. Plaintiffs Failed To Establish Commonality For Their Disparate Impact Claim.

Wal-Mart established two points that preclude Plaintiffs' effort to certify a class on their disparate-impact claim. First, proof of commonality in a disparate-impact case requires a plaintiff to identify a "specific employment practice" that ties together all class members' claims. *See* 564 U.S. at 357 (explaining that the plaintiffs failed to establish commonality because they "ha[d] identified no 'specific employment practice' ... that ties all their 1.5 million claims together"). And second, the "existence of delegated discretion" cannot form the "specific employment practice" at issue, because that "practice" is, by its very nature, "just the opposite of a uniform employment practice that would provide the commonality needed for a class action." *Id.* at 355, 357; *see id.* at 357 ("[M]erely proving that the discretionary system has produced a racial or sexual disparity *is not enough.*"); *see also Bolden v. Walsh Constr. Co.*, 688 F.3d 893, 898 (7th Cir. 2012) ("*Wal-Mart* tells us that local discretion cannot support a company-wide class no matter how cleverly lawyers may try to repackage local variability as uniformity.").

Plaintiffs seek to circumvent *Wal-Mart* by pointing to alleged "company-wide polic[ies]" that purportedly structure the *process* for managers to exercise their discretion. Pls' Br. 30-38. But these arguments misunderstand *Wal-Mart*. In order to show that Plaintiffs' Title VII claims will actually turn on common questions, Plaintiffs must show that their alleged sex-based disadvantage *actually results from* a given common policy, rather than from variable, discretionary judgments. *See Wal-Mart*, 564 U.S. at 359 ("Because respondents provide no convincing proof of a companywide discriminatory pay and promotion policy, we have concluded that they have not established the existence of any common question."); 42 U.S.C. § 2000e-2(k)(1)(A)(i) (requiring plaintiff to prove the existence of "a *particular employment practice* that *causes* a disparate impact on the basis of ... sex" (emphasis added)). If there is no proof of causation linking the claimed disparate impact to the asserted "common" policy governing the exercise of discretion, then Plaintiffs' challenge is really just to the discretionary judgments, or, equivalently, to the very "policy" of employing discretionary judgments—both of which, *Wal-Mart* holds, do *not* suffice for commonality.

To be concrete: Suppose that Wal-Mart had a policy that managers must make their pay and promotion decisions on Tuesdays, and submit them to corporate management on a yellow sheet of paper. That would be a "common," company-wide policy for the pay and promotion process that is applicable to all the class members.

But it obviously would not have saved the plaintiffs' bid for class certification, because the alleged *mechanism* of discrimination in *Wal-Mart*—namely, sex stereotypes allegedly infecting thousands of managers' perceptions of their subordinates—had nothing to do with the day of the week on which decisions were made, or the color of paper on which those decisions are recorded. In other words, Plaintiffs could not simply pluck an arbitrary feature of the pay and promotion process out of the air and—without regard to their own actual theory of how discrimination comes about—leverage that "common" policy to satisfy commonality.

Plaintiffs' assorted efforts to establish a "common" policy fail for precisely the same reason here. Under Plaintiffs' own recitation of the facts, none is actually a source or cause of the alleged disparate impact. For example, Plaintiffs assert that the "Calibration Process" is a uniform feature of Microsoft's personnel decisions, but they *agree* that this process yields performance ratings that reflect "no gender disparity" (i.e., no evidence of disparate impact). ER484 & n.11; *see* Microsoft Br. 36-39. And the district court found as a factual matter that the rubrics and criteria that Plaintiffs identify as common "were so vague that they imposed no real constraints" on managers' discretion at all. ER488 (internal quotation marks omitted). Thus, for instance, Microsoft's directive that managers should consider "employee readiness or performance" in making promotion decisions was not the source of an unlawful sex-based disparate impact. That is hardly a surprise: With or without that

generic directive from senior management, any competent manager would consider an employee's "readiness or performance" in deciding on a promotion.

Plaintiffs offer no argument that the "calibration process" narrows managers' discretion in a manner that causes a disparate impact on women. To the contrary, it was the very vagueness of Microsoft's company-wide criteria that underlay Plaintiffs' original theory that gender bias *seeped into the criteria's practical application* by individual managers. *See* Microsoft Br. 38-39 (summarizing Plaintiffs' expert's analysis to this effect). On appeal, Plaintiffs appear to abandon that theory and instead argue that because the "calibration process" is *some kind* of policy, it must necessarily support commonality—regardless of whether that policy constrains individual managers' discretion in any meaningful way. Pls' Br. 36-37.

The *Wal-Mart* plaintiffs made a similar argument on remand, and as the District Court in that case explained, that effort to avoid *Wal-Mart*'s holding does not work. That argument "leaves Plaintiffs right back where they started: challenging [a company's] practice of delegating discretion to local managers, which the Supreme Court specifically held was *not* a specific employment practice supplying a common question sufficient to certify a class." *Dukes v. Wal–Mart Stores, Inc.*, 964 F. Supp. 2d 1115, 1127 (N.D. Cal. 2013). Similarly here, any asserted disparate impact undoubtedly flows from the *actual use of discretion*—which is off-limits as a basis for claiming commonality—and not from the mundane, utterly innocuous

procedures and criteria through which managers' discretionary personnel decisions happen to be carried out at Microsoft.[4] Plaintiffs thus failed to prove commonality for their disparate-impact claim.

B. Plaintiffs Failed To Establish Commonality For Their Disparate Treatment Claim.

Plaintiffs failed to establish commonality for their disparate treatment claim as well. Plaintiffs' classwide disparate treatment theory required them to prove their "merits contention that [Microsoft] engages in a *pattern or practice* of discrimination." *Wal-Mart*, 564 U.S. at 352. Absent such a pattern or practice, each individual's disparate treatment claim would simply call for a fact-intensive assessment of "the reason for a particular employment decision"; there would be no "common answer to the crucial question *why was I disfavored*." *Id.* (internal quotation marks omitted) Thus, it is only proof of a pattern or practice of discrimination that could "glue ... the alleged reasons for all those decisions together" and thereby justify class treatment. *Id.*; *see id.* at 351-52 & n.6 (explaining that the commonality inquiry often "overlap[s] with the merits of the plaintiff's underlying claim" and that this is "a familiar feature of litigation").

[4] Plaintiffs' reliance on a "policy" of review by senior executives fails for the same reason. As the district court explained, Plaintiffs failed to adduce any evidence suggesting that such review caused any disparate impact; indeed, they failed to identify a *single instance* in which the relevant executives changed a manager's recommendation. ER93.

Here, Plaintiffs failed to prove a "pattern or practice" of sex discrimination. In order to clear that bar, the Supreme Court has explained, "it must be established by a preponderance of the evidence that '[sex] discrimination was the company's *standard operating procedure*—the regular rather than the unusual practice.'" *Cooper v. Fed. Reserve Bank of Richmond*, 467 U.S. 867, 875-76 (1984) (citation omitted; emphasis added). In other words, the plaintiff's "burden is to demonstrate that unlawful discrimination has been a regular procedure or policy followed by an employer." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 360 (1977). And in assessing whether the evidence shows discrimination to be that endemic in a company, courts must be mindful that "a piece of fruit may well be bruised without being rotten to the core." *Cooper*, 467 U.S. at 880; *see, e.g.*, *id.* at 878-79 (holding that lower court correctly rejected pattern-or-practice claim because the plaintiff's "statistical evidence, buttressed by expert testimony and anecdotal evidence," was insufficient to show "bankwide discrimination"). Thus, courts cannot certify a pattern-or-practice class unless there is "significant proof" that Microsoft "operated under a general policy of discrimination." *Wal-Mart*, 564 U.S. at 353 (quotation marks omitted).

The high bar for proving a "pattern or practice" makes sense when one considers its extraordinarily severe legal effect. By definition, "[t]he proof of the pattern or practice supports an inference that any particular employment decision, during

the period in which the discriminatory policy was in force, was made in pursuit of that policy." *Teamsters*, 431 U.S. at 362. Such a finding thus establishes "a rebuttable inference that *all* class members were victims of the discriminatory practice"—meaning that *every* adverse personnel decision during the relevant period was discriminatory. *Wal-Mart*, 564 U.S. at 352 n.7 (emphasis added); *see Teamsters*, 431 U.S. at 362 ("The employer cannot, therefore, claim [at the second phase] that there is no reason to believe that its individual employment decisions were discriminatorily based; it has already been shown to have maintained a policy of discriminatory decisionmaking."). As a matter of both logic and fairness, then, a "pattern or practice" may properly be found only where the evidence is so strong that it genuinely warrants that response—so strong that, even absent any additional employee-specific evidence introduced by either party, *every* decision not to promote a woman or give a woman a raise can be presumed to be discriminatory.

The district court was correct in finding that Plaintiffs failed to prove such a pervasive and robust "standard operating procedure" of intentional discrimination here. To be sure, Plaintiffs offered statistics purporting to show an aggregate pay and promotion gap at Microsoft. But these statistics in fact indicated that 95% to 98% of the class was not disfavored at all—in direct contradiction of Plaintiffs' contention that 100% of pay and promotion decisions can be presumed to reflect intentional gender discrimination. Further, the statistics fell far short of "significant

proof," *Wal-Mart*, 564 U.S. at 353 (quotation marks omitted), showing that any discrimination pervaded the company, as opposed to being concentrated in particular units or decisionmakers. *See* Microsoft Br. 57-58; *cf. Wal-Mart*, 564 U.S. at 356-57 ("A regional pay disparity, for example, may be attributable to only a small set of Wal–Mart stores, and cannot by itself establish the uniform, store-by-store disparity upon which the plaintiffs' theory of commonality depends.").

Aside from their inapt statistics, Plaintiffs offer only a small handful of declarations from class members and anecdotal "culture evidence." But it would take a great deal more to justify an inference that each of more than 8,000 employees probably suffered discrimination at the hands of each of their myriad different supervisors, some of whom are themselves class members, over a span of eight years. *See, e.g.*, *Cooper*, 467 U.S. at 875-76 ("Proving isolated or sporadic discriminatory acts by the employer is insufficient to establish a prima facie case of a pattern or practice of discrimination ... ."). Indeed, Plaintiffs point to no case in which evidence as weak as theirs has ever been thought sufficient to warrant the strong medicine of a pattern-or-practice finding. And because Plaintiffs "provide[d] no convincing proof of a companywide discriminatory pay and promotion policy," it necessarily follows that "they have not established the existence of any common question," either. *Wal-Mart*, 564 U.S. at 359.

II. CLASS CERTIFICATION WOULD SUBVERT RULE 23 BY FORCING THE DISTRICT COURT TO HOLD THOUSANDS OF MINI-TRIALS WITH NO COMPENSATING GAINS IN EFFICIENCY.

The District Court's decision is consistent not only with Supreme Court precedent, but also with practicality and common sense. In deciding whether the District Court abused its discretion in denying class certification, the Court should consider how a classwide proceeding would play out at trial. The inevitable procedural quagmire that would result from class certification confirms the wisdom of the District Court's decision.

This case is fundamentally different from the prototypal class action. Rule 23 was intended for cases in which a Court resolves a common question, and then awards damages to class members according to an orderly claims-submission process. For instance, suppose a company is accused of breaching a standard-form contract, and therefore overcharging all of its customers on the same basis. In such a case, class treatment may be appropriate: the breach of contract question can be resolved on a classwide basis, and if the class prevails, the amount of damages payable to each class member can be calculated mechanically.

But here, suppose the district court certified a class and held that Microsoft's pay and promotion "process" had an aggregate disparate impact on women. That determination would not actually answer the question whether any *particular*

woman would or would not have been promoted or received a raise but for the asserted gender-related impact. Nor would any mechanical claims-submission procedure answer that question for every class member—or even *any* class member. To answer that question for any class member, the district court would need to hear evidence about the particular personnel decision at issue, the relevant considerations, the records of the relevant decisionmakers, and countless other particular facts. Thus, the nominal "class action" would quickly devolve into an endless series of the individual, particularized disputes that representative litigation is supposed to avoid. *Cf. Wal-Mart*, 564 U.S. at 350 ("Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury ... gives no cause to believe that all their claims can productively be litigated at once.").

Likewise, if the district court found a "pattern or practice" of disparate-treatment discrimination at Microsoft, Microsoft would then have the right to prove that each particular employment decision was in fact justified on its merits. *See Teamsters*, 431 U.S. at 362 (explaining that, at the second phase of a pattern-or-practice case, each job applicant "will be presumptively entitled to relief, subject to a showing by the company that its earlier refusal to place the applicant in a line-driver job was not based on its policy of discrimination"). In a traditional pattern-or-practice case, this second phase of the litigation may not be unduly onerous: The proven

policy of discrimination will be genuinely robust and thus very likely to have infected each particular decision, leaving little room for individualized rebuttal. *Cf. Segar v. Smith*, 738 F.2d 1249, 1269 (D.C. Cir. 1984) (in a "typical pattern or practice case ... the plaintiffs' initial offer of evidence will have been so strong that the bare articulation of a nondiscriminatory explanation will not suffice to rebut it"). But not so here, where Plaintiffs' allegations of a "pattern or practice" are so tenuous. *See supra* at 12-15. Microsoft thus could be expected to put on robust individualized defenses to each of the more than 8,000 claims. And each such defense "will [then] be subject to further evidence by the [relevant class member] that the purported reason for an applicant's rejection was in fact a pretext for unlawful discrimination." *Teamsters*, 431 U.S. at 362 n.50. Thus, it will emerge in short order that the "claims might as well have been tried separately," and "that the maintenance of [Plaintiffs'] action as a class action did not advance 'the efficiency and economy of litigation which is a principal purpose of the procedure.'" *Falcon*, 457 U.S. at 159 (quoting *Am. Pipe*, 414 U.S. at 553).

That would be bad enough. But precisely because litigating a pseudo-class action would prove so costly, it is all too likely that Microsoft, or another defendant placed in a similar position, would be "coerce[d] ... into settling on highly disadvantageous terms regardless of the merits of the suit." *CE Design Ltd. v. King Architectural Metals, Inc.*, 637 F.3d 721, 723 (7th Cir. 2011). As the Supreme Court

has emphasized, if class litigation is not properly managed, it "may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978); *accord Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1715 (2017) (noting that "an order granting class certification may force a defendant to settle rather than run the risk of potentially ruinous liability" (quotation marks, ellipses and brackets omitted)). That result disserves defendants and the integrity of the judicial system alike, and it further cautions against reversing the district court's sound denial of class certification here.

CONCLUSION

The decision below should be affirmed.

Dated: April 8, 2019

Respectfully Submitted,

/s/ Adam G. Unikowsky

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 4,300 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5).

/s/ Adam G. Unikowsky
Adam G. Unikowsky

CERTIFICATE OF SERVICE

I hereby certify that that on April 8, 2019, I electronically filed the foregoing brief with the Clerk of the Court using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

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