Case No. 2023-103

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

IN RE

NIMITZ TECHNOLOGIES LLC,

Petitioner.

On Petition for a Writ of Mandamus to the United States District Court for the District of Delaware in Case Nos. 1:21-cv-01247-CFC,1:21-cv-01362-CFC, 1:21cv-01855-CFC and 1:22-cv-00413-CFC
Honorable Colm F. Connolly, Judge

BRIEF OF AMICI CURIAE ELECTRONIC FRONTIER FOUNDATION, THE PUBLIC INTEREST PATENT LAW INSTITUTE, AND ENGINE ADVOCACY IN OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rules 29(a) and 47.4, counsel for Electronic Frontier Foundation certifies that:

1. The full name of the parties I represent are:

Electronic Frontier Foundation, the Public Interest Patent Law Institute, and Engine Advocacy.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) I represent is: N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party I represent are: None.

4. The names of all law firms and the partners or associates that appeared for the party I represent or are expected to appear in this Court are:

N/A

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal: None beyond those disclosed by the parties.

6. No disclosure regarding organizational victims in criminal cases or regarding bankruptcy cases is applicable under Fed. R. App. P. 26.1(b) or (c).

November 30, 2022

/s/ Rachael Lamkin
Rachael Lamkin

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE[1]

The Electronic Frontier Foundation is a nonprofit civil liberties organization that has worked for more than 30 years to protect innovation, free expression, and civil liberties in the digital world. EFF and its more than 38,000 active donors have a powerful interest in ensuring that intellectual property laws serve the public by promoting more creativity and innovation than they deter.

The Public Interest Patent Law Institute ("PIPLI") is a nonprofit, nonpartisan organization dedicated to ensuring the patent system promotes innovation and access for the public's benefit.

Engine Advocacy is a nonprofit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups, working with government and a community of growth-oriented startups across the nation to support the development of technology entrepreneurship.[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

The public has a right—and need—to know who is controlling and benefiting from litigation in publicly-funded courts. Parties who conceal this information through pseudonyms or shell entities undermine the presumption that

[1] No party or party's counsel authored this brief, in whole or in part, or contributed money that was intended to fund preparing or submitting this brief.

[2] The accompanying Motion for Leave discusses amici's interests in greater detail.

the courts of this country are open to the public and provisions of the Federal Rules and Civil Procedure and Patent Act that exist to address and deter frivolous claims and litigation misconduct. Parties able to immunize themselves from these safeguards by hiding behind insolvent entities encourage meritless infringement suits that impede real innovation and exacerbate burdens on courts.

If this Court decides otherwise, provisions that are fundamental to the public's confidence in the judiciary will fail too. For example, the Constitution's standing requirement imposes important limits on the exercise of judicial authority. To enforce this requirement in patent cases, courts need information about a plaintiff's control over the patent-in-suit. Judges must also be able to identify non-parties with interests in the outcome of litigation to know when and how to comply with their statutory and ethical recusal obligations. And judges need to know when attorneys are acting at the behest of unnamed entities.[3]

When questions arise about compliance with requirements such as these, courts should follow Judge Connolly's path. Taking action to protect the parties, the public, and integrity of the court system is proper and commendable.

But Judge Connolly is hardly unique in requiring parties to identify entities

[3] Important legal protections apply when plaintiffs participate in associations to litigate for a cause, rather than private financial benefits alone. *E.g., National Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 428-29 (1963).

funding, controlling, and benefiting from cases before him. At least 25% of district courts across the country have similar rules requiring parties to disclose those entities, including third-party funders.[4] The Standing Order at issue is not only consistent with other district courts, but also with the American Bar Association's best practices for third-party litigation funding,[5] which recognize that "the exponential growth in third-party litigation funding" of patent and non-patent cases in recent years has necessitated new and improved transparency mechanisms, like those at issue here.[6]

Put simply, granting the Petition will encourage meritless suits, conceal unethical conduct, and erode public confidence in the judicial process. These harms must be avoided, not invited.

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[4] Mark Behrens, et al., Shook, Hardy and Bacon, *Third-Party Litigation Funding State and Federal Disclosure Rules & Case Law*, May 11, 2022, https://www.shb.com/-/media/files/professionals/j/katie-jackson/shb-handout-tplf-disclosure-rules-and-case-law.pdf

[5] AMERICAN BAR ASSOCIATION, *Best Practices for Third-Party Litigation Funding*, Aug. 3-4, 2020 ("ABA Best Practices") at 2, https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/111a-annual-2020.pdf

[6] *Id.* at 1.

BACKGROUND

Litigation Funding

Litigation funding is an enormous and rapidly growing business. Although "[t]he exact dollar amount that third-party investors infuse in U.S. lawsuits every year is unknown, . . . conservative estimates begin around $2.3 billion."[7] The unique dynamics of patent litigation in particular have "given rise to business relationships in which patent holders team up with legal counsel as well as an investment firm to back the case."[8] In such situations, litigation funding may flow directly to legal counsel rather than individual patent holders.

Given the increasing significance of litigation funding, the ABA in 2020 adopted Best Practices for Third-Party Litigation Funding to help courts and litigants navigate these issues.[9] Although the ABA does not provide strict requirements or opinions on litigation funding, it does "suggest that the practitioner should assume that some level of disclosure may be required at some point—whether by court rules or standing orders, arbitral rules, discovery rulings,

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[7] Erica Abshez Moran and Teresa A. Griffin, Faegre Drinker, *Considerations from the ABA's Best Practices for Litigation Funding*, Feb. 16, 2021, https://www.faegredrinkeronproducts.com/2021/02/considerations-from-the-abas-best-practices-for-litigation-funding/.

[8] *Id.*

[9] ABA Best Practices, *supra*, note 4, at 1.

or events and proceedings extraneous to the 'main event' litigation."[10]

Nearly a year after the ABA's guidance issued, the District Court for the District of New Jersey adopted a local rule requiring disclosures of third-party litigation funding. Local Rule 7.1.1.1 requires parties to identify a

> person or entity that is not a party and is providing funding for some or all of the attorneys' fees and expenses for the litigation on a non-recourse basis in exchange for (1) a contingent financial interest based upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal or bank loan, or insurance.

D.N.J. Civ. L. Rule 7.1.1. This rule also requires disclosing "[w]hether the funder's approval is necessary for litigation decisions or settlement decisions in the action," "the nature of the terms and conditions relating to that approval," and [a] brief description of the nature of the financial interest." *Id.*

Judge Connolly's Standing Order

Nearly two years after the ABA's guidance issued, Judge Connolly issued a Standing Order with substantially identical requirements to New Jersey's Local Rule 7.1.1. For example, it requires parties to identify a

> person or entity that is not a party (a 'Third-Party Funder') funding for some or all of the party's attorney fees and/or expenses to litigate this action on a non-recourse basis in exchange for (1) a financial interest that is contingent upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal loan, bank loan, or insurance.

[10] *Id.* at 2.

Appx353. The Standing Order also requires disclosing "[w]hether any Third-Party Funder's approval is necessary for litigation or settlement decisions in the action," "the nature of the terms and conditions relating to that approval," and "[a] brief description of the nature of the financial interest of the Third-Party Funder(s)." Appx353-54.

The Plaintiff LLCs in this and Related Cases

Petitioner Nimitz Technology ("Nimitz") is one of three LLCs named as plaintiffs in a substantial number of infringement suits before Judge Connolly.[11] On November 4, 2022, Judge Connolly held a hearing where the managing members of Nimitz and Mellaconic IP LLC, testified. Appx360. On November 10, Judge Connolly held another hearing where the managing member of Backertop LLC, testified. Appx445-80.

All three witnesses described nearly identical facts regarding their ownership of the relevant patents and involvement (or lack thereof) in litigation: (1) Mavexar, a third party, presented to them the opportunity to take ownership of the asserted patents, (2) Mavexar formed LLCs of which the witnesses were named managing members, (3) these LLCs acquired patents without paying money, but by agreeing to assume liability for losses incurred in litigation,

[11] According to PACER, the LLCs identified in the list of cases directly affected by this Court's decision, *see* Br. i-ii, brought 69 infringement suits in the District of Delaware between 2000 and 2020.

(4) these LLCs were entitled to 5-10% of litigation and settlement proceeds with the remaining 90%-95% going to Mavexar, (5) Mavexar handled the retention of attorneys for the LLCs, communications with those attorneys, and made all decisions regarding patent assertion, litigation, and settlement, (6) these attorneys all had contingency fee arrangements, and (7) Mavexar had agreed to cover the costs of litigation, though the plaintiff LLCs would ultimately be liable should any court award sanctions and/or fees to any defendant. *See* Appx376-79 (67:25-77:14 (Mark Hall of Nimitz); Appx381-85 (86:18-102:1) (Hau Bui of Mellaconic); Appx447-74 (14:3-41:10) (Lori LaPray of Backertop).

Mavexar is a "consulting company" that "provide[s] *non*legal services," as the managing member of another Mavexar-backed LLC, Backertop, testified with respect to both the contractual description and her understanding of Mavexar's services. Appx452-43 (19:25-20:5) (emphasis added). Despite its status as a nonlegal consultant, Nimitz's managing member, Mark Hall, attested to Mavexar's control over legal decisions, as the following colloquy between Mr. Hall and Judge Connolly demonstrates:

> Q. [A]lthough you are in name the owner of the patent, you defer solely to Mavexar and the lawyers to make all the decisions associated with how the patent is asserted and how cases are settled, fair?
>
> A. Correct.

Appx379 (77:7-11). As Nimitz's brief admits, "Nimitz left the day-to-day management of the investment vehicle to its consulting agent Mavexar and Nimitz' lawyer." Br. 19 (*citing* Appx378 at 74:25-75:2).

After the Backertop hearing, Judge Connolly articulated some of his concerns about the plaintiff LLCs' arrangement with Mavexar:

> by structuring this litigation the way you have with Mavexar, you've basically put a plaintiff in this court asserting a patent, and the plaintiff has no assets. So you've immunized, effectively, the plaintiff from the consequences of a frivolous lawsuit, for instance. Mavexar, who's driving the train, isn't formally a party here, so you've insulated it[.]

Appx484-85 (51:24-53:6).

The Court concluded the hearing by saying: "I need to look further into this and think about it more. You're invited, if you want, either of you, to submit any briefing." Appx485 (53:1-3).

Neither Nimitz nor any Mavexar-backed LLC filed objections or briefs in the District Court before Nimitz asked this Court to grant a writ of mandamus.

ARGUMENT

I. THE DISTRICT COURT'S ORDERS ARE APPROPRIATE AND ESSENTIAL MEANS OF ENSURING THE INTEGRITY OF JUDICIAL PROCEEDINGS.

At heart, the Petition is an attack on all local rules and standing orders that require parties to identify entities with concrete interests in the outcome of litigation. The expansive relief Nimitz seeks follows from its position that

information about third-party interests in patent cases is, according to the Petition, always irrelevant and necessarily foreclosed by Congressional intent. *See* Br. 4, 15-18. That position is without support, contrary to law, and inimical to the judicial system.

Disclosure requirements such as Judge Connolly's are increasingly common and necessary. They ensure compliance with the Constitution, federal statutes, and ethical obligations; they can dictate the efficacy of mechanisms for deterring frivolous claims and litigation misconduct; and they underpin public confidence in the administration of justice. Each of these aims are squarely within the trial court's purview.

A. The Disclosure Requirements of Judge Connolly's Standing Order Are Practically Identical to or Narrower than those of Numerous District Courts.

Nimitz asserts that the District Court's disclosure requirements are unprecedented. *See* Br. 1, 12. That is incorrect.

Numerous district courts impose disclosure requirements equivalent to or broader than those of Judge Connolly's Standing Order. According to one study, "[a]pproximately 25% of district courts . . . require a party to disclose the identity of any person or entity (other than the parties to the case) that has a financial interest in the outcome of the case," thus including "litigation funders in

some circumstances."[12] Some courts with disclosure requirements broader than those at issue here include the Central and Northern Districts of California, the Middle District of Florida, the Northern and Southern Districts of Georgia, the Northern and Southern Districts of Iowa, the District of Maryland, the District of Nevada, and the Northern District of Texas.[13]

If this Court decides Judge Connolly's Standing Order is unlawful, it is effectively deciding that local rules of numerous district courts are unlawful too.

B. Information about Entities with Interests in the Outcome of a Case Facilitates Compliance with the Constitution, Common Law, and Federal Statues.

1. Constitutional and Common Law Rights of Public Access

The Supreme Court has long held, as this Court and the Third Circuit recognize, that the public has constitutional and common law rights of access to court proceedings. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589 (1978) (common law); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (First Amendment); *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1356 (Fed. Cir. 2011); *Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011) ("[O]ne of the essential qualities of a Court of Justice [is] that its proceedings should be public.") (quotation marks and citations omitted).

[12] Behrens, et al., *supra*, note 3, at 3 (quotation marks and citation omitted).

[13] *Id.* at 3-6.

Consistent with the public's access rights, members of the public "have a right to know who is using their courts." *Megless*, 654 F.3d at 408 ("Identifying the parties to the proceeding is an important dimension of publicness.") (quotation marks and citation omitted); *see also DePuy Synthes Prod., Inc. v. Veterinary Orthopedic Implants, Inc.*, 990 F.3d 1364, 1370 (Fed. Cir. 2021) (refusing to seal defendant entity's name). Plaintiffs who can establish "a reasonable fear of severe harm from litigating without a pseudonym" are rightly permitted to do so, *Megless*, 654 F.3d at 408, but no such showing has been made or attempted here.

Nimitz, like the other Mavexar-formed LLC plaintiffs, is a pseudonym masking the identity of the entity controlling and benefiting from the litigation. The Petition does not dispute this, instead complaining that the District Court's so-called "inquisition is plainly designed to establish that persons other than Nimitz control the litigations and benefit from the litigations," and stating "[w]hether that is true or not" is "legally irrelevant." Br. 24-25.

Whether "persons other than Nimitz control the litigations and benefit from the litigations" is essential information that the public is entitled to know given the mandates for open access to our publicly-funded court system. If entities can control and benefit from litigation while keeping their identities and involvement secret, they are doing what the Constitution and common law forbid: using public courts without the public's knowledge.

2. Constitutional Standing

Courts have an unwaivable obligation to ensure that plaintiffs have standing. As such, they can and should consider such questions *sua sponte*. *See Fuji Photo Film Co. v. ITC*, 474 F.3d 1281, 1289 (Fed. Cir. 2007) ("Because Article III standing is jurisdictional, this court must consider the issue *sua sponte* even if not raised by the parties.") (citation omitted).

The Petition's primary position appears to be that Nimitz's purported status as assignee or patentee ends the inquiry. Br. 15. That is not the law. This Court has repeatedly rejected the argument that a party's status or classification by itself determines their right to sue. Rather, "the critical determination regarding a party's ability to sue in its own name is whether an agreement transferring patent rights to that party is, in effect, an assignment or a mere license"—a determination that "depends on the substance of what was granted rather than formalities or magic words." *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1229 (Fed. Cir. 2019) (citation omitted).

Whether Nimitz or other entities control litigation and licensing decisions is highly relevant to standing. As this Court has explained, "retaining control of licensing or litigation activities is critical to demonstrating that the patent has not been effectively assigned," and therefore that the purported assignee lacks standing to sue. *Diamond Coating Techs., LLC v. Hyundai Motor Am.*, 823 F.3d

615, 620 (Fed. Cir. 2016) (quotation marks and citation omitted).

Here, Nimitz should not be permitted to hide its true relationship with the entity actually controlling litigation and licensing decisions by relying on a document titled "assignment." *See Diamond Coating*, 823 F.3d, at 620.

3. Federal Law Governing Recusal

The information Nimitz seeks to conceal is also necessary to ensure conflicts of interest do not impair the appearance of impartiality.

Of particular relevance is 28 U.S.C. § 455, which provides that "[a]ny . . . judge . . . of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Id*. Section 455 identifies specific circumstances requiring disqualification, such as when a judge "knows that he, individually or as a fiduciary, or his spouse or minor child . . . , has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." *Id.* § 455(b)(4). To determine whether such circumstances are present, judges need to know the type of information at issue here: which entities have an "interest that could be substantially affected by the outcome of the proceeding." *Id.*

By requiring judges to disqualify themselves in such circumstances, Section 455 "promote[s] public confidence in the integrity of the judicial system."

Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 848 (1988); *see also Shell Oil Co. v. United States*, 672 F.3d 1283, 1293 (Fed. Cir. 2012) (holding that judge's failure to recuse under 28 U.S.C. § 455(b)(4) created a "'risk of undermining the public's confidence in the judicial process'" (citation omitted)); *United States v. Kennedy*, 682 F.3d 244, 258 (3d Cir. 2012) (recognizing that Section 455 aims "to promote the public's confidence in the judiciary[.]") (citations omitted).

The public has a strong interest in mechanisms for preventing apparent conflicts of interest. A Wall Street Journal investigation in 2021 found that more than 130 federal judges violated U.S. law and judicial ethics by overseeing court cases involving companies in which they or their family owned stock, and unearthed 685 court cases in which judges improperly failed to disqualify themselves since 2010.[14] Granting the Petition would only make such failures more likely.

II. JUDGMENT PROOF PLAINTIFFS UNDERMINE SAFEGUARDS AGAINST VEXATIOUS LITIGATION.

The District Court raised concerns about whether the actual real party in interest (Mavexar) intentionally structured the plaintiff LLCs to insulate itself

[14] James V. Grimaldi, et al., *131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest*, WALL STREET J., Sept. 28, 2021, https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421.

from liability. Appx484-85 (51:24-52:7). These concerns are well-founded given the facts of this case and countless others.

Here, the Petition suggests the managing member of Nimitz might "potentially" be personally liable for litigations costs, Br. 7, but the Backertop hearing painted a different picture. There, Backertop's managing member, Ms. LaPray testified, repeatedly, that she understood Backertop would be liable for litigation fees or losses rather than her personally. Appx464-70 (31:7-14, 37:1-15). Her counsel also confirmed Backertop "provides a level of insulation for Ms. LaPray personally." *Id.* at 485 (52:9-12).

Moreover, Mavexar's efforts to secret its identity behind Nimitz (and others) are common and detrimental to the efficacy of litigation sanctions. As a court dealing with such an effort observed: "Congress enacted Section 285 to provide incentives to defend against frivolous infringement claims because doing so benefits the public. However, if recourse can only be had against a judgment-proof shell company, no such incentive exists." *Iris Connex, LLC v. Dell, Inc.*, 235 F. Supp. 3d 826, 846 (E.D. Tex. 2017).

In *Iris Connex*, Judge Gilstrap confronted facts strikingly similar to those at issue here. *See id.* at 840-42. But those facts were not discovered until the court ordered post-judgment discovery on a Section 285 motion, and the plaintiff filed for bankruptcy. *See id.* at 837-38. "As the post-judgment discovery progressed, it

became obvious that [plaintiff] Iris Connex was . . . the first level of two shell corporations which were intended to shield the real actor, Mr. Brian Yates, from personal liability." *Id.* at 833. The court ultimately imposed fees on Mr. Yates, noting that he "made an intentional decision to create and undercapitalize Iris Connex as an empty shell," and "such a design choice . . . undermines the integrity of the judicial system.'" *Id.* at 851.

While the defendant in that case, Dell, could afford post-judgment discovery and the additional litigation necessary to collect fees, many defendants do not have the resources to do so. When that happens, the intentional use of shell companies to avoid sanctions succeeds, harming the wrongfully-accused defendants, the judicial system, and the public.

For example, in *Rothschild Dig. Confirmation, LLC v. CompanyCam, Inc*., 494 F. Supp. 3d 263 (D. Del. 2020), the plaintiff sued a small startup called CompanyCam. After CompanyCam prevailed on the merits, the court awarded attorney's fees under Section 285 to the defendant. *Id*. at 266-69. Instead of honoring that order, the plaintiff fired its counsel and refused to pay, claiming it had no assets. *See* Letter from Andrew E. Russel to the Hon. Maryellen Noreika, *Rothschild Dig. Confirmation, LLC v. CompanyCam, Inc*., 1:19-cv-01109-MN (D. Del.), Sept. 29, 2021, ECF No. 51, at 1 & 2 ("RDC stated that RDC has no assets and no way to satisfy the fee judgment[.]"). Defendant, a small company

with limited resources, was ultimately unable to recover the attorney's fees it incurred defending itself from vexatious litigation.

Again, this is one example of many meritless patent cases brought by judgment-proof shell companies created to immunize real parties in interest from fee awards. *See, e.g.*, *SAP Am., Inc. v. InvestPic, LLC*, No. 3:16-CV-02689-K, 2021 WL 1102085, at *5 (N.D. Tex. Mar. 23, 2021) ("[P]ost-judgment evidence indicates that InvestPic is a sham or shell entity that is designed and intended to avoid liability. . . . [T]he members of InvestPic made InvestPic judgment-proof and insulated themselves from any liability . . . .").

Even now, Mavexar plaintiffs are filing complaints without disclosing Mavexar's financial interest in contravention of local rules requiring the disclosure of said information. *See* Not. of Interested Parties, *Backertop Licensing, LLC v. Fantasia Trading, LLC*, 5:22-cv-02081-SPG-JEM (C.D. Cal.), Nov. 23, 2022, ECF No. 5.

If defendants have no recourse against judgment-proof plaintiffs, or need unlimited resources for discovery to have any hope of obtaining recourse, then the mechanisms Congress provided to disincentivize meritless suits are toothless.

CONCLUSION

For the foregoing reasons, mandamus should be denied.[15]

November 30, 2022

Respectfully submitted,

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[15] Amici focus on Issues No. 1 and 2 given the public's interest in their broad implications, but it appears clear that mandamus over Issue 3 should also be denied. *See, e.g.*, *In re Diagnostics Sys. Corp.*, 328 F. App'x 621, 622-23 (Fed. Cir. 2008).

CERTIFICATE OF COMPLIANCE

I hereby certify as follows:

1. The foregoing BRIEF OF AMICI CURIAE ELECTRONIC FRONTIER FOUNDATION, THE PUBLIC INTEREST PATENT LAW INSTITUTE, AND ENGINE ADVOCACY IN OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS complies with the type-volume limitation of Fed. Cir. R. 21(e). The brief is printed in proportionally spaced 14-point type, and there are 3,706 words in the brief according to the word count of the word-processing system used to prepare the brief (excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), that is, the tables of contents and citations, and certificates of counsel, and by Fed. Cir. R. 32(b), that is, the certificate of interest, the statement of related cases, and the addendum in an initial brief of an appellant).

2. The brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and with the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft® Word for Mac 2016 in 14-point Times New Roman font.

November 30, 2022 /s/ Rachael Lamkin
Rachael Lamkin

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2022, I caused the foregoing to be served by electronic means via the Court's CM/ECF system on all counsel registered to receive electronic notices.

November 30, 2022 /s/ Rachael Lamkin
Rachael Lamkin