IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROY COCKRUM; SCOTT COMER; and ERIC SCHOENBERG,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 3:18-cv-484-HEH
DONALD J. TRUMP FOR PRESIDENT, INC.,	)	
Defendant.	)	

PLAINTIFFS' SUPPLEMENTAL BRIEF ON CHOICE OF LAW

TABLE OF CONTENTS

Table of Authorities ii

Discussion 1

Conclusion 10

Certificate of Service 14

TABLE OF AUTHORITIES

Federal Cases

Ascend Health Corp. v. Wells,
2013 WL 1010589 (E.D.N.C. Mar. 14, 2013) 8

Bernstein v. National Broad. Co.,
129 F. Supp. 817 (D.D.C 1955), *aff'd*, 232 F.2d 369 (D.C. Cir. 1956) 4

Brown v. American Broadcasting Co.,
704 F.2d 1296 (1983) 4

Cretella v. Kuzminski,
2008 WL 2227605 (E.D. Va. May 29, 2008) 7

Estill v. Hearst Pub. Co.,
186 F.2d 1017 (7th Cir. 1951) 8

Ford Motor Co. v. National Indemnity Co.,
972 F. Supp. 2d 850 (E.D. Va. 2013) 2, 3

General Assurance of Am. v. Overby-Seawell,
893 F. Supp. 2d 761 (E.D. Va. 2012) 3

Greidinger v. Davis,
988 F.2d 1344 (4th Cir. 1993) 5

Hatfill v. Foster,
415 F. Supp. 2d 353 (S.D.N.Y. 2006) 8

Hilb Rogal & Hobbs Co. v. Rick Strategy Partners, Inc.,
2006 WL 5908727 (E.D. Va. Feb. 10, 2006) 2

Insteel Indus., Inc. v. Costanza Contracting Co.,
276 F. Supp. 2d 479 (E.D. Va. 2003) 2, 3

JTH Tax Inc. v. Williams,
310 F. Supp. 3d 648 (E.D. Va. 2018) 2

Katz v. Odin, Feldman & Pittleman, P.C.,
332 F. Supp. 2d 909 (E.D. Va. 2004) 6

Klaxon Co. v. Stentor Elec. Manufacturing Co.,
313 U.S. 487 (1941) 1, 10

Kylin Network (Beijing) Movie & Culture Media Co. Ltd v. Fidlow,
2017 WL 2385343 (E.D. Va. June 1, 2017) 8

Mattox v. News Syndicate Co.,
176 F.2d 897 (2d Cir. 1949) 8

Milton v. IIT Research Inst.,
138 F.3d 519, 521 (4th Cir.1998) 2

Ostergren v. Cuccinelli,
615 F.3d 263 (4th Cir. 2010) 5

Quillen v. International Playtex, Inc.,
789 F.2d 1041 (4th Cir. 1986) 1, 2, 5, 6

Semida v. Rice,
863 F.2d 1156 (4th Cir. 1988) 7

Time, Inc. v. Hill,
385 U.S. 374 (1967) 4

Tsimpedes v. Martin,
2006 WL 2222393 (E.D. Va. Aug. 2, 2006) 7

Wells v. Liddy,
186 F.3d 505 (4th Cir. 1999) 7

Wiest v. E-Fense, Inc.,
356 F. Supp. 2d 604 (E.D. Va. 2005) 7

State Cases

Batson v. Shiflett,
602 A.2d 1191 (Md. 1992) 5

McMillan v. McMillan,
253 S.E.2d 662 (Va. 1979) 1

State Rules and Regulations

Va. Code § 8.01-230 (1984) 6

Additional Authorities

The Choice of Law in Multistate Defamation and Invasion of Privacy: An Unsolved Problem, 60 HARV. L. REV. 941, 947 (1947) 4,5

Beale, *Treatise on the Conflict of Laws* (1935) §377.2 3

Restatement (First) of Conflict of Laws §377 ..... 2, 4, 7

Restatement (First) of Conflict of Laws §378 3

Restatement (Second) of Torts §577A 7

Restatement (Second) of Torts §652A 5

Restatement (Second) of Torts §652D 6, 9

Plaintiffs Roy Cockrum, Eric Schoenberg, and Scott Comer submit this supplemental brief to further explain why the laws of Tennessee, New Jersey, and Maryland, respectively, govern their state-law tort claims. The choice of law doctrine applied by this Court sitting in diversity, the *lex loci delicti commissi* doctrine favored by the State of Virginia, looks to the location of last act necessary to complete the tort to determine which state's law should apply, and therefore necessarily turns on the elements of the specific tort at issue. Each of the torts asserted here — invasion of privacy by giving publicity to private facts and intentional infliction of emotional distress — is completed by an injury that is personal to the plaintiff. The last acts necessary to complete these torts therefore occurred where the Plaintiffs were located because that is where their personal privacy was invaded, and, in the case of Mr. Comer, where that invasion also caused emotional distress. Moreover, the privacy tort here is a publication-based tort, and in cases where offending material is published in multiple states, the only application of *lex loci* consistent with the nature of the invasion of privacy claim results in the court's choice of the location of the plaintiff's injury.

DISCUSSION

There is no dispute that this Court applies the choice of law rules of the forum state, Virginia, and that Virginia applies the *lex loci* doctrine embodied in the First Restatement of Conflicts of Laws. *Klaxon Co. v. Stentor Elec. Mfg. Co*., 313 U.S. 487, 496 (1941); *McMillan v. McMillan*, 253 S.E.2d 662, 663 (Va. 1979) (affirming Virginia applies the First Restatement of Conflicts of Laws and rejecting the balancing test under the Second Restatement); *see also Quillen v. Int'l Playtex, Inc*., 789 F.2d 1041, 1044 (4th Cir. 1986). The *lex loci* doctrine applies the state law of the "place of the wrong," understood to mean the location of the legal injury.

That location is where "the last event necessary to make an act liable for an alleged tort takes place." *Id.*

Under *lex loci*, "[w]hat acts and events are necessary to constitute a tort is a question of the law of Torts." Restatement (First) of Conflict of Laws §377 cmt. a. In keeping with the First Restatement, the Fourth Circuit understands the question of what event completes a tort to vary with the elements of particular torts. A personal injury tort, for example, will be governed by the law of the place of plaintiff's injury, *see Quillen*, 789 F.2d at 1044, while a wrongful discharge tort will be governed by the law of the place of discharge, *see Milton v. IIT Research Inst*., 138 F.3d 519, 521 (4th Cir.1998). For reputational torts, "the place of wrong is where the defamatory statement is communicated," *see* Restatement (First) of Conflict of Laws §377 cmt. a, n. 5; *see also Insteel Indus., Inc. v. Costanza Contracting Co.*, 276 F. Supp. 2d 479, 486 (E.D. Va. 2003) (place of the wrong was location of the harm to plaintiff's reputation). Whereas in fraud cases, the place of the wrong is "where the loss is sustained, not where fraudulent representations are made," *see* Restatement (First) of Conflict of Laws §377 cmt. a, n.4. As this Court previously explained: "The location where 'the last event necessary to make an act liable for an alleged tort takes place' will vary amongst different claims, depending on what elements comprise the particular claim and which element is deemed to provide the 'last event necessary' to make the actor liable for the particular tort at issue." *Ford Motor Co. v. Nat'l Indem. Co.,* 972 F. Supp. 2d 850, 857 (E.D. Va. 2013).

The Campaign argues that the plaintiff's location can never be the place of the wrong for *lex loci* purposes, but each of the Campaign's cases involve different torts than the ones at issue here (*see* ECF No. 57 at p.10): *Milton*, 138 F.3d at 521 (wrongful discharge); *JTH Tax Inc. v Williams* 310 F. Supp. 3d 648, 657 (E.D. Va. 2018) (tortious interference with contract); *Hilb*

Rogal & Hobbs Co. v. Rick Strategy Partners, Inc., 2006 WL 5908727, *6 (E.D. Va. Feb. 10, 2006) (statutory business tort); *Gen. Assur. of Am., Inc. v. Overby-Seawell Co.*, 893 F. Supp. 2d 761, 777-78 (E.D. Va. 2012) (tortious interference with contract). These cases do not demonstrate that the location of a plaintiff's injury cannot determine the place of the wrong in cases involving the torts at issue here.

The Campaign's related argument that the location of the wrong must be determined by the location of an act by a defendant is also contrary to law. As this Court has previously explained, *lex loci* turns on the last act necessary to complete the tort, "even if the actor has no control over the location of that last event." *Insteel Indus.*, 276 F. Supp. 2d at 486 (citing *Quillen*, 789 F.2d at 144). Thus, under the First Restatement: "Whether a particular harm which a plaintiff has sustained constitutes an injury for which he may recover compensation is determined by the law of the place of wrong. It is immaterial whether by the law of the forum, *or by the law of the place where the actor acted*, the harm in question was or was not a legal injury." Restatement (First) of Conflict of Laws §378 cmt. b (emphasis added). As Professor Beale (the Reporter for the First Restatement) explained in his 1935 *Treatise on the Conflict of Laws*:

> In cases heretofore the harm was caused directly by an action of the defendant. Where the injury is not caused directly but as the result of a train of consequences, the place of the injury presents more difficulties; but these difficulties disappear if one keeps in mind the fact that the right injured is that created by law to protect the person or the thing from the injury, and that *that law is the law of the place where the person or thing is situated at the time of the injury.*

Treatise §377.2 ("Place of Wrong"), at pp. 1287-88 (emphasis added).

The tort claim common to all three Plaintiffs is the invasion of privacy by giving publicity to private facts. There is no law from Virginia courts addressing *lex loci* for this tort, nor for any invasion of privacy tort. *Cf. Ford Motor Co.*, 972 F. Supp. 2d at 857 ("At this point

in the analysis, there is an unfortunate lacuna in the jurisprudence on Virginia's choice of law."). But there is law governing the analysis the Court must undertake: addressing the elements as set forth in the law of torts, from which this Court can determine where in the "train of events" the Plaintiffs suffered legal injury. Restatement (First) of Conflict of Laws §377 cmt. a.

The Fourth Circuit has addressed the elements of this tort:

> [A] strong argument can be made that, under Virginia law, a claim for either of these two types of invasion of privacy [*i.e.*, intrusion upon seclusion and publicity to private facts] would not accrue until the plaintiff had knowledge of the publication of the allegedly offensive material because, until that time, *a necessary element of the plaintiff's cause of action, the injury,* would be missing.

Brown v. Am. Broad. Co., 704 F.2d 1296, 1302 (4th Cir. 1983) (emphasis added). The Fourth Circuit cites two cases favorably in support of the proposition that a *personal* injury is an element of the invasion of privacy tort. First, the Court cites *Time, Inc. v. Hill*, 385 U.S. 374 (1967) for the proposition that "[i]n the 'right of privacy' cases the primary damage is the mental distress from having been exposed to public view, although injury to reputation may be an element bearing upon such damage." *Id.* at 384 n.9. Second, the Fourth Circuit cited a choice of law decision by the District Court for the District of Columbia, which concluded:

> The tort of invasion of privacy being a personal injury, the question whether plaintiff has a cause of action on the facts stated by him should be determined by the law of the jurisdiction where he sustained the injury … The injury in these cases is the humiliation and outrage to plaintiff's feelings, resulting from the telecast. The last event necessary to make the defendant liable was not the final act in publication of the telecast, as plaintiff argues, but the reaction of the telecast on his own sensibilities.

Bernstein v. Nat'l Broad. Co., 129 F. Supp. 817, 825 (D.D.C 1955), *aff'd*, 232 F.2d 369 (D.C. Cir. 1956).[1]

---

[1] *Accord: The Choice of Law in Multistate Defamation and Invasion of Privacy: An Unsolved Problem*, 60 Harv. L. Rev. 941, 947 (1947):

The Fourth Circuit's analysis is consistent with the Restatement (Second) of Torts §652A definition of this tort as an invasion of privacy that causes harm, and the applicable damages section, which is consistent with the personal nature of the right invaded. *See id.* at §652H ("One who has established a cause of action for invasion of his privacy is entitled to recover damages for (a) the harm to his interest in privacy resulting from the invasion; (b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and (c) special damage of which the invasion is a legal cause.").[2] This analysis is also consistent with the nature of the compelling personal privacy interest in protecting Social Security numbers recognized by the Fourth Circuit in both *Ostergren v. Cuccinelli*, 615 F.3d 263, 279 (4th Cir. 2010) and *Greidinger v. Davis*, 988 F.2d 1344, 1353-54 (4th Cir. 1993).

Privacy is a personal right held by the individual, and when publicity is given to the private facts, that personal injury occurs where the plaintiff is located. Likewise, the intentional infliction of emotional distress tort requires proof of emotional distress. *Batson v. Shiflett*, 602 A.2d 1191, 1216 (Md. 1992). The location of the invasion of the personal right to be free from emotional distress is, of course, also the location of the individual. The injury for each of these torts is therefore personal, and the Fourth Circuit has held that for *lex loci* purposes, the place of the wrong in a personal injury case is where the injury occurred, not where earlier acts with a causal relationship to the injury occurred. *Quillen*, 789 F.2d at 1044 (citing Va. Code § 8.01-230

> The essence of the right of privacy is freedom from mental distress. The emphasis on impact, the technical completion of the tort, obscures this fact because actual suffering need not be proved. But for conflict-of-laws purposes, this distress is a significant connecting factor that gives the state of which the plaintiff is a permanent member an important interest in his redress. And in the balancing of competing state interests, this connecting factor may assume paramount importance when the impact is distributed among many states.

[2] As thoroughly addressed in Plaintiffs' Opposition (ECF No. 30), Tennessee, New Jersey and Maryland all faithfully follow the Second Restatement of Torts. *Id.* at 10-15.

(1984) for proposition that "in personal injury case [the] cause of action accrues the date injury is sustained").

This analysis is consistent with the Fourth Circuit's decision in *Milton*, 138 F.3d at 521, primarily relied upon by Defendant. ECF No. 57 at pp. 9-10. Just as *Quillen* recognized that *lex loci* turns on the location of the legal injury rather than some earlier event, the court in *Milton* recognized that *lex loci* turns on the location of the legal injury rather than the location of later events involving the consequential effects of that injury. *Milton*, 138 F.3d at 521. In the present case, the location of the legal injury — the invasion of privacy itself — is personal to each Plaintiff, regardless of the location of the consequential damages that flow from that invasion.[3]

In addition, the particular privacy tort at issue here requires widespread, public dissemination of private facts. Restatement (Second) of Torts §652D cmt. a ("publicity" broader than "publication" as used in libel and defamation). Even if this Court were to conclude that the legal injury for this tort were completed by publication, rather than when the publication of private information has an impact on the plaintiff, the result of the *lex loci* analysis will also be the location of the plaintiff, for the following reasons.

For publication-based reputational torts, courts have long held that the location of the legal injury is the location where the information was communicated to the public and caused reputational harm, not the location where a defendant created the offending document. *E.g.*, *Katz v. Odin, Feldman & Pittleman, P.C.*, 332 F. Supp. 2d 909, 914 (E.D. Va. 2004); *Tsimpedes*

[3] The harm to Plaintiffs here included identity theft and other injuries to Mr. Cockrum and Mr. Schoenberg, (ECF No. 8 (Amended Compl.) at ¶¶20-21, 61-68), and the impact of the invasion on Mr. Comer's health and career (*id.* at ¶¶22-25, 69-77). Defendant argued at the hearing the issue that every tort requires harm to a plaintiff. While that is true, it does not follow that the last act necessary to complete every tort is therefore the same. Different torts vary with respect to the location of legal injury, which is why the place of the wrong *for lex loci* purposes requires a tort-specific analysis.

v. Martin, 2006 WL 2222393, at *3 (E.D. Va. Aug. 2, 2006); *see also Wells v. Liddy*, 186 F.3d 505, 522 (4th Cir. 1999) (*lex loci* analysis "straightforward" where information communicated to the public only in one state); Restatement (First) of Conflict of Laws § 377 cmt. a, n.5. In other words, *lex loci* looks not to the printing press, but to the doorstep. In the modern era, this means the location of publication is the reader's computer screen, not the server.

For this reason, the *dicta* in *Wiest v. E-Fense, Inc.*, 356 F. Supp. 2d 604, 608 (E.D. Va. 2005), relied upon by Defendant at argument (*see also* ECF No. 23 at p.15) to argue that the location of a tort arising from an internet publication should be the location where the defendant controlled or created a website, is not persuasive. This Court expressly noted in *Wiest* that the plaintiff was pro se and the choice of law issue not argued. *Id.* at 608 n.2. The other case from this Court cited by Defendant for the incorrect proposition that internet-publication torts are governed by the location where a website is controlled, *Cretella v. Kuzminski*, 2008 WL 2227605, at *3 (E.D. Va. May 29, 2008) (ECF No. 23 at p.15), largely turned not on where the website was controlled but on where the information was made public.

Even where the offending publication occurs in multiple states, a federal court sitting in diversity must choose the law of one state, and one state only, to apply to a given plaintiff's claim. Restatement (Second) of Torts § 577A ("Single and Multiple Publications"); *Semida v. Rice*, 863 F.2d 1156, 1161 (4th Cir. 1988) (embracing "single publication rule").[4] When

[4] Under the "single publication rule" of torts set forth in §577A, "[a]ny one edition of a book or newspaper, or any one radio or television broadcast, exhibition of a motion picture or similar aggregate communication is a single publication." And for any plaintiff, "As to any single publication, (a) only one action for damages can be maintained; (b) all damages suffered in all jurisdictions can be recovered in the one action; and (c) a judgment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions."

publication occurs in many states, courts need a rule for identifying which doorstep matters most. *See Mattox v. News Syndicate Co.*, 176 F.2d 897, 900 (2d Cir. 1949) ("The Restatement of Conflicts lays it down that the place of the wrong is 'the place of communication,' and that is obviously true, but it does not tell what law should govern when the libel is 'communicated' in several jurisdictions."). Courts have solved this problem not with a blanket rule for all torts involving publication but by looking to the nature of the specific tort at issue. Thus, in *Mattox*, Judge Hand solved the problem by focusing on the nature of the claim (libel) and reasoning that non-public figures would only be harmed by publication among those who knew them, *i.e.* when the material was published on their neighbors' doorsteps, in the state where they lived. *Id.*; *accord Estill v. Hearst Pub. Co.*, 186 F.2d 1017, 1021 (7th Cir. 1951); *see also Hatfill v. Foster*, 415 F. Supp. 2d 353 (S.D.N.Y. 2006); *Ascend Health Corp. v. Wells*, 2013 WL 1010589, at *2 (E.D.N.C. Mar. 14, 2013). The same analysis applied to the particular tort at issue here, publicity given to private facts, would focus on the personal rather than reputational nature of the injury, *see infra*, and thereby would avoid some of the complexity raised by defamation and libel where reputational impact can occur in many places. *Cf. Kylin Network (Beijing) Movie & Culture Media Co. Ltd v. Fidlow*, 2017 WL 2385343, at *3 (E.D. Va. June 1, 2017) (recognizing "the Supreme Court of Virginia has never addressed how this rule applies in situations where the defamatory content is 'published' in multiple jurisdictions, such as on a national television broadcast or, as here, a website that can be accessed worldwide.").[5]

[5] At the January 24, 2019 hearing, this Court asked whether it was necessary to take discovery on who actually viewed the offending information. The tort at issue does not require proof of which individuals actually read the material and where, but that it was published in a manner "that reaches, or is sure to reach, the public." Restatement (Second) of Torts §652D cmt. a. Internet websites accessible to the public certainly meet this standard.

Where the relevant tort is the publication of private facts, therefore, *lex loci* analysis directs that the location of the plaintiff is the location of legal injury. No analytical principle consistent with the nature of this tort would permit a court to choose another state's law. The law requires the choice of one state per claim, *see supra*, and the answer to *lex loci* cannot be that there is no means to choose among the states in which the offending material was published because no law applies more than any other. Such reasoning would allow a defendant to violate the law with impunity.

Finally, Defendant's proposed alternative of New York is contrary to the *lex loci* doctrine for two reasons. First, Defendant asserts that it is headquartered in New York. ECF No. 23 at p. 15. Yet a Defendant's headquarters is irrelevant to the question of the last location necessary to complete a tort.

Second, Defendant argues that New York law should apply because some of Defendant's alleged conspiratorial actions occurred in New York. *Id*. But that argument cannot succeed. The Complaint alleges conspiratorial actions in several jurisdictions, not just in New York. *See* ECF No. 8 at ¶¶78-144. Moreover, the place (or places) where conspirators form or act in furtherance of a conspiracy is not necessarily the location of the *last act* necessary to complete the *tort*. Under *lex loci*, this Court must first determine which state's law applies to the tort, and the law of that state will then answer ancillary questions of liability such as the scope of conspiracy and aiding and abetting liability. A contrary rule would be unworkable. If, for example, conspirators operating in Pennsylvania and New York published tortious material in New Jersey about a New Jersey plaintiff, the Court would not separately apply the laws of Pennsylvania and New York to the same tort claim brought against the two co-conspirator

defendants. Rather, New Jersey law would govern the claim, including as to the scope of conspiracy liability.

At the hearing on the motion to dismiss, Defendant argued in rebuttal that Plaintiffs' argument regarding choice of law was somehow undermined by Plaintiffs' previous position during the litigation in the District of Columbia, where Plaintiffs contended that the District's tort law should apply. But saying that District of Columbia law should govern a case like the present one if brought in the District, which applies a governmental interests analysis, is entirely consistent with saying that the law of the plaintiffs' home states should govern now that the forum is Virginia, which applies the First Restatement. The Supreme Court has long recognized that federal courts in different states will sometimes reach different choice-of-law outcomes: this is a straightforward application of the principle that under *Erie* doctrine, federal courts should apply the choice of law principles of the forum state. As the Court explained in *Klaxon*:

> The conflict of laws rules to be applied by the federal court in Delaware must conform to those prevailing in Delaware's state courts. Otherwise the accident of diversity of citizenship would constantly disturb equal administration of justice in coordinate state and federal courts sitting side by side . . . . *Whatever lack of uniformity this may produce between federal courts in different states is attributable to our federal system,* which leaves to a state, within the limits permitted by the Constitution, the right to pursue local policies diverging from those of its neighbors.

313 U.S. at 496 (emphasis added).

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully submit that the proper outcome of the application of the *lex loci delicti commissi* doctrine to the claims at issue in this case is to apply the law of Tennessee to Mr. Cockrum's claim, the law of New Jersey to Mr. Schoenberg's claim, and the law of Maryland to Mr. Comer's claims.

Respectfully submitted,

Dated: February 4, 2019

By: __*/s/ Elizabeth Childress Burneson*___

Counsel for Plaintiffs

KELLY J. BUNDY (VA Bar No. 86327)
ELIZABETH C. BURNESON (VA Bar No. 93413)
Hirschler Fleischer, a Professional Corporation
2100 E. Cary Street (23223)
Post Office Box 500
Richmond, VA 23218-0500
Telephone: (804) 771-9505
(804) 771-9528
Facsimile: (804) 644-0957
E-mail: kbundy@hirschlerlaw.com
lburneson@hirschlerlaw.com

BENJAMIN L. BERWICK (MA Bar No. 679207)
(*pro hac vice*)
United to Protect Democracy
10 Ware St.
Cambridge, MA 02138
202-579-4582
Ben.Berwick@protectdemocracy.org

IAN BASSIN (NY Attorney Registration No. 4683439) (*pro hac vice*)
United to Protect Democracy
222 Broadway, 19th Floor
New York, NY 10038
202-579-4582
Ian.Bassin@protectdemocracy.org

JUSTIN FLORENCE (D.C. Bar No. 988953)
(*pro hac vice*)
ANNE TINDALL (D.C. Bar No. 494607)
(*pro hac vice*)
CAMERON KISTLER (D.C. Bar No. 1008922)
(*pro hac vice*)
United to Protect Democracy
2020 Pennsylvania Ave. NW, #163
Washington, DC 20006

202-579-4582
Justin.Florence@protectdemocracy.org
Anne.Tindall@protectdemocracy.org
Cameron.Kistler@protectdemocracy.org

JESSICA MARSDEN (N.C. Bar No. 50855)
(*pro hac vice*)
United to Protect Democracy
510 Meadowmont Village Circle, No. 328
Chapel Hill, NC 27517
202-579-4582
jess.marsden@protectdemocracy.org

STEPHEN P. BERZON (CA State Bar No. 46540)
(*pro hac vice*)
BARBARA J. CHISHOLM (CA State Bar No. 224656) (*pro hac vice*)
DANIELLE LEONARD (CA State Bar No. 218201)
(*pro hac vice*)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151
sberzon@altber.com
bchisholm@altber.com
dleonard@altber.com

NANCY GERTNER (MA Bar No. 190140)
pro hac vice)
Fick & Marx
100 Franklin Street, 7th floor
Boston, MA 02110
(857) 321-8360
ngertner@fickmarx.com

RICHARD PRIMUS (MI Bar No. P70419)
(*pro hac vice*)
The University of Michigan Law School*
625 S. State Street
Ann Arbor, MI 48109
(734) 647-5543
PrimusLaw1859@gmail.com
* For identification purposes.

STEVEN A. HIRSCH (CA State Bar No. 171825)
(*pro hac vice*)

Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
(415) 391-5400
shirsch@keker.com

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2019, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of Court for the Eastern District of Virginia, Richmond Division, using the Court's CM/ECF system, which thereby caused the above to be served electronically on all registered users of the Court's CM/ECF system who have filed notices of appearance in this matter of such filing (NEF) to all registered parties.

Dated: February 4, 2019

By: *__/s/ Elizabeth Childress Burneson___*

Counsel for Plaintiffs
KELLY J. BUNDY (VA Bar No. 86327)
ELIZABETH C. BURNESON (VA Bar No. 93413)
Hirschler Fleischer, a Professional Corporation
2100 E. Cary Street (23223)
Post Office Box 500
Richmond, VA 23218-0500
Telephone: (804) 771-9505
(804) 771-9528
Facsimile: (804) 644-0957
E-mail: kbundy@hirschlerlaw.com
lburneson@hirschlerlaw.com