CASE NO. 18-1944

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

ALI RAZAK, KENAN SABANI, and KHALDOUN CHERDOUD,
Plaintiffs-Appellants

v.

UBER TECHNOLOGIES, INC., and GEGEN, LLC
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
No. 16-cv-573
The Honorable Michael M. Baylson

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES

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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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF INTEREST[1]

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 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. More than 96% of the Chamber's members are small businesses with 100 or fewer employees. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community, including cases involving labor and employment matters.

The National Federation of Independent Business ("NFIB") is the nation's leading small business association, representing member businesses in Washington, D.C., and all fifty state capitals. Founded in 1943 as a nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses.

[1] Pursuant to Federal Rule of Appellate Procedure 29, *Amici* certify that all parties have consented to the filing of this brief. *Amici* further certify that no 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.

Amici have a strong interest in this proceeding. *Amici*'s members use independent contractors extensively and rely on the flexibility of independent contractor relationships, which has promoted innovation and growth for *Amici*'s members and their contractors alike. Altering the established understanding about who is an employee and who is an independent contractor would substantially impair the ability of *Amici*'s members to enter into such economic relationships. *Amici* therefore encourage this Court to affirm the district court's well-reasoned conclusion that the plaintiffs are not "employees" under the Fair Labor Standards Act ("FLSA") and related Pennsylvania law.

SUMMARY OF ARGUMENT

This case concerns the "gig" economy—that is, the economic activity that arises when entrepreneurs seeking to accept "gigs" can find customers via the Internet. Such entrepreneurs differ from employees of ordinary companies because they can accept "gigs" if and when they please, rather than having their wages and hours dictated by an employer. The gig economy is nothing new—independent contractors have always been a critical part of the economy. But the Internet has opened the door for millions of entrepreneurs to strike out on their own without being limited to a single traditional job. Today, a person who wants to rent out their house, design software, be a personal trainer, or undertake innumerable other activities—either as a sole occupation or as an adjunct to a traditional 9-5 job—can use an

Internet-based application to find customers. As relevant here, a person who wants to earn extra money driving people to their destinations can find those would-be passengers by taking advantage of Uber's app. Such independent workers benefit greatly from the flexibility of products like the Uber app. They can earn a living while working where and when they want, while simultaneously using other apps if they so choose to find other customers.

Classifying such independent contractors as "employees" would be harmful to Internet businesses, independent contractors, and consumers. Internet businesses would be subject to unexpected liability and cumbersome regulatory requirements. Their contractors would suffer as well because such businesses might be forced to micromanage those contractors to prevent labor costs from ballooning. For instance, if the Court classified Uber as the employer of drivers who use the Uber app, then Uber might need to limit those drivers to using the app no more than 40 hours a week, or it might need to limit drivers to operating only in high-volume areas—thus eliminating the flexibility that is the very reason drivers take advantage of Uber in the first place.

The law does not require that result, because the district court's decision is correct. Congress enacted the FLSA in order to prevent employers from exploiting their economically dependent employees. The FLSA's drafters understood that an employee put to the choice of working long hours at low pay or being fired would

have no choice but to choose the former—and the FLSA was designed to prevent employees from facing that harsh choice. But drivers who use the Uber app are nothing like the employees that Congress intended to protect. They can work whenever and wherever they want; they can use as many apps as they want; they can increase their earnings via their own business acumen; and when they stop using the Uber app to find passengers, they keep their car, their smartphone or tablet, and any other capital they have contributed towards the effort. The district court therefore correctly classified those drivers as independent contractors.

ARGUMENT

I. The Gig Economy Has Created Millions Of Economic Opportunities For Independent Contractors.

This case requires the Court to determine the legal status of participants in the so-called "gig economy"—that is, the economy that allows entrepreneurs to accept "gigs" if and when they please, rather than being tied down to particular jobs requiring them to work a set number of hours per day at their employer's direction. The gig economy is nothing new—independent contractors pursued gigs long before the Internet was invented. But by facilitating the matching of entrepreneurs and their customers, the Internet has dramatically expanded the gig economy, to the benefit of both the gig economy's suppliers and its customers.

"Independent contractor arrangements are commonplace throughout the U.S. economy, from computer software engineers and emergency room physicians to

home health care providers and timber harvesters." Jeffrey A. Eisenach, Navigant Economics, *The Role of Independent Contractors in the U.S. Economy*, at i (2010). "Independent contracting is especially prevalent in such broad industry categories as agriculture, construction and professional services, and in a diverse set of specific occupations, including cab drivers, construction workers, emergency room physicians, financial advisors, mystery shoppers, and truck drivers." *Id.*

As of 2017 there were more than 40 million independent workers in the United States—people "of all ages, skill, and income levels—consultants, freelancers, contractors, temporary or on-call workers—who work independently to build businesses, develop their careers, pursue passions and/or to supplement their incomes." MBO Partners, *The State of Independence In America: Rising Confidence Amid A Maturing Market* 2 (2017) ("*State of Independence*"). That segment of the workforce is "multi-faceted, economically powerful—and increasingly confident." *Id.* It is growing rapidly, too, at a rate three times faster than the overall economy. Freelancers Union & Upwork, *Freelancing In America: 2017* at 3 (2017) ("*Freelancing In America*"). If that growth rate holds, independent workers may be the majority of the U.S. workforce by 2027. *Id.*

Online products that facilitate the process of matching providers with customers have spurred the dramatic growth of the gig economy. These products are remarkably diverse. Some focus on specific areas, such as Gigster (software

engineering), Airbnb (short term accommodations), and Postmates (delivery services). Others encompass a wider range of services, such as Thumbtack (home, business, wellness, creative design), Uber and Lyft (ride sharing, food delivery), and Upwork (accounting, copy editing, personal fitness). Still others are involved in commercial real estate, healthcare, handyman services, pet care, legal services, finance, fundraising, customer services, logistics and management consulting.

Thanks to the innovations of these companies and others, "millions of Americans [w]ork in jobs that didn't even exist 10 or 20 years ago." President Barack Obama, Remarks by the President in State of the Union Address (Jan. 20, 2015). The ranks of those workers continues to swell. In 2017, the number of people working for an internet-based company at least once per month "soared 23 percent to 12.9 million, up from 10.5 million in 2016." *State of Independence* 3.

The rise of the gig economy has created new job opportunities for workers of all stripes, especially those who want or need flexible arrangements. By working independently—when, where, how, and for whom they wish—workers who are constrained from taking traditional 9-to-5 jobs can nevertheless boost their income. A parent can work around school functions; a retiree can supplement savings; an artist can work in between shows; or, most relevant to this case, a person with a long commute can make extra money by driving someone else home. Independent work

allows workers to take control of their earning potential and decide how to spend their time in a way they deem best.

Many in the independent workforce take advantage of this flexibility. Roughly half of independent contractors use that job to supplement traditional employment. *State of Independence* 7. For Uber in particular, approximately one-third of drivers use its app as their only or largest source of income, but half use it to supplement income. Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States*, 71 ILR Rev. 705 (2018).

Meanwhile, many gig-economy workers choose to contract with multiple companies simultaneously to ensure the greatest volume of work. Independent contractors may take full advantage of the flexible working relationship by "toggling back and forth between different … companies and personal clients, and by deciding how best to obtain business" such that profits are "increased through their initiative, judgment, or foresight—all attributes of the typical independent contractor." *Saleem v. Corp. Transp. Grp., LLC*, 854 F.3d 131, 144 (2d Cir. 2017) (internal quotation marks and alterations omitted). A driver, for example, could take a job for a traditional black-car company one trip, find a passenger using Uber's app for the next trip, find a group of passengers for the next trip using Lyft's app, take a personal client to the airport after that, and then finally deliver a package or dinner.

This independent-contractor arrangement offers real benefits to workers. Because independent contractors own the necessary tools and equipment for the job, they have the flexibility and freedom to deploy those resources however they see fit. That provides them with "more control over their economic destiny" because they are empowered "to choose [their] own hours, clients and manner in which the work is completed." Steven Cohen & William B. Eimicke, Colum. Sch. of Int'l Affairs, *Independent Contracting Policy and Management Analysis* 16 (Aug. 2013) ("*Independent Contracting*"). In turn, that independence and autonomy leads the overwhelming majority of independent workers to report being satisfied in the independent contractor relationship. *See, e.g.*, Eisenach, *supra* at 33-34; *Freelancing In America* 4; Hall & Krueger, 71 ILR Rev. at 713; Morning Consult & Chamber Technology Engagement Center, *New Economy Report: Polling Presentation* 26, 27 (Feb. 22, 2018) ("*New Economy Report*") (finding 79% of independent workers describe working in the gig economy positively and 72% have seen their financial situation improve since working in the gig economy). Independent workers also report feeling added security from having the power to choose diverse clients, rather than a single employer, and to control their own costs and benefits. *Freelancing In America* 4; *New Economy Report* 22.

The rise of the gig economy has also benefited the public. The Federal Trade Commission has noted that ridesharing companies like Uber and Lyft are "providing

customers with new ways to more easily locate, arrange, and pay for passenger motor vehicle transportation services," allocating transportation resources more efficiently, helping to "meet unmet demand for passenger motor vehicle transportation services," and "improv[ing] service in traditionally underserved areas." Federal Trade Commission, Comments on Chicago Proposed Ordinance 02014-1367, at 3 (Apr. 15, 2014). The public agrees, as "users are in near-universal agreement that ride-hailing saves them time and stress, and that these services offer good jobs for people who prioritize flexible working hours." Aaron Smith, Pew Research Center, *Shared, Collaborative, and On Demand: The New Digital Economy* 5 (2016); *see also New Economy Report* 21 (reporting that most adults recognize the gig economy's positive impact on workers in need of a flexible environment).

II. Deeming Gig Economy Workers Employees Would Have Major Negative Impacts On Businesses, Labor, And The Economy.

Classifying gig-economy businesses as "employers" and their independent contractors as "employees" would have negative consequences for businesses, contractors, and consumers.

From the business perspective, deeming workers to be employees would drive up costs and stifle innovation. Software products like the Uber app are successful precisely because they do *not* create traditional employer-employee relationships, but instead allow independent drivers and independent consumers to find each other. For instance, eBay transformed the retail industry by creating a new business model

in which it does not employ sellers in retail stores, but instead allows independent buyers and sellers to find each other. This business model allowed willing buyers to find willing sellers and enter into mutually agreeable transactions that could never have occurred in a world of big-box retail stores. Companies like Uber and Lyft likewise transformed the transportation industry because their business models, which consists of providing a technological solution for drivers and consumers to find each other, is more attractive to both drivers and passengers than the traditional business model of top-down companies where employers tell employees what to do.

Yet Appellants now ask the Court to declare drivers who use the Uber app to be Uber's "employees"—and presumably also the employees of every other app that those drivers use as an independent contractor. Such a ruling would prevent software companies from pursuing the business models that have transformed modern commerce—business models in which the software companies sell an app and are not merely Internet versions of retail stores or taxicab companies.

Independent contractors in the gig economy, too, would be worse off if they were declared to be employees. This is because if app designers are deemed to be employers of independent drivers, they will be forced to act like employers—to their "employees'" detriment. The high cost of compliance with labor laws and regulations will cause companies to sharply limit the number of people who work on their product. *See* Nat'l Retail Fed'n & Oxford Econs., *Rethinking Overtime:*

How Increasing Overtime Exemption Thresholds Will Affect The Retail And Restaurant Industries 20 (2014) ("*Rethinking Overtime*"); *see also, e.g.*, Nat'l Ass'n of Realtors, *Independent Contractor Status in Real Estate - 2015 White Paper* 10 (updated July 14, 2016) ("*NAR White Paper*") ("A resulting shift away from the independent contractor model may result in a significant reduction in the number of real estate agents, as brokers struggle with the increased costs of employing agents."). The employees that remain would lose the flexibility they enjoy as independent contractors. *See Freelancing In America* 4; Hall & Krueger, 71 ILR Rev. at 713; *New Economy Report* 26, 27; *Independent Contracting* 16. Employers would no longer allow workers to set their own schedules and work without advance notice whenever, wherever, and for however long they wish, lest the company's labor costs balloon unpredictably. *See Rethinking Overtime* 4, 20; *see also, e.g.*, *NAR White Paper* 10-11 ("brokers would have to assume heightened control over real estate salespeople, resulting in significant decrease in the freedom and flexibility that real estate agents currently enjoy in an independent contractor relationship.").

In particular, if drivers using the Uber app were classified as employees eligible for overtime pay, Uber might be forced to limit them to 40 hours per week. If drivers using the Uber app are eligible for the minimum wage and declare all of their time with the app activated to be compensable work time, Uber might be forced to micromanage when the app is turned on or off. For instance, Uber might prevent

the app from being turned on if the drivers are in an area unlikely to encounter passengers, or force drivers to be in high-yield areas at particular times of day. This would eliminate one of Uber's fundamental selling points for drivers—they have the freedom to turn the app on when they want, where they want.

Consumers would also be hurt if gig economy participants were considered employees. If Uber is forced to cut the number of drivers who use the app, or prevent drivers from working more than 40 hours per week, consumers may become unable to obtain the late-night ride that Uber previously facilitated. Further, classifying gig economy participants as employees would make it more logistically challenging to launch new Internet matching apps, to the detriment of the economy as a whole. Studies have shown that the "economic benefits of independent contracting … are substantial" and that making "it more difficult for workers and firms to enter into such arrangements would thus result in slower economic growth, lower levels of employment and job creation, and lower consumer welfare overall." Eisenach, *supra* at ii; *see also Independent Contracting* 85.

In short, requiring companies to classify independent contractors as employees creates a lose-lose-lose situation that is bad for businesses, workers, and consumers. This Court should avoid that result by affirming the district court's decision.

III. Drivers Who Use the UberBLACK App Are Not Employees Under The FLSA.

Classifying drivers who use the UberBLACK app as independent contractors is not only good policy, it is correct as a matter of law. The District Court's decision is consistent with the letter and purpose of the FLSA.

As the parties explain, this Court's decision in *Donovan v. DialAmerica Marketing, Inc.*, 757 F.2d 1376 (3d Cir. 1985), identifies six factors that courts should consider in classifying workers under the FLSA. Uber's factor-by-factor analysis persuasively demonstrates that drivers who use the Uber app are independent contractors, and *Amici* will not repeat that analysis here.

Rather, *Amici* will offer a complementary point. In classifying workers as employees or independent contractors, the Court should be guided by Congress's underlying rationale in electing to confer protection on employees but not on independent contractors. And that rationale powerfully supports classifying drivers who use the UberBLACK app as independent contractors.

"The principal congressional purpose in enacting the Fair Labor Standards Act of 1938 was to protect all covered workers from substandard wages and oppressive working hours." *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981). Congress sought to stop employers with market power from requiring the low-skilled employees who were dependent on them for their livelihood to work for "low wages and long hours … that were detrimental to the

health and well-being of workers." *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947). So Congress enacted "minimum pay and maximum hour provisions" to stop that practice. *Id.* The FLSA's drafters understood that an employee put to the choice of working long hours at low pay or being fired would have no choice but to choose the former. Such employees are subject to the employer's economic power—and the FLSA is designed to mitigate that power.

That rationale does not apply to the drivers at issue in this case, for several reasons.

First, those drivers are not forced to work for long hours. Drivers control whether, when, and for how long they work each day. To be sure, some drivers opt to work for long hours. But that is their own voluntary choice, not Uber's. Uber does not require or even encourage drivers to work long hours—it does not allocate trip requests based on hours worked, for example, and bars drivers from working more than 12 straight hours (*see* App. 0031)[2]—and the majority of drivers who use the UberBLACK app do not work long hours (*id.*). That makes the flexible relationship between drivers and Uber very different from the coercive relationships that Congress sought to proscribe through the FLSA. Numerous courts have held

[2] Uber's Drowsy Driving Policy requires drivers to take a break after they have been available to work for twelve straight hours, but that safety requirement is "qualitatively different from the control exercised by an employer over an employee." App. 0032-0033 (quotation marks omitted).

that analogous flexible work policies are powerful evidence of an independent contractor relationship.[3] A similar conclusion is warranted here.

Second, drivers have significant control over the amount of money they earn. Drivers largely determine the amount of revenue they take in from Uber, based on whether, when, where, and for how long they choose to drive. The driver decides where to go at any given time, and the driver's "proximity, among other factors" determines "whether each driver receives any given trip request." App. 0035. So a driver who wisely chooses to operate in locations where and at times when rides may be plentiful, and who efficiently manages operations, is likely to make more money. The ability to turn a greater profit by operating more efficiently is a classic hallmark of an independent contractor.[4] By contrast, the purpose of the FLSA is to protect

[3] *See, e.g., Karlson v. Action Process Serv. & Private Investigations, LLC*, 860 F.3d 1089, 1094-95 (8th Cir. 2017) (describing a worker as an independent contractor because he "decided which assignments … to accept," did "not … report for work, punch a time clock[,] or otherwise report his hours" and was not "told when to work"); *Alexander v. Avera St. Luke's Hosp.*, 768 F.3d 756, 762 (8th Cir. 2014) (finding that when doctor "maintained complete freedom to set his schedule" it showed independent contractor status); *Herman v. Express Sixty-Minutes Delivery Serv., Inc.*, 161 F.3d 299, 302 (5th Cir. 1998) (contrasting independent contractors with employees, who "report for work at a specified time," "are paid by the hour," "work a set number of hours that are determined by" the employer, "are not allowed to turn down deliveries," and "are under the control and supervision" of the employer); *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 171 (2d Cir. 1998) (finding that a worker "free to set his own schedule and take vacations when he wished" is strongly indicative of independent contractor status).

[4] *See, e.g., Karlson*, 860 F.3d at 1094-95; *Browning v. Ceva Freight, LLC*, 885 F. Supp. 2d 590, 608 (E.D.N.Y. 2012) (explaining that when profit and loss are

employees who *cannot* earn a greater profit by operating more efficiently, but whose hours and wages are at the discretion of an employer that enjoys greater bargaining power.

Third, drivers must make substantial out-of-pocket capital investments—and they decide how to manage those investments. The driver decides whether to buy, lease, or rent the vehicle they use, and on what terms (subject to market availability). And the driver chooses how to manage carrying costs, like gasoline, vehicle maintenance and upkeep, and insurance. As courts have frequently noted, the fact that workers must make their own capital investments is a powerful indicator of an independent contractor relationship.[5]

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dependent, in part, on "investment in bigger vehicles and hiring additional employees in order to increase their efficiency and capacity," it favors independent contractor status); *Chao v. Mid-Atlantic Installation Servs., Inc.*, 16 F. App'x 104, 106-07 (4th Cir. 2001) ("[Plaintiff's] net profit or loss depends on his skill in meeting technical specifications …; on the business acumen with which [plaintiff] makes his required capital investments …; and on [plaintiff's] decision whether to hire his own employees or to work alone.").

[5] *See, e.g., Saleem*, 854 F.3d at 140 (acknowledging that independent contractors decide "the degree to which they would invest in their driving businesses"); *Chao*, 16 F. App'x at 107 ("investment in equipment and their right to employ workers weigh strongly in favor of concluding that they are independent contractors" (internal quotation marks omitted)); *Carrell v. Sunland Constr., Inc.*, 998 F.2d 330, 333-34 (5th Cir. 1993) (independent contractor finding supported by individual investments in equipment, even though putative employer's "overall investment" was "significant").

The FLSA was not intended to cover workers like those who drive for UberBLACK. Workers who must make and manage their own capital investments can increase their ultimate take-home pay through their own managerial acumen—an option unavailable to employees who are the intended beneficiaries of the FLSA's protections. Moreover, workers benefit from their capital investments even after they stop using the UberBLACK app. An employee of a trucking company who quits his job cannot take the truck with him. By contrast, a person who buys a car and uses the UberBLACK app can keep the car (and his smartphone or tablet) even after he stops using the app.[6] This decreases drivers' economic dependence on Uber and decreases the need for FLSA protection.

Appellants stress that they acquired their vehicles and insurance through Uber. But Appellants were not *required* to acquire their vehicles or insurance from companies that Uber works with. Appellants chose to do so. Nor were Appellants required to use their newly acquired vehicles to drive using the Uber app. That Appellants chose to use their vehicle that way reflects their own repeated decisions, presumably based on what they thought would present the best economic

[6] *Cf. Velu v. Velocity Exp., Inc.*, 666 F. Supp. 2d 300, 307 (E.D.N.Y. 2009) (finding independent contractor where "if either party were to terminate the Agreement today, Plaintiff could go out the next day with the same van, clothes, equipment, computer, printer, and other supplies, and immediately work for another shipping company").

opportunity. Those choices, which were not Uber's, do not convert the drivers who use the Uber app into Uber employees.

Fourth, Uber does not limit drivers from engaging in other work. As a result, drivers may simultaneously work for many different companies, toggling between them based on whatever opportunity the driver deems best—a fact that several courts have held to be indicative of an independent contractor relationship.[7] That allows drivers to accept rides from Uber while at the same time driving for Lyft, making a delivery for Postmates, and working for private clients. *See, e.g.*, *State of Independence* 6 (reporting that drivers work a variety of jobs at the same time). This is yet another reason that drivers do not exhibit the sort of economic dependence on Uber that warrants application of the FLSA's protections.

In short, drivers who use Uber's app are nothing like the employees Congress sought to protect when it enacted the FLSA. The District Court properly concluded that those drivers are not employees under the FLSA.

CONCLUSION

The judgment of the district court should be affirmed.

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[7] *See, e.g, Saleem*, 854 F.3d at 140 (finding drivers power to decide "whether to work exclusively for CTG accounts or provide rides for CTG's rivals' clients and/or develop business of their own" showed workers were independent contractors); *Herman*, 161 F.3d at 305 (noting that when "[d]rivers are able to work for other … delivery companies" it points to independent contractor status); *Donovan*, 757 F.2d at 1385-86 (finding workers were employees when they "were not in a position to offer their services to many different businesses and organizations").

Dated: October 1, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(a)(4) and 32(g), and Local Rule 31.1(c) and 28.3(d), the undersigned counsel for *amici curiae* certifies as follows:

1. I am a member of the bar of this Court.

2. This brief complies with the type-volume limitation of Rule 29(a)(5) because the brief contains 4,445 words, excluding the parts of the brief exempted by Rule 32(f).

3. This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because: the brief was drafted in Microsoft Word 2010, using 14-Point Times New Roman font.

4. The text of the electronic brief is identical to the text in the paper copies.

5. A virus detection program, Microsoft Security Essentials, has been run on the file and no virus was detected.

I understand that a material misrepresentation may result in the Court's striking the brief and imposing sanctions. If the Court so desires, I will provide an electronic version of the brief and/or copy of the work or line print-out.

Dated: October 1, 2018

Respectfully Submitted,

/s/ Adam G. Unikowsky

CERTIFICATE OF SERVICE

I hereby certify that that on October 1, 2018, I electronically filed the foregoing brief with the Clerk of the Court using the appellate CM/ECF system. Ten hard copies of the foregoing brief were sent to the Clerk's Office via overnight delivery. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

Dated: October 1, 2018 */s/ Adam G. Unikowsky*