No. 18-1041

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

HEATHER R. OBERDORF and
MICHAEL A. OBERDORF, her husband,
Plaintiffs-Appellants,

v.

AMAZON.COM, INC., a Washington Corporation,
Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
No. 4:16-cv-01127-MWB (Hon. Matthew W. Brann)

BRIEF OF AMICI CURIAE INTERNET ASSOCIATION, THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, AND TECHNET IN SUPPORT OF DEFENDANT-APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a) and Third Circuit Local Appellate Rule 26.1, Amici Curiae Internet Association, the Computer & Communications Industry Association, and TechNet are not publicly held corporations and do not have parent corporations. No publicly traded corporation owns ten percent or more of their stock.

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STATEMENT OF AMICI CURIAE[1]

Internet Association represents the interests of leading Internet and technology companies and their customers.[2] It seeks to protect internet freedom, promote innovation and economic growth, and empower customers and users.

The Computer & Communications Industry Association ("CCIA") is an international non-profit trade association representing technology product and service providers of all sizes, including hardware and software, electronic commerce, telecommunications and Internet products and services—companies that collectively generate more than $500 billion in annual revenues.[3]

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes 83 dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-

[1] No party, no counsel for a party, and no person other than Amici or their counsel authored this brief in whole or in part. Although Amazon is a member of each of the three Amici organizations, neither it nor its counsel, nor anyone other than Amici or another member of an Amicus made any monetary contribution intended to fund the preparation or submission of this brief.

[2] A list of Internet Association members is available at http://internet association.org/our-members/.

[3] A list of CCIA members is available at http://www.ccianet.org/members/.

commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.[4]

Amici and their members have a substantial interest in the legal rules governing whether providers of interactive computer services may be subjected to lawsuits for alleged harms resulting from online exchanges of information. Because Amici's members serve as platforms for communications and services among billions of users, their members have been, and will continue to be, parties to lawsuits in which they invoke immunity under Section 230 of the Communications Decency Act, 47 U.S.C. § 230(c)(1). The success of these online businesses—and the vitality of online media and online free speech generally—depends on their being shielded from the risks, burdens, and uncertainty of lawsuits that may hold them liable for hosting or facilitating online exchanges of third-party information and products. For these reasons, Amici regularly file amicus briefs in cases interpreting Section 230, and they submitted an amicus brief in support of Amazon's petition for rehearing in this appeal.

Amici and their members rely on the settled interpretation of Section 230 granting broad immunity to online intermediaries for harms arising from third-party content, including, as in this case, listings posted by third-parties seeking to

[4] A list of TechNet members is available at http://technet.org/membership/members.

sell products through an online marketplace. The robustness of this immunity has been recognized by this Circuit and by other courts across the country. The panel's now-vacated interpretation of Section 230 and the position pressed by Plaintiffs are contrary to this settled precedent. Accepting that position would contravene Congress's policy choices and introduce substantial uncertainty to a law that has been crucial to the growth and success of the internet industry and become a prerequisite for the provision of services upon which the public has come to rely.

All parties consented to the filing of this brief.

SUMMARY OF ARGUMENT

Amici urge the *en banc* Court to affirm the district court's judgment on the ground that Section 230 bars all of Plaintiffs' claims and to reject the erroneous interpretation of Section 230 adopted by the panel in its now-vacated opinion. Plaintiffs' claims seek to impose liability on Amazon for an allegedly unsafe product that Plaintiffs purchased from a third-party seller through Amazon's online marketplace. Amazon did not manufacture, own, ship, possess, or even touch the product. But according to Plaintiffs and the panel, Amazon may still be held liable for an injury resulting from an alleged defect in that product because Amazon did not remove the third-party listing for the product from its website. As the district court correctly recognized in holding that Section 230 bars Plaintiffs' negligence claims and would, if they did not fail for other reasons, bar Plaintiffs' remaining

claims (*see* JA12-14 & n.52), Section 230 protects Amazon against precisely the sort of claims asserted here: those that would impose liability on a website operator "for decisions relating to the monitoring, screening, and deletion of [third-party] content from its network." *Green v. America Online*, 318 F.3d 465, 471 (3d Cir. 2003).

The novel and erroneous interpretation of Section 230 pressed by Plaintiffs and adopted by the panel conflicts with decisions of this Court and elsewhere. If adopted, it would threaten to chill the creation and growth of innovative online services, open the door to litigation against online providers in a wide range of circumstances, undermine the development of e-commerce, and harm the U.S. economy. Amici urge this Court to reject Plaintiffs' position and hold that Section 230 bars all of Plaintiffs' claims.

ARGUMENT

I. SECTION 230 BARS ALL OF PLAINTIFFS' CLAIMS

In *Green v. America Online*, this Court held that Section 230 "precludes courts from entertaining claims that would place a computer service provider in a publisher's role." 318 F.3d 465, 471 (3d Cir. 2003) (citations omitted). Section 230 therefore bars claims that seek to impose liability on an online service provider, like Amazon, "'for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone, or alter

[third-party] content.'" *Id.* As the district court explained, the theory that underlies all of Plaintiffs' claims would do exactly what *Green* forbids: impose liability on Amazon for publishing and allegedly failing to monitor and remove a listing posted to the Amazon platform by a third-party. *See* JA12-14 & n.52.

Plaintiffs' own arguments for why Amazon should be considered a "seller" under Pennsylvania law—which the panel majority largely adopted—demonstrate why Section 230 bars Plaintiffs' claims. Every action or function highlighted by the Plaintiffs and the panel majority is a quintessential publishing act protected by Section 230.

Plaintiffs emphasize, for example, that Amazon reserves a right to "control[]" the "content and format" of all product listings on its website, and that "Amazon's search feature" "directed" Mrs. Oberdorf to the particular dog collar that she purchased. Appellants' Br. 2-3. Plaintiffs do not contend, however, that Amazon was the source of, or modified, any of the content of the product listing at issue in this case. "[C]hoices about what [third-party] content can appear on [a] website and in what form[] are editorial choices that fall within the purview of traditional publisher functions." *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 21 (1st Cir. 2016); *accord Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 256 (4th Cir. 2009) (Section 230 protects an online platform's control over the "structure and design of its website"). Likewise, a platform that

uses "algorithms" to "recommend[]" third-party content to its users is "acting as a publisher of others' content." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019). Section 230 immunizes such publishing functions.

The same is true of the other features identified by Plaintiffs and the panel majority to try to demonstrate that Amazon is a "seller." Plaintiffs and the panel pointed to Amazon's decision to require third-party sellers to communicate with customers through the platform, *see* Appellants' Br. 6-7; Panel Op. 14-15 & n.21, 23, and to Amazon's collection and display of customer ratings about third-party products, Panel Op. 18, 23. These too are publishing functions fully protected by Section 230. *See Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1271 (9th Cir. 2016) (applying Section 230 to platform's rating system); *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 718 (Ct. App. 2002) (same).

Most fundamentally, Plaintiffs and the panel majority repeatedly emphasized that the manner in which Amazon can and should prevent third-parties from selling defective products is to monitor and refuse to publish their product listings. *See* Appellants' Br. 6-8; Panel Op. 15-16, 18. Such an editorial decision "relating to the monitoring, screening, and deletion of content from [Amazon's] network" lies at the very heart of Section 230's protection. *Green*, 318 F.3d at 471. In short, Plaintiffs' and the panel majority's flawed analysis of why Amazon should be

deemed a "seller" of products that it did not manufacture, ship, or ever possess confirms that Plaintiffs' claims trigger Section 230.

Plaintiffs and the panel majority sought to distinguish *Green* and these other cases on the ground that Amazon's "involvement in transactions extends beyond a mere editorial function." Panel Op. 32. But the activities that the panel identified do not strip Amazon of Section 230 immunity.

The first activity—receiving customer shipping information—is the kind of activity that online providers routinely perform without losing protection. *See* Appellants' Br. 14, 20; Panel Op. 32. Dating websites, classified pages, housing sites, and social media platforms all solicit contact information from their users to connect them with other users. Gathering and retransmitting this sort of third-party information has long been recognized as protected publishing conduct. *See Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019) ("Indeed, arranging and distributing third-party information inherently forms 'connections' and 'matches' among speakers, content, and viewers of content, whether in interactive internet forums or in more traditional media. That is an essential result of publishing."); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124-1125 (9th Cir. 2003) (gathering and matching dating profiles is a protected action under Section 230).

The only other set of activities that Plaintiffs and the panel highlighted all relate to payments that Amazon collects in connection with third-party listings.

See Appellants' Br. 8, 20; Panel Op. 32. But again, all manner of online platforms receive and/or disburse funds in connection with third-party content and still receive Section 230 immunity. *E.g.*, *MDA City Apartments, LLC v. Airbnb, Inc.*, 2018 WL 910831, at *14 (Ill. Cir. Ct. Feb. 14, 2018) (Airbnb's "processing payments and transactions in connection with listings created by third parties" does not remove Section 230 immunity). Websites, for example, charge fees to run ads and classified listings, or for access to prospective job applicants and matchmaking services. *E.g.*, *Gentry,* 121 Cal. Rptr. 2d at 708 (immunizing eBay from allegedly fraudulent postings on its website even though eBay received placement fees from dealers when they listed an item for auction). And online platforms regularly pay third-parties to create or license content. *E.g.*, *Goddard v. Google, Inc.*, 2008 WL 5245490, at *3 (N.D. Cal. Dec. 17, 2008) ("the fact that a website elicits online content for profit is immaterial; the only relevant inquiry is whether the interactive service provider 'creates' or 'develops' that content"); *Blumenthal v. Drudge*, 992 F. Supp. 44, 52-53 (D.D.C. 1998) (holding that Section 230 immunity applied to an interactive computer service even though it contracted with a columnist to provide content in return for monthly compensation). Accepting or making payments does not deprive a website of Section 230 immunity for publishing third-party content. *See Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d

1157, 1161, 1174-1175 (9th Cir. 2008) (en banc) (that defendant website derived "revenue from advertisers and subscribers" did not affect its immunity).

In sum, none of the activities identified by Plaintiffs or the panel alter the conclusion that Plaintiffs' claims, at bottom, are premised on Amazon's publishing of and alleged failure to remove third-party listings from its site. Section 230 unequivocally bars these claims.

II. NUMEROUS DECISIONS OF OTHER COURTS HAVE LIKEWISE GRANTED IMMUNITY TO ONLINE MARKETPLACES

The district court's application of Section 230 to bar Plaintiffs' claims in this case comports with the decisions of numerous other federal and state courts that have upheld immunity for websites that provide an online marketplace for third-party sellers.

In *Inman v. Technicolor USA, Inc.*, 2011 WL 5829024 (W.D. Pa. Nov. 18, 2011), for example, a district court in this Circuit dismissed claims nearly identical to those asserted here under Section 230. The plaintiff in *Inman* asserted products liability and negligence claims against eBay based on allegations that he had suffered mercury poisoning from defective vacuum tubes purchased through the eBay site. *Id*. at *1. The plaintiff's allegations—like those here—established that eBay provided "an online forum where [third-party] sellers … may peddle their wares." *Id.* at *6. Relying on *Green*, the court held that Section 230 barred the plaintiff's theory that "the alleged sale of vacuum tubes … was facilitated by

communication" by a third-party seller through eBay's site—that is, the third-party's offer to sell defective vacuum tubes. *Id*. at *7.

The California Court of Appeal reached a similar conclusion in *Gentry*, 121 Cal. Rptr. 2d 703. The plaintiffs in *Gentry* sued eBay for failing to furnish a certificate of authenticity when they purchased fraudulently autographed sports collectibles from third-party sellers through eBay's site. eBay charged a "placement fee" when listing an item and "success fees" upon a sale. *Id.* at 708. Unlike the panel here, however, the court in *Gentry* held that Section 230 barred claims arising from third-party sales consummated through eBay's site. As *Gentry* explained, such claims must be dismissed because they "ultimately seek to hold eBay responsible for conduct falling within the reach of section 230, namely eBay's dissemination of representations made by [third-party sellers]" about their products. *Id.* at 715.

The North Carolina Court of Appeals likewise upheld Section 230 immunity in *Hill v. StubHub, Inc.*, 727 S.E.2d 550 (N.C. Ct. App. 2012). The plaintiff in *Hill* sued StubHub, the operator of an online ticket marketplace, for allegedly violating a state law regulating ticket prices. Much like Amazon, StubHub "serve[d] as an intermediary between buyers and [third-party] sellers in order to facilitate transactions," including by processing payments, helping to ship products, and charging fees for its services to both the buyer and seller. *Id.* at 552. Unlike the

panel here, however, the *Hill* court barred the claims against StubHub under Section 230, recognizing that the claims were "predicated on the theory that [StubHub] should be held responsible for content" that originated with third-party sellers (namely, the listing of a ticket price substantially above face value). *Id.* at 557.

The court reached much the same conclusion in *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097 (C.D. Cal. 2017), *appeal dismissed*, 2018 WL 7141208 (9th Cir. Dec. 17, 2018). In *La Park La Brea*, apartment owners and operators sued Airbnb, asserting state law claims based on allegations that tenants who used the Airbnb platform had violated their lease agreements by renting out the plaintiffs' properties. The plaintiffs sought to avoid Section 230 on the ground that Airbnb received payments for its services, required certain information to be included in listings, and offered other ancillary services. *Id.* at 1104. But "the mere fact that Airbnb's conduct 'includes more than posting listings' does not *per se* mean that section 230 immunity is unavailable." *Id.* Because the third-parties "who use Airbnb's website have complete control over the content at issue"—the "listing [of] rentals in violation of [plaintiff's] leases"—the court held that Section 230 barred plaintiffs' claims. *Id.* at 1107.

Numerous other courts have similarly invoked Section 230 immunity to bar claims that seek to impose liability against the operator of an online marketplace

for facilitating third-party sales. *See Stiner v. Amazon.com, Inc.*, 2017 WL 9751163, at *14 (Ohio Com. Pl. Sept. 20, 2017) (dismissing products liability claim against Amazon based on allegations that plaintiff's son had ingested a fatal dose of caffeine powder purchased from a third-party seller through Amazon), *aff'd*, 120 N.E.3d 885 (Ohio Ct. App. 2019); *Hinton v. Amazon.com.dedc, LLC*, 72 F. Supp. 3d 685, 686-687 (S.D. Miss. 2014) (finding eBay immune for harms from a defective product because eBay did not originate the product and imposing liability would treat eBay as a publisher); *Gibson v. Craigslist, Inc.*, 2009 WL 1704355, at *4 (S.D.N.Y. June 15, 2009) (dismissing claim by a plaintiff shot by a handgun sold on Craigslist because "Plaintiff seeks to hold Defendant liable for its alleged failure to block, screen, or otherwise prevent the dissemination of a third party's content"); *Daniel v. Armslist, LLC*, 926 N.W.2d 710, 726 (Wis. 2019) (dismissing claims by the child of a firearms victim against an online firearms marketplace because the allegations were that "Armslist provided an online forum for third-party content and failed to adequately monitor that content[,] … [which] is precisely the type of claim that is prohibited by § 230(c)(1), no matter how artfully pled."), *petition for cert. filed*, No. 19-153 (U.S. July 29, 2019); *Stoner v. eBay, Inc.*, 2000 WL 1705637, at *1 (Cal. Super. Ct. Nov. 1, 2000) (finding eBay immune under Section 230 for claims concerning "bootleg" audio recordings sold by third-parties through the eBay site).

As the foregoing demonstrates, the view of Section 230 pressed by Plaintiff and adopted by the panel is out of step with decisions by both federal and state courts across the country.

III. REJECTING SECTION 230 IMMUNITY WOULD HAVE FAR-REACHING NEGATIVE EFFECTS ON AMICI'S MEMBERS, OTHER PROVIDERS OF INTERACTIVE COMPUTER SERVICES, AND THE U.S. ECONOMY

Denying Section 230 immunity in this case would conflict with Congress' intent in passing Section 230 and threaten serious harms not only for Amazon, but for myriad other internet companies, small businesses, consumers, and the U.S. economy. Among Congress's "primary reasons" for enacting Section 230 was "to promote the development of e-commerce." *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003). Congress sought to encourage "the continued development of the Internet and other interactive computer services and other interactive media" and to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(1)-(2). Congress feared that if such laws and regulations were applied to online intermediaries based upon the huge quantities of third-party content they host and transmit, it would cripple their growth. *See Gonzalez v. Google, Inc.*, 282 F. Supp. 3d 1150, 1163 (N.D. Cal. 2017) (Congress sought to further "e-commerce interests on the Internet[.]"), *appeal pending*, No. 18-16700 (9th Cir.); *Jurin v. Google Inc.*, 695 F. Supp. 2d 1117, 1123 (E.D. Cal.

2010) ("The purpose of the CDA is to encourage open, robust, and creative use of the internet.").

Contrary to the view pressed by Amicus Public Justice (Br. 24-25), Congress did "cho[o]se[] to treat cyberspace differently" than similar offline businesses when it enacted Section 230. *Batzel*, 333 F.3d at 1026-1027. Congress recognized that the sheer "amount of information communicated via interactive computer services is … staggering" making it "impossible for service providers to screen each of their millions"—and now hundreds of millions or billions—"of postings for possible problems." *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). Because "potential liability for each message" could lead platforms "to severely restrict the number and type of messages posted," Congress "chose to immunize service providers to avoid any such restrictive effect." *Id.* It therefore "decided *not* to treat providers of interactive computer services like other information providers" that operate offline. *Blumenthal*, 992 F. Supp. at 49 (emphasis added); *accord Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 407 (6th Cir. 2014); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418-419 (5th Cir. 2008); *Carafano*, 339 F.3d at 1122-1123.

Section 230's protections have spurred dramatic growth in the internet and e-commerce since 1996, just as Congress intended.[5] The wealth of opportunities unleashed by online platforms have driven down the cost of matching buyers and sellers.[6] Low barriers to entry have enabled small businesses and individuals from all walks of life to participate in new markets, without the need to raise or invest significant capital.[7] The benefits of these advances have been felt far and wide: As home to the largest technology companies in the world, the internet economy has provided jobs and driven GDP growth in the United States.[8] Quite simply,

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[5] *See, e.g.*, Post, *A bit of Internet history, or how two members of Congress helped create a trillion or so dollars of value*, Washington Post (Aug. 27, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/08/27/a-bit-of-internet-history-or-how-two-members-of-congress-helped-create-a-trillion-or-so-dollars-of-value/ ("Virtually every successful online venture that emerged after 1996 … relies in large part (or entirely) on content provided by their users, who number in the hundreds of millions, or billions …. I fail to see how any of these companies, or the thousands more like them, would exist without Section 230 …. [I]t is impossible for me to imagine, say, an investor providing funds for any of these ventures in a world without Section 230.").

[6] *See* Organisation for Economic Co-operation and Development, *The Economic and Social Role of Internet Intermediaries* 6-8 (Apr. 2010), https://www.oecd.org/internet/ieconomy/44949023.pdf.

[7] *See* Skorup & Huddleston, *The Erosion of Publisher Liability in American Law, Section 230, and the Future of Online Curation* 35, Mercatus Center (July 2019), https://www.mercatus.org/system/files/skorup-publisher-liability-mercatus-working-paper-v1.pdf.

[8] *See* DePillis, *Technology helped America's economy way more than we thought*, CNN Business (Aug. 3, 2018), https://money.cnn.com/2018/08/03/news/economy/gdp-economic-growth-technology/index.html; National Telecommunications and Information Administration, *Initial Estimates Show Digital Economy Accounted for 6.5 Percent of GDP in 2016* (Mar. 15, 2018),

"Section 230 has helped make the United States the center of the world for innovation in information technology."[9]

Rejecting Section 230 immunity in this case would threaten to undermine these economic benefits. Faced with costly litigation and potential liability, service providers like Amazon would be pressed to simply stop allowing third-parties to offer products through their sites or otherwise reduce services. Innovative entrepreneurs, investors, and computer programmers would be deterred from founding companies and developing services that benefit the public. Indeed, a recent study found that weakening intermediary protections, like Section 230, would significantly reduce economic activity, and cause the U.S. economy to lose 4.25 million jobs and $440 billion in GDP over 10 years.[10] Additionally, the threat

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https://www.ntia.doc.gov/blog/2018/initial-estimates-show-digital-economy-accounted-65-percent-gdp-2016 ("Goods and services that are primarily digital accounted for 6.5 percent of the U.S. economy, or $1.2 trillion, in 2016[.] … From 2006 to 2016, the digital economy grew at an average annual rate of 5.6 percent, outpacing overall U.S. economic growth of 1.5 percent per year. In 2016, the digital economy supported 5.9 million jobs, or 3.9 percent of total U.S. employment. Digital economy employees earned $114,275 in average annual compensation compared with $66,498 per worker for the total U.S. economy.").

[9] Skorup & Huddleston, *Should Big Tech be held more liable for the content on their platforms? An AEIdeas online symposium*, American Enterprise Institute (Mar. 20, 2018), http://www.aei.org/publication/should-big-tech-be-held-more-liable-an-aeideas-online-symposium/.

[10] Dippon, *Economic Value of Internet Intermediaries and the Role of Liability Protections* 2, NERA Economic Consulting (June 5, 2017), https://cdn1.internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf.

of liability under Plaintiffs' and the panel's view of Section 230 could force internet service providers and websites to block user-generated content to reduce risk, leading to a less open and collaborative internet.[11] A holding that Section 230 immunity is unavailable in this case would thus impose significant costs on individuals and the U.S. economy far beyond the parties to this litigation.

CONCLUSION

For the foregoing reasons, the *en banc* Court should affirm the district court's decision that Section 230 bars all of Plaintiffs claims.

Respectfully submitted,

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[11] *Id.*

CERTIFICATE OF BAR MEMBERSHIP

In accordance with Local Rule of Appellate Procedure 28.3(d), I certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

/s/ Patrick J. Carome
PATRICK J. CAROME

October 24, 2019

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B). The brief contains 3,298 words, excluding the parts of the brief exempted by the rules, as provided in Fed. R. App. P. 32(f).

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in font size 14 Times New Roman.

3. Pursuant to Third Circuit Local Appellate Rule 31.1(c), the undersigned hereby certifies that the text of the electronic brief filed with the Court is identical to the paper copies, and that a virus detection program has been run on the electronic file and that no virus was detected. The virus detection program used was CYLANCE Protect anti-virus software, version 2.0.1534.15.

/s/ Patrick J. Carome
PATRICK J. CAROME

October 24, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2019, I electronically filed the foregoing with the Clerk using the appellate CM/ECF system. Counsel for all parties to the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Patrick J. Carome
PATRICK J. CAROME