19-3549

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

IN RE: ACTAVIS HOLDCO U.S., INC.; ACTAVIS PHARMA, INC.; AKORN, INC.; AKORN SALES INC.; AMNEAL PHARMACEUTICALS, INC.; APOTEX CORPORATION; ASCEND LABORATORIES, LLC; AUROBINDO PHARMA USA, INC.; CITRON PHARMA, LLC; DAVA PHARMACEUTICALS, LLC; DR. REDDY'S LABORATORIES, INC.; ENDO INTERNATIONAL, PLC; EPIC PHARMA, LLC; FOUGERA PHARMACEUTICALS INC.; G&W LABORATORIES, INC.; GENERICS BIDCO I, LLC; GLENMARK PHARMACEUTICALS INC., USA; HI-TECH PHARMACAL CO., INC.; IMPAX LABORATORIES, INC.; LANNETT COMPANY, INC.; LUPIN PHARMACEUTICALS, INC.; MAYNE PHARMA INC.; MORTON GROVE PHARMACEUTICALS, INC.; MYLAN INC.; MYLAN N.V.; MYLAN PHARMACEUTICALS INC.; OCEANSIDE PHARMACEUTICALS, INC.; PAR PHARMACEUTICAL COMPANIES, INC.; PAR PHARMACEUTICAL, INC.; PERRIGO NEW YORK, INC.; SANDOZ INC.; SUN PHARMACEUTICALS INDUSTRIES, INC.; TARO PHARMACEUTICALS USA, INC.; TEVA PHARMACEUTICALS USA, INC.; UDL LABORATORIES, INC.; UPSHER-SMITH LABORATORIES, LLC; VALEANT PHARMACEUTICALS INTERNATIONAL; VALEANT PHARMACEUTICALS NORTH AMERICA, LLC; WOCKHARDT USA LLC; ZYDUS PHARMACEUTICALS (USA) INC.,

Petitioners.

ON PETITION FOR A WRIT OF MANDAMUS FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(RELATED TO E.D. PA. CASE NO. 16-MD-2724)

BRIEF OF *AMICUS CURIAE* LAWYERS FOR CIVIL JUSTICE IN SUPPORT OF PETITION FOR REHEARING EN BANC

Jonathan M. Redgrave
Gareth T. Evans
Kevin F. Brady
REDGRAVE LLP
601 Pennsylvania Avenue N.W.
Suite 900, South Building
Washington D.C., 20004
(202) 697-3479
GEvans@Redgravellp.com

Counsel for Amicus Curiae Lawyers for Civil Justice

December 23, 2019

DISCLOSURE STATEMENT

Lawyers for Civil Justice ("LCJ") is a membership organization incorporated in the District of Columbia as a non-profit organization with a 501(c)(6) status as recognized by the Internal Revenue Service. LCJ has no parent corporation. No single member owns 10% or more of LCJ's memberships.

TABLE OF CONTENTS

Page

STATEMENT OF IDENTIFICATION 6

SUMMARY OF THE ARGUMENT 8

ARGUMENT 9

A. The District Court's Order Was A Usurpation Of Power 9

B. The District Court's Order Was An Abuse Of Discretion 11

C. The District Court's Order Was A Clear Error Of Law 14

D. There Is No Adequate Means Of Relief Other Than A Writ Of Mandamus 17

CONCLUSION 18

CERTIFICATION OF COMPLIANCE 19

ELECTRONIC DOCUMENT CERTIFICATE 20

CERTIFICATE OF BAR MEMBERSHIP 21

CERTIFICATE OF SERVICE 22

TABLE OF AUTHORITIES

PAGE(S)

CASES

Cheney v. U.S. District Court,
542 U.S. 367 (2004)..... *passim*

Consumer Fin. Prot. Bureau v. Navient Corp.,
2018 WL 6729794 (M.D. Pa. Dec. 21, 2018) 15

Da Silva Moore v. Publicis Groupe & MSL Group,
287 F.R.D. 182, 191 (S.D.N.Y. 2012).....12

Herbert v. Lando,
441 U.S. 153 (1979).....11

LaBuy v. Howes Leather Company,
352 U.S. 249 (1957)..... 10,11,12

NuVasive, Inc. v. Alphatec Holdings, Inc.,
2019 WL 4934477 (S.D. Cal. Oct. 7, 2019).....15

United States v. Wexler,
31 F.3d 117 (3d Cir. 1994) 14

UPMC v. Highmark Inc.,
2013 WL 12141530 (W.D. Pa. Jan. 22, 2013) 16

Will v. United States,
389 U.S. 90 (1967)..... 9, 12

Williams v. Taser Int'l, Inc.,
2007 WL 1630875 (N.D. Ga. June 4, 2007) 16

Winfield v. City of New York,
No. 15-cv-05236, 2018 WL 2148435 (S.D.N.Y. May 10, 2018) 16

RULES

2006 Advisory Comm. Note to Rule 34 11

Fed. R. Civ. P. 26(b)(1)..... *passim*

Fed. R. Civ. P. 34(a).....10

Fed. R. Civ. P. 34(b)(1).....15

OTHER AUTHORITIES

The Sedona Conference Commentary on Protection of Privileged ESI, 17 Sedona Conf. J. 95, 137 (2016) 16

The Sedona Principles, Third Edition, 19 Sedona Conf. J. at 154 17

STATEMENT OF IDENTIFICATION

Lawyers for Civil Justice ("LCJ") is a national coalition of corporations, law firms and defense trial lawyer organizations that promotes excellence and fairness in the civil justice system to secure the just, speedy, and inexpensive determination of civil cases. For over 30 years, LCJ has been closely engaged in reforming federal civil rules to: (1) promote balance in the civil justice system; (2) reduce costs and burdens associated with litigation; and (3) advance predictability and efficiency in litigation.

LCJ has a unique perspective on the 2015 amendments to the discovery rules, having been directly involved in the entire process, including participating in the 2010 Duke Conference, submitting empirical evidence in support of changes to the discovery rules and other materials such as White Papers, and participating in all the hearings and Rules Advisory Committee meetings related to the adoption of the 2015 rules amendments.

LCJ's members are frequent litigants, often seeking discovery as well as responding to discovery requests. LCJ advocates for procedural rules that are fair and efficient for everyone, regardless of their position in any particular lawsuit.

LCJ has an interest in this case because the District Court's discovery order is an example of the epidemic of excessive discovery in civil litigation, particularly in multi-district litigation cases, and it contravenes the rules and fundamental procedures of civil discovery in the federal courts.

LCJ is submitting this *amicus* brief pursuant to its accompanying Motion for Leave to File an *Amicus* Brief pursuant to Federal Rule of Appellate Procedure 29(b)(2). No party to this case and no party's counsel authored LCJ's *amicus* brief in whole or in part. No party and no party's counsel contributed money intended to fund the preparation or submission of this brief. No person other than LCJ contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Federal Rule of Civil Procedure 26(b)(1) sets relevance as the outer limit of the scope of discovery. The District Court's discovery order, however, requires Petitioners to produce any documents that hit "search terms" without any review for relevance. In doing so, it mandates the production of large volumes of sensitive, irrelevant material, exceeding the District Court's authority under Rule 26(b)(1). Mandamus is necessary and appropriate in these circumstances.

The Court should grant the Petition for Rehearing En Banc because the majority misapplied the conditions for mandamus set forth in *Cheney v. U.S. District Court*, 542 U.S. 367, 380-81 (2004). The majority's conclusion that there was no "judicial usurpation of power" is incorrect, as mandating production of irrelevant material exceeded the District Court's authority under Rule 26(b)(1). Furthermore, the reasons the majority lists as demonstrating there was "no showing" of an abuse of discretion are incorrect. Courts' latitude in managing discovery does not extend beyond the boundaries of the Rules. The "protections and limitations" the majority relies upon are legally and practically insufficient to remedy—indeed, they exacerbate—the problem of compelled production of search term hits. It was clear error to expand discovery beyond relevant information, and mandamus is the only available relief.

ARGUMENT

The panel dissent correctly stated that the District Court's discovery order "constitutes a serious and exceptional error that should be corrected through a writ of mandamus." *See* Dec. 6, 2019 Order at 3 n.1. The conditions for mandamus are satisfied here, and the majority misapplied the requirements set forth in *Cheney v. U.S. District Court*, 542 U.S. 367, 380-81 (2004). In *Cheney*, the Supreme Court stated that "only exceptional circumstances amounting to a judicial 'usurpation of power'" *or* a "clear abuse of discretion" justify mandamus. *Id.*, 542 U.S. at 380.

Here, the majority summarily concluded that the District Court's order (1) "does not amount to a judicial usurpation of power;" and (2) there was no showing that the order resulted from a "clear abuse of discretion." *See* Order dated Dec. 6, 2019 ("Panel Order") at 2. Those conclusions are incorrect, and a writ of mandamus is necessary.

A. THE DISTRICT COURT'S ORDER WAS A USURPATION OF POWER

The District Court's discovery order exceeded its authority under the Federal Rules and thus was, in fact, a usurpation of power. The Court in *Cheney* stated with respect to usurpation of power, "courts have not confined themselves to an arbitrary and technical definition of 'jurisdiction.'" 542 U.S. at 380. In *Will v. United States*, for example, the Supreme Court observed that mandamus has been invoked "where a district judge displayed a persistent disregard of the Rules of Civil Procedure promulgated by this Court." 389 U.S. at 95-96.

Here, the discovery order disregards the fundamental boundary in Rule 26(b)(1) that discovery is limited to relevant material. As the dissent aptly stated, "nothing in the civil rules permits a court to compel production of non-responsive, irrelevant documents at any time, much less before the producing party has had an opportunity to screen these documents." Panel Order at 3. The District Court has no authority to require such a production.

Rule 26(b)(1) sets relevance as the outer limit of the scope of discovery. *See* Fed. R. Civ. P. 26(b)(1). The rule's language is plain and clear: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]" *Id.* Rule 34, pursuant to which a party can seek production of documents, is bounded to requests "within the scope of Rule 26(b)." Fed. R. Civ. P. 34(a).

The District Court cannot exceed its authority by expanding the scope of discovery where expedient to do so—*e.g.*, because the case involves "high stakes." *See* discovery order at A10-11. Expediency does not warrant judicial action that violates the rules that bind the courts. "Where the subject concerns the enforcement of the rules which by law it is the duty of this court to formulate and put in force, mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule invoked." *LaBuy v. Howes Leather Company*, 352 U.S. 249, 256 (1957) (internal quotes omitted).

The Supreme Court's decision in *LaBuy v. Howes Leather Co.* is instructive. There, the district court referred antitrust actions for trial before

a special master over the parties' objections, because "the cases were very complicated and complex, that they would take considerable time to try, and that his calendar was congested." 352 U.S. at 254 (internal quotes omitted). The Supreme Court affirmed a writ barring the referrals because they were an "abuse of the [district court's] power under Rule 53(b)." *Id.* at 256.

For the same reasons, it was inappropriate for the District Court here to order the production of irrelevant information simply because the case involves large volumes of electronically stored information. No law or rule provides that electronically stored information is subject to a broader scope of discovery. Indeed, the Rules were amended in 2006 to "confirm that discovery of electronically stored information stands on equal footing with discovery of paper documents." *See* 2006 Advisory Comm. Notes to Rule 34.

One of the hallmarks of our judicial system is that discovery is limited to relevant material. The Supreme Court in *Herbert v. Lando* stated that "the requirement of Rule 26(b)(1) that the material sought in discovery be 'relevant' should be firmly applied." *Herbert v. Lando*, 441 U.S. 153, 177 (1979). The District Court in mandating production of irrelevant material exceeded its authority under Rule 26(b)(1). Accordingly, the majority's conclusion that there was no "judicial usurpation of power" was incorrect.

B. THE DISTRICT COURT'S ORDER WAS AN ABUSE OF DISCRETION

The majority found that there was "no showing that the District Court's order was the result of a 'clear abuse of discretion.'" Panel Order at 2. To the contrary, the discovery order was a clear abuse of discretion because it

exceeded the court's authority under Rule 26(b)(1). *See Cheney*, 542 U.S. at 380. The majority lists several reasons why there was "no showing" of an abuse of discretion, each of which is wrong.

First, the majority states that "the District Court has wide latitude in controlling discovery" and that "the Federal Rules of Civil Procedure permit a district court to compel the production of documents within broad parameters." Panel Order at 2. But the latitude afforded courts in managing discovery does not extend beyond the boundaries of the Federal Rules. *See, e.g., Will v. United States*, 389 U.S. at 95-96 (mandamus properly invoked where district court disregards "the Rules of Civil Procedure"); *LaBuy v. Howes Leather Company*, 352 U.S. 249, 256 (1957) (mandamus should issue to prevent judicial action beyond the scope of the rule invoked).

Second, the majority justifies its result by stating that "search terms aimed at identifying relevant information . . . are likely to narrow the information produced." Panel Order at 2. But all the majority's justification means is that (a) less than "everything" will be produced, and (b) some relevant information is likely to be produced along with massive quantities of irrelevant information in violation of Rule 26(b)(1).

Search terms, no matter how carefully conceived, inevitably yield many false positives. *See, e.g., Da Silva Moore v. Publicis Groupe & MSL Group*, 287 F.R.D. 182, 191 (S.D.N.Y. 2012) ("Another problem with keywords is that they often are over-inclusive, that is, they find responsive documents but also large numbers of irrelevant documents."). To avoid being under-

inclusive, requesting parties—as here—often seek very broad search terms, which exacerbates the problem of over-inclusiveness. Thus, that the District Court required the use of search terms alone is a problem and not, as the majority characterizes it, a solution.

Third, the majority asserts that there has been "no showing that the ordered disclosure, when paired with the protections and limitations that the District Court imposed, will cause great injury." Panel Order at 2. That assertion is incorrect and misplaced. The discovery order requires Petitioners to produce all documents hitting search terms without responsiveness review, inevitably resulting in compelled production of what Petitioners estimated is millions of pages of irrelevant information.

This mandated production of irrelevant documents will result in grave injury to Petitioners. The costs of processing for production large volumes of irrelevant documents are extraordinary. Additionally, the discovery order compels Petitioners to produce information about irrelevant trade secrets and other competitively sensitive information, risking irreparable harm even with ostensible protective order protections. Once disclosed, any protections or trade secrets status may be waived.

The "protections and limitations" that the majority relies upon exacerbate these injuries. For example, requiring Petitioners to apply a multi-tiered protective order against an enormous universe of mostly irrelevant documents to claw back "trade secrets, unrelated business information and

unrelated personal or embarrassing information" in just 120 days increases the costs and burdens upon them. *See* Panel Order at 2. Doing so requires Petitioners to carefully review enormous volumes of *irrelevant* material in a short period, unfairly imposing tremendous burdens and greatly increasing the risk that information needing protection will go unprotected.

The majority points to the limited privilege review permitted under the discovery order as supporting the result. Although the District Court permitted privilege review, it required that such review be completed less than 60 days (*i.e.*, December 20, 2019). *See* A2. Given the extremely large volumes of mostly irrelevant information involved, it will be impossible for Petitioners to conduct a thorough privilege review on this schedule. Moreover, there will be enormous expenses in reviewing millions of irrelevant documents for privilege.

As the dissent correctly stated, courts may not issue orders that exceed their authority and then provide for a period afterwards to attempt to remediate the resultant harm. "[A] court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents produced." Panel Order at 3.

C. THE DISTRICT COURT'S ORDER WAS A CLEAR ERROR OF LAW

The District Court made a clear error of law in expanding the scope of discovery beyond relevant information. *See U.S. v. Wexler*, 31 F.3d 117, 128 (3d Cir. 1994) (mandamus appropriate to remedy "a clear error of law"); 55

C.J.S. Mandamus § 90 ("A court's clear failure to analyze or apply the law correctly…is an abuse of discretion subject to correction by mandamus, as the court does not have discretion in determining what the law is.").

In addition to being clear error for having mandated discovery beyond that which Rule 26(b)(1) allows, the discovery order was clear error because it violates the process for production set forth in Rules 26 and 34. The dissent correctly stated that "[t]he sequence of events in discovery is important, and the rules of civil procedure allow for a review for responsiveness and relevance *before* production." Panel Order at 3 (emphasis in original).

Rule 34 provides that the requesting party must "describe with reasonable particularity each item or category of items" requested, and the producing party then produce the requested information or object. Fed. R. Civ. P. 34(b)(1). "That is discovery: a party requests information and the burden is on the producing party to locate and produce it or object legitimately to production." *NuVasive, Inc. v. Alphatec Holdings, Inc.*, 2019 WL 4934477, at *2 (S.D. Cal. Oct. 7, 2019). The dissent correctly points out that "[b]y cloaking the document requests in this case with a core attribute of search warrants—production before review and objection—*the discovery order is an extraordinary outlier*." Panel Order at 3 (emphasis added).

Additionally, the majority relies on erroneous and inapposite lower court authority making similar abuses of discretion as the discovery order here. *See Consumer Fin. Prot. Bureau v. Navient Corp.*, 2018 WL 6729794, at *2 (M.D. Pa. Dec. 21, 2018) (ordering production without relevance review

based on erroneous case law preceding the 2015 rule amendments); *UPMC v. Highmark Inc.*, 2013 WL 12141530, at *2 (W.D. Pa. Jan. 22, 2013) (allowing broad discovery that included irrelevant information based in part on "reasonably calculated to lead to the discovery of admissible evidence" clause that has been removed from Rule 26(b)(1)); *Williams v. Taser Int'l, Inc.*, 2007 WL 1630875, at *5 (N.D. Ga. June 4, 2007) (in contrast with this case, the responding party proposed production of search term hits following a privilege review).

The majority also relies on the erroneous proposition that "a similar approach is contemplated by Federal Rule of Evidence 502(d), by which a court may order production without a privilege review." Panel Order at 2. Nothing in Rule 502(d), which provides for clawbacks of privileged materials, states that a court can compel production of irrelevant documents. Although parties may voluntarily agree to "quick peek" arrangements, numerous authorities warn against imposing such a provision without express party consent. The court in *Winfield v. City of New York*, for example, rejected the argument that any source of authority empowers a district court to order a "quick peek" procedure against the producing party's wishes. *See* 2018 WL 2148435, at *4-8 (S.D.N.Y. May 10, 2018); *see also The Sedona Conference Commentary on Protection of Privileged ESI*, 17 Sedona Conf. J. 95, 137 (2016) ("although a court may enter a Rule 502(d) order *allowing* the parties to engage in a 'quick peek' process, the court cannot *order* a 'quick peek'

process over the objection of the producing party") (emphasis added). Petitioners have not consented to such a process here.

Moreover, such "quick peeks" are disfavored for several reasons. As the Sedona Principles observe, their "risks and limitations make 'quick peek' agreements and productions ill-advised for most cases." *The Sedona Principles, Third Edition*, 19 Sedona Conf. J. at 154. For example, clawback procedures, even under Rule 502(d), apply only to privileged and work product information and do "not protect trade secrets and other commercially or personally sensitive information." Once disclosed, any protections or trade secrets status may be waived. *Id*

The impact of the majority's clearly erroneous precedent, if allowed to stand, cannot be understated. Requesting parties will quickly dispense with the need for tailored Rule 34 requests and an orderly meet and confer process. Instead, they will seek a broad search term process that deprives responding parties of their right to review documents and that results in significant risks and burdens attendant to the production of irrelevant documents.

D. THERE IS NO ADEQUATE MEANS OF RELIEF OTHER THAN A WRIT OF MANDAMUS

A writ of mandamus is the only relief available here. *See Cheney*, 542 U.S. at 380. The Petitioners cannot obtain any relief on appeal, as the production of irrelevant materials and the attendant harm of such a discovery order cannot be undone and remedied. The enormous burdens and

extraordinary expenses will already have been incurred, and the certain disclosures of trade secrets and privileged documents already taken place.

Accordingly, the conditions for the issuance of a writ of mandamus are present, and the panel majority plainly erred.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Rehearing En Banc.

Dated: December 23, 2019

Respectfully submitted,

/s/ Gareth T. Evans
Jonathan M. Redgrave
Gareth T. Evans
Kevin F. Brady
REDGRAVE LLP
601 Pennsylvania Ave. N.W.
Suite 900, South Building
Washington D.C., 20004
GEvans@Redgravellp.com
(323) 383-2915
Counsel for Amicus Curiae
Lawyers for Civil Justice

CERTIFICATION OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(b)(4) because this brief contains 2,524 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Third Circuit L.A.R. 29.1(b). Microsoft Word 2016 was used to calculate the word count.

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

Dated: December 23, 2019

Respectfully submitted,

/s/ Gareth T. Evans
Gareth T. Evans

Counsel for Amicus Curiae
Lawyers for Civil Justice

ELECTRONIC DOCUMENT CERTIFICATE

I hereby certify that:

1. The Court's clerk has informed LCJ's counsel that pursuant to Third Circuit Local Appellate Rule 35.2(a) only the electronic version of this brief is required to be filed at this time and paper copies are not required.

2. Pursuant to Third Circuit Local Appellate Rule 31.1(c), I hereby certify that a virus detection program was run on the electronic version of this brief using Sonos virus protection software, and that no virus was detected.

Dated: December 23, 2019

Respectfully submitted,

/s/ Gareth T. Evans
Gareth T. Evans
Counsel for Amicus Curiae
Lawyers for Civil Justice

CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that, as counsel filing this brief on behalf of *Amicus Curiae* Lawyers for Civil Justice, I am admitted to practice before the United States Court of Appeals for the Third Circuit.

Dated: December 23, 2019

Respectfully submitted,

/s/ Gareth T. Evans
Gareth T. Evans
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing to be served via Electronic Mail and First-Class Mail Service pursuant to the Court's orders appointing liaison counsel upon:

Dianne M. Nast
NASTLAW LLC
1100 Market Street, Suite 2801
Philadelphia, PA 19107
(215) 923-9300
dnast@nastlaw.com

Liaison and Lead Counsel for the Direct Purchaser Plaintiffs

Roberta D. Liebenberg
FINE, KAPLAN AND BLACK, R.P.C.
One South Broad Street, 23rd Floor
Philadelphia, PA 19107
(215) 567-6565
rliebenberg@finekaplan.com

Liaison and Lead Counsel for the End-Payer Plaintiffs

W. Joseph Nielsen
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860)808-5040
Fax: (860)808-5033
Joseph.Nielsen@ct.gov

Liaison Counsel for Plaintiff States

Jan P. Levine
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
Tel: (215) 981-4000
Fax: (215) 981-4750
levinej@pepperlaw.com

Sheron Korpus
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Tel: (212) 506-1700
Fax: (212) 506-1800
skorpus@kasowitz.com

Saul P. Morgenstern
ARNOLD & PORTER KAYE SCHOLER LLP
250 W. 55th Street
New York, NY 10019
Tel: (212) 836-8000
Fax: (212) 836-8689
saul.morgenstern@apks.com

Laura S. Shores
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue
Washington, DC 20001
Tel: (202) 942-5000
Fax: (202) 942-5999
laura.shores@apks.com

Richard Alan Arnold
KENNY NACHWALTER, PA
1441 Brickell Avenue, Suite 1100
Miami, FL 33131
Tel: (305) 373-1000
Fax: (305) 372-1861
rarnold@knpa.com

Counsel for Kroger Plaintiffs

Chul Pak
WILSON SONSINI GOODRICH
& Professional Corporation
1301 Avenue of the Americas,
40th Fl.
New York, NY 10019
Tel: (212) 999-5800
Fax: (212) 999-5899
cpak@wsgr.com

Defendants' Liaison Counsel

on this 23rd day of December, 2019.

Respectfully submitted,

/s/ Gareth T. Evans
Gareth T. Evans
Counsel for Amicus Curiae