

Case No. 19-1124

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UMG RECORDINGS, INCORPORATED, CAPITAL RECORDS,
INCORPORATED, WARNER BROS. RECORDS INC., ATLANTIC
RECORDING CORPORATION, ELEKTRA ENTERTAINMENT GROUP,
INCORPORATED, FUELED BY RAMEN LLC, NONESUCH RECORDS INC.,
SONY MUSIC ENTERTAINMENT, INCORPORATED, SONY MUSIC
ENTERTAINMENT US LATIN LLC, ARISTA RECORDS, LLC, LAFACE
RECORDS LLC, ZOMBA RECORDING LLC,

Plaintiff-Appellants,

v.

TOFIG KURBANOV, d/b/a/ FLVTO.BIZ, a/k/a/ 2CONV.COM, DOES 1-10,

Defendant-Appellees.

**BRIEF OF *AMICUS CURIAE* ELECTRONIC FRONTIER
FOUNDATION IN SUPPORT OF DEFENDANT-APPELLEE**

On Appeal from the U.S. District Court for the
Eastern District of Virginia at Alexandria
Case No. 1:18-cv-00957-CMH-TCB
The Honorable Claude M. Hilton, District Court Judge

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**DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER
ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* Electronic Frontier Foundation states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more of the stock of *amicus*.

Dated: April 18, 2019

Respectfully submitted,

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STATEMENT OF INTEREST¹

The Electronic Frontier Foundation (EFF) is a member-supported, nonprofit public interest organization dedicated to protecting civil liberties and free expression in the digital world. Founded in 1990, EFF represents more than 31,000 contributing members. EFF promotes the sound development of copyright law as a balanced legal regime that fosters creativity and innovation. EFF's interest with respect to copyright law reaches beyond specific industry sectors and technologies to promote well-informed copyright jurisprudence. EFF has contributed its expertise to many cases applying copyright law to new technologies, as party counsel, as *amicus curiae*, and as court-appointed attorneys *ad litem*.

¹ No party's counsel authored this brief in whole or in part. Neither any party nor any party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus*, its members, or its counsel contributed money that was intended to fund the preparing or submitting of this brief. All parties have consented to the filing of this brief.

INTRODUCTION

This case concerns two websites, FLVTO.com and 2conv.com (the converters) that perform a simple function: given the Internet address of a video that is publicly available on YouTube or other video sharing sites, they allow users to download and save the video, or just its audio track. Although people can use any number of software programs that run locally on their computer or device to accomplish the same goal, many people prefer the ease and convenience of a video converter provided through a website. Like a web browser, photocopy machine, or video recorder, the converters at issue in this case are neutral technologies, equally capable of lawful and infringing uses. And lawful uses abound, from saving a copy of a family member's home video to downloading clips from a TV show as raw material for a critical commentary.

Appellants, however, seek to control the use and availability of copying technologies, because they can be used to copy music illegally. Their practice is to file suit against foreign-owned websites, with default the most likely outcome. Then, as part of a default judgment, they request broad injunctions that purport to bind a host of intermediary companies, enlisting them to disable or block the website. These injunctions, which can be legally problematic, are often granted without challenge. Through this process, difficult questions about the scope of such injunctions go unanswered.

Personal jurisdiction is a key safeguard in these circumstances. Preserving the limits of personal jurisdiction to uphold due process, as the district court did in this case, also avoids default judgments against foreign defendants, and promotes the resolution of complex legal issues on a full record.

Personal jurisdiction requires a showing that the defendant purposefully directed his activities towards the forum. As the district court correctly held, neither the sale of advertising space that is customized by a third party based on the viewer's location, nor the presence of ordinary "Terms of Use" on a website, show purposeful engagement with a forum state. This Court should affirm the district court's dismissal of the case.

I. The Websites Are Lawful Tools With Substantial Lawful Uses; There Is No Emergency That Justifies Expanding Personal Jurisdiction.

As with nearly every technological tool in the world, video converters like FLVTO and 2conv offer have both legal and illegal uses. And simply providing a tool for copying digital media does not give rise to infringement liability. Nonetheless, Appellants and their amici have honed in on acts of infringement allegedly done by third parties using the converters in order to tar FLVTO and 2conv as "music piracy websites," Appellant Br. 1, or even "piracy valets," MPAA Amicus Brief 3. Appellants base their claim of jurisdiction in part on an alleged need for "vindication of copyright laws," which they describe as a "particularly important" reason to exercise jurisdiction over Mr. Kurbanov. Appellant Br. 49.

In short, appellants and their amici attempt to gin up a copyright emergency to justify an expansion of personal jurisdiction doctrines. But a review of the nature and function of stream-ripping websites and settled principles of copyright law shows that there is no such emergency, and no legitimate reason to haul a foreign website owner into a U.S. court.

A. Saving a Copy of Online Video and Audio Is A Common Activity With Countless Lawful Purposes

People around the world upload hundreds of hours of video and audio every minute to YouTube and other video sharing websites.² Much of this content is uploaded with the rightsholder's permission for users to download and save it. Millions of videos on YouTube are licensed under Creative Commons licenses, which grant permission for anyone to make copies.³ Millions more are uploaded with the intention that select people will download them, such as business associates and family members. And the overwhelming majority of this content is *not* commercial music recordings.⁴

² *Hours of Video Uploaded to YouTube Every Minute as of July 2015*, Statista, <https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/> (accessed April 16, 2019).

³ Elliot Harmon, *Four Million CC-Licensed Videos Uploaded to YouTube*, Creative Commons Blog (July 25, 2012), <https://creativecommons.org/2012/07/25/four-million-cc-licensed-videos-uploaded-to-youtube/>.

⁴ Paul Resnikoff, *YouTube Says Just 2.5% Of Its Traffic Is Music-Related*, Digital Music News (Apr. 29, 2016), <https://www.digitalmusicnews.com/2016/04/29/youtube-says-just-2-5-of-its-traffic-is-music-related>.

Even where a rightsholder has not granted permission for copying, there are numerous circumstances in which downloading audio and video from YouTube is a non-infringing fair use. These include using portions of a video or song as part of a critical review, in a parody, or as raw material for new and different creative work. *See Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 583 (1994) (parody of a song is a fair use); *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1178 (9th Cir. 2013) (use of copyrighted image in video was a fair use); *Katz v. Google Inc.*, 802 F.3d 1178, 1183 (11th Cir. 2015) (use of copyrighted photo to illustrate a pointed critique of photo's subject was fair use). Making a complete copy of a work in order to use portions of it in a new work can also be fair use. *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1523 (9th Cir. 1992), as amended (Jan. 6, 1993).

In short, there many millions of examples of *lawful* copying of video and audio from YouTube.

Converters for stream-ripping and video downloading are simply one tool that facilitates such copying. Numerous software programs installed locally on a user's device can perform the same function. Whether web-based or local, these programs take video that the user already has access to, and save it locally in a variety of formats, including audio-only formats. They perform a similar function to a web browser and its save or print commands.

Providing web-based access to a software program that can also be installed

locally is common on today's Internet. For example, webmail services like Gmail take the place of email client software installed locally on a user's computer or device. Just as Gmail replaces a downloadable email client with an advertising-supported, web-based service, stream-ripping sites like FLVTO and 2conv replace desktop-based video downloading programs.

B. Providing A Copying Function Does Not Create Liability for Infringement.

The law is clear that simply providing the public with a tool for copying digital media does not give rise to copyright liability.

First, a website operator like Mr. Kurbanov does not engage in direct copyright infringement, because the materials allegedly being copied “are of a type and kind selected by the subscriber and at a time initiated by the subscriber.” *CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d 544, 555 (4th Cir. 2004); *see also Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 668 (9th Cir. 2017) (affirming that direct infringement liability applies only to the entity that is the “direct cause” of the infringement). Because the FLVTO and 2conv converters simply respond to users' request for specific downloads as those requests arrive, it is the users, not the websites, whose volitional conduct causes copying to occur. Therefore, the websites do not directly infringe.

Nor are FLVTO and 2conv secondarily liable for the activities of those who use the tool for infringement. Contributory liability requires “intentionally

inducing or encouraging direct infringement.” *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005). Simply providing a technology that can be used to infringe does not create contributory liability when that technology is “capable of substantial non-infringing uses.” *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 442 (1984).

Evidence of an intent to induce infringement by others can lead to contributory liability, but such intent must be shown by “purposeful, culpable expression and conduct.” *Grokster*, 545 U.S. at 915. Appellants have not alleged any such thing. Instead of “purposeful expression,” they simply cite to text on the websites that refers to the converters’ value for all kinds of uses—including, presumably, lawful ones. *See, e.g.*, Complaint (ECF No. 1) ¶ 40 (the site “makes converting videos to mp3 online easier and faster than ever”). Instead of purposeful conduct, Appellees are accused merely of providing a service that enables copying. That cannot show an intent to induce infringement unless the service provider knows that a “specific person” will use the service to infringe, but continues providing service to that person. *BMG Rights Mgmt. (US) LLC v. Cox Commc’ns, Inc.*, 881 F.3d 293, 307 (4th Cir. 2018).

Vicarious liability requires showing that “the right and ability to supervise the infringing activity.” *Nelson-Salabes, Inc. v. Morningside Dev., LLC*, 284 F.3d 505, 513 (4th Cir. 2002). To show an ability to supervise infringing conduct, a

plaintiff must show that the defendant had the technical ability to identify and remove infringements. *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 746 (9th Cir. 2019). And a defendant’s “failure to change its operations to avoid assisting [users] to distribute . . . infringing content . . . is not the same as declining to exercise a right and ability to make [third parties] stop their direct infringement.” *Id.* (quoting *Amazon*, 508 F.3d at 1175).

The allegations in this case do not meet that standard. The converters do little more than accept the Internet address of a video hosted at YouTube or another site and facilitate the downloading of that video or its audio track. Site operators have no practical means of knowing which videos are licensed for downloading, or to whom. And they have no practical means (nor any independent need) of identifying users, much less controlling them.

Instead, like the videocassette recorders of an earlier technological era, converters are neutral technologies. They are no more “piracy valets” than an actual valet is a “stolen car valet”—even if some of the cars they agree to park turn out to have been stolen.

Given the weakness of Appellants’ theory of liability, exercising jurisdiction over Mr. Kurbanov will hardly advance the interests of this forum in “vindication of copyright laws.”

II. Common, Non-Targeted Website Features Don't Subject A Foreign Website Owner to Personal Jurisdiction.

To analyze specific jurisdiction, courts in this Circuit consider “(1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs’ claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally ‘reasonable.’” *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003).

The district court correctly recognized that Appellants cannot satisfy either of the first two factors. Simply retrieving video and audio data from YouTube in response to discrete customer requests is not meaningfully interactive. Selling advertising space through a broker that in turn targets ads at users based on their location—whatever their location—does not show any intention to target Virginia users. Finally, “Terms of Use” on the websites do not create a meaningful commercial relationship for jurisdiction purposes.

A. The District Court Correctly Categorized the Websites As Semi-Interactive.

Purposeful availment exists where contacts “proximately result from actions by the defendant himself that create a ‘substantial connection’ with the forum State.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). This Circuit has adopted the *Zippo* test, which divides websites into three separate categories:

interactive, semi-interactive, and passive. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Interactive websites are generally subject to personal jurisdiction, while passive websites are not; semi-interactive websites must be examined by the court before a determination can be made. *Id.*

Here, the websites at issue here are semi-interactive; as explained by the district court, there is no evidence that users exchanged multiple files with the websites, and users do not need to create an account, sign in, or even register in order to use the websites. Memorandum Opinion 11. In fact, the websites barely rise above the level of “passive” websites—those that “do[] little more than make information available to those who are interested in it.” *Zippo*, 952 F. Supp. at 1124. All websites receive input from each visitor, in the form of Uniform Resource Locators (URLs) that specify the pages, images, and other content the user wishes to see. The FLVTO and 2conv websites receive one additional URL from the visitor when they use the converter tool—one that identifies a video already made available to the public on YouTube or another video-sharing website. The converter then retrieves the video identified by the user. The only potential distinction between a website that hosts a converter and a purely passive website, as defined in *Zippo*, is the additional step of retrieving publicly available data from another website.

B. Geo-Targeting of Advertisements by Third Parties Does Not Establish Targeting of Virginians by the Websites.

Websites that do not directly sell goods or services to its users often generate revenue through online advertisements hosted on their website. These online advertisements have geo-targeting capabilities, meaning that third-party advertising networks serve users specific advertisements based on guesses about their location. Here, Appellants contend that the Websites' use of geo-targeted advertisements demonstrates that Mr. Kurbanov was targeting Virginians and Americans.

This is not enough to show purposeful targeting of the forum, because geo-targeting results from unilateral acts by visitors. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). In *World-Wide Volkswagen*, the court explained that while it was foreseeable for a consumer to have brought automobiles sold in one state to another, purposeful availment did not exist because Volkswagen did not make efforts to serve the market for its product in the plaintiff's state. *Id.* Any user, regardless of their location, is subject to geo-targeting through advertisements on Appellee's website that are selected by a third-party broker. If using this common form of advertising were enough to constitute purposeful availment, then simply employing an advertising broker of this type would create jurisdiction wherever *any* website user resides—a massive expansion of personal jurisdiction that would affect millions of websites.

C. Boilerplate Terms of Use on a Website Do Not Create a Meaningful Commercial Relationship

Today, all but the most basic of websites contains contractual terms that purport to apply whenever a visitor connects to the site. Typically, they include prohibitions on illegal or disruptive conduct and a waiver of liability. The enforceability of these terms is often questionable, as these contracts of adhesion are plagued by problems of user assent and unconscionability. The contractual relationships they create are dubious, at best.

In this case, it is not at all clear whether Mr. Kurbanov would be able to enforce any term of his websites' Terms of Use, beyond simply denying service to a particular user on a given visit.

The Supreme Court has long held that merely having a contract with a party does not automatically establish purposeful availment. *Burger King Corp.*, 471 U.S. at 479. In *Burger King*, the Court examined several factors to establish whether defendants purposely established minimum contacts within the forum: “prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing.” *Id.* Users who agree to the Terms of Use of the Websites do not have any option to negotiate or waive any of the provisions in the agreement. With the interactions between the user and the Website based solely on the actions of the user, the relationship is very much unilateral; and as the Supreme Court has held, “[t]he unilateral activity of those

who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). As with the use of geo-targeted advertising networks, holding that the presence of Terms of Use on a website constitutes purposeful availment would dramatically expand the scope of personal jurisdiction.

III. Maintaining the Limits of Personal Jurisdiction Will Promote the Resolution of Important Questions Through Contested Litigation Instead of Default.

Over the last several years, major copyright and trademark holders, including many of the Appellants here and their amici, have sued foreign website owners who are unlikely, or indeed unable, to appear in a U.S. court to respond. Upon the inevitable default, the plaintiffs request staggeringly broad injunctions that purport to bind nearly every type of intermediary business that forms part of the Internet’s infrastructure, enlisting them to help make the foreign website disappear from the Internet.

This litigation campaign raises vital, largely unanswered questions about the proper application of injunctions to non-parties, and the interaction between third-party injunctions and the substantive limits on copyright and trademark liability. In particular, these cases raise the question of whether neutral providers of Internet services to websites can be considered to be in “active concert or participation” with a defendant website and thus can be bound by an injunction under Federal

Rule of Civil Procedure 65. But confronting these questions in cases that seem designed to lead to default risks shortchanging the development of the law, effectively resolving challenging questions by default, without adversarial honing.

The due process limits on federal courts' exercise of personal jurisdiction are part of a legal framework that encourages the resolution of important legal questions through adversarial litigation. Mr. Kurbanov's appearance through counsel in this case to challenge personal jurisdiction is unusual, but it serves to illustrate the importance of preserving the limits of personal jurisdiction to encourage sound development of the substantive law.

A. Litigation Against Foreign Website Owners In Pursuit Of Broad Injunctions On Default

Appellants, along with other major media and entertainment companies and major brands, commonly file suit against the owners of foreign websites without regard to the jurisdiction of U.S. courts, apparently with the goal of obtaining broadly written injunctions aimed at numerous third parties. In most of these cases, injunctions issued without any consideration of their proper scope.

For example, the plaintiffs in *Paramount Pictures Corp. v. Does*, obtained an injunction against a foreign website owner who did not appear in court.

Paramount Pictures Corp. v. Does, No. 15-CV-5819, 2015 WL 10013786, (S.D.N.Y. Nov. 24, 2015). That injunction purported to bind third-party service providers to stop providing further services to defendants. *Id.* at *3. In their brief,

the plaintiffs cited to numerous other cases decided on default, in which unopposed preliminary injunctions were granted with language directed at a broad range of non-party service providers. 1:15-cv-05819-PAC, Dkt. 24, at 22-23, 46. In the words of the plaintiffs in that case, the injunction “ordered third-party service providers, including web hosting and payment service providers, to cease or disable their services” to the defendant. The court did not consider which entities can properly be bound by an injunction. Nor did the court consider whether the Digital Millennium Copyright Act’s protections for intermediaries, particularly the limitation on remedies of 17 U.S.C. § 512 (a)-(c), limited the reach of the injunction.

Similarly, in *Arista Records LLC v. Vasilenko*, plaintiffs obtained a copyright-related injunction against a foreign website that they proceeded to serve on the service provider CloudFlare and other internet intermediaries. *Arista Records LLC v. Vasilenko*, No. 15-21450 (S.D. Fla. 2015). Although CloudFlare contested the applicability of the injunction, the court left undecided whether CloudFlare was “in active concert or participation” with the defendants under Rule 65(d), such that it would be bound by the injunction. *Id.*, ECF No. 68 (Apr. 28, 2018).

The case of *American Bridal v. Partnerships & Unincorporated Associations*, 192 F. Supp. 3d 924 (N.D. Ill. 2016), began similarly, but ultimately

did not lead to orders against numerous service providers, because the court, like the district court in this case, considered the issue of personal jurisdiction. In *American Bridal*, holders of trademarks in clothing brands obtained a temporary restraining order against over three thousand foreign website defendants for selling allegedly counterfeit products, and for copyright infringement. *Id.* at 929. Plaintiffs leveraged that order to shut down many of the websites, including numerous websites whose owners complained about a lack of due process. *Id.* at 933. Subsequently, the court dismissed the case *sua sponte* for lack of personal jurisdiction. *Id.* at 935.

B. Resolution of Similar Cases on Default Has Raised Important Questions That Require A Full Hearing on the Merits.

The injunctions against third-parties that result from cases similar to this one that are decided on default have significant legally problematic elements, including purporting to bind non-parties without careful consideration of the scope of Rule 65(a). That rule places limits on the scope of allowable injunctions: an injunction may only bind people with actual notice of the injunction, and only if they are either the parties, people directly connected to the parties because they are their officers, agents, servants, employees, or attorneys, or other persons who are in “active concert or participation” with any of the above. Rule 65(d)(2)(A-C).

In an analogous case, *Blockowicz v. Williams*, the Seventh Circuit held that a website’s operators were not in “active concert and participation” with their users

when users had posted defamatory material on the website. *Blockowicz v. Williams*, 630 F.3d 563, 568 (7th Cir. 2010). This reading of Rule 65 applied even though the website did not remove the defamatory content after an injunction was issued; the court found that plaintiffs had “failed to present any evidence that [the website operators] had any contact with the defendants after the injunction was issued, or that they worked in concert with the defendants to violate the injunction.” *Id.*

The Digital Millennium Copyright Act, Section 512, also limits injunctions against internet intermediaries. Section 512 establishes safe harbors that, if met, constrain the forms that injunctions against service providers may take. 17 U.S.C. §512(a-d, j). At its greatest extent, an injunction against a qualifying service provider can only grant relief that is the “least burdensome to the service provider among the forms of relief comparably effective for that purpose.” 17 U.S.C. §512(j)(1)(A)(iii). In addition, injunctions must also give the service provider notice and an opportunity to be heard. 17 U.S.C. §512(j)(3).

However, as the cases described above illustrate, these issues are not given the careful consideration they need when injunctions are issued in a default judgment.

C. Careful Attention to a Foreign Website Owner’s Lack of Contacts with the Forum Helps Channel Resolution of Complex Legal Questions Through Adversarial Litigation Rather Than Default

Defendants lacking minimum contacts with a forum are, almost by definition, unlikely to appear in court. Therefore, ensuring that minimum contacts exist helps promote resolution of cases through contested litigation, rather than by default, promoting decisions made with a full record of evidence and argument. *See U.S. v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982) (“[T]he clear policy of the Rules [of Civil Procedure] is to encourage dispositions of claims on their merits.”).

This Court has not yet ruled on whether a district court must *sua sponte* address jurisdictional issues before issuing a default judgment. *See Williams v. Advert. Sex, LLC*, 410 Fed. Appx. 578, 580 (4th Cir. 2011). However, several district courts in this circuit have so ruled. *See, e.g., Winzeler v. Sanchez*, 2015 WL 12645001 (E.D. Va. July 28, 2015) (the Court must have both subject matter and personal jurisdiction over a defaulting party); *JTH Tax Inc. v. Knight*, No. 2:13-CV-583, 2014 WL 1050905, at *6 (E.D. Va. Mar. 17, 2014) (“The Court should also ensure that it has personal jurisdiction over the absent defendant.”); *Saiyed v. 3-S Network Inc.*, No. 3:14-CV-528, 2015 WL 11110956, at *1 (E.D. Va. May 21, 2015) (“it being the responsibility of courts to determine jurisdiction *sua sponte*...”); *Freedom Hawk Kayak v. Ya Tai Elec. Appliances Co.*, 908 F. Supp. 2d 763, 767 (W.D. Va. 2012) (applying Federal Circuit personal jurisdiction law).

In this case, affirming the district court's well-considered holding that Mr. Kurbanov does not have minimum contacts with Virginia would serve the public interest by discouraging litigants like the Appellants here from bringing cases that are most likely to end in default judgments and the entry of broad, unchallenged injunctions that impact numerous non-parties.

Dated: April 18, 2019

Respectfully submitted,

/s/ Mitchell L. Stoltz

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS
PURSUANT TO FED. R. APP. P. 32(A)(7)(C)**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify as follows:

1. This Brief of *Amicus Curiae* in Support of Defendant-Appellee complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,142 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief 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 brief has been prepared in a proportionally spaced typeface using Microsoft Word 2011, the word processing system used to prepare the brief, in 14 point font in Times New Roman font.

Dated: April 18, 2019

/s/ Mitchell L. Stoltz
Mitchell L. Stoltz

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on April 18, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: April 18, 2019

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