THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Docket No. 2020-0496

Debbie Banaian

Plaintiff/Appellant

v.

Ann Elizabeth Bascom, et al

Defendants/Appellees

MANDATORY APPEAL FROM A FINAL DECISION OF THE HILLSBOROUGH COUNTY, NORTHERN DISTRICT, SUPERIOR COURT

BRIEF OF DEFENDANT/APPELLEE JACOB D. MACDUFFIE

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47 U.S.C.A. § 230

§ 230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) 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;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit--

(A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of Title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

STATEMENT OF THE CASE

Plaintiff/Appellant Debbie Banaian alleges that on May 17, 2016, while working as a teacher at the Merrimack Valley Middle School, a student at the Merrimack Valley High School "hacked" the Middle School website and changed the page maintained by Banaian so that it "suggest[ed] that Ms. Banaian was sexually perverted and desirous of seeking sexual liaisons with Merrimack Valley students and their parents." Pl's Compl., ¶¶ 2, 5.[1] Banaian refers to this original hacker as the "Website Usurper." Pl's Compl., ¶ 2. She alleges further that soon after the initial hack was completed, another student (referred to as the "Website Tweeter") "took a picture of the altered website and tweeted that image over Twitter." Pl's Compl., ¶ 6.

Banaian filed her original complaint on May 16, 2019, just before the expiration of the statute of limitations. In that two-count complaint, Banaian alleged that the Website Usurper and Website Tweeter, along with approximately twenty John and Jane Does alleged to have re-tweeted the original tweet, defamed her and thereby inflicted emotional distress upon her. Pl's Compl., ¶¶ 8, 10-20. Defendant/Appellee Jacob MacDuffie was not named as a defendant in Banaian's original complaint, was not served with a copy of that complaint, and was not made aware of this action until November, 2019 after Banaian requested that the trial court add MacDuffie in place of one of the John Does.[2]

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[1] Plaintiff/Appellant did not provide a copy of her Complaint, but co-Defendant/Appellee Katie Moulton included a copy with her appendix. Rather than supply an additional copy, references made herein to the Complaint are to the appendix of Moulton's brief.

[2] MacDuffie argued in his motion to dismiss that Banaian's claims against him were untimely and barred by the statute of limitations, but the trial court declined to reach that issue as it found that MacDuffie was otherwise immune from suit in this case. Feb 12, 2020 Order at p. 9 (Pl's App. at Br. p. 27).

In her complaint, Banaian alleges only that MacDuffie and his fellow "Re-Tweeters" (as that label implies) simply retweeted the image that had been originally tweeted by the Website Tweeter. Pl's Compl., ¶ 6. There are no allegations in Banaian's complaint that MacDuffie or any of the Re-Tweeters added anything to the original tweet posted by the Website Tweeter, modified the original tweet in any way, included any commentary with their retweet of the allegedly offending image, or did anything more than simply utilize the retweet function of the Twitter service. *See* Pl's Compl., ¶ 6. Banaian does not allege that MacDuffie as a Re-Tweeter had any involvement with the alteration of the school website by the Website Usurper or with the capture of the image of that page that was sent out by the Website Tweeter. *See* Pl's Compl., ¶ 6. Banaian's sole claim against MacDuffie and his fellow Re-Tweeters is that by retweeting the original tweet, they "communicat[ed] the [Website Tweeter's] posting to a variety of casual internet participants who would happen to encounter the tweet communication." Pl's Compl., ¶ 6.

MacDuffie, along with several of his alleged Re-Tweeters, moved to dismiss the claims against them arguing, among other things, that the Communications Decency Act, 47 U.S.C. § 230 (the "CDA"), federally preempted and barred Banaian's claims relating to this online publication. The trial court ultimately agreed and granted MacDuffie's motion to dismiss. *See* Feb. 12, 2020 Order (Pl's Br. at p. 19). Banaian's subsequent motion for reconsideration was denied by Order dated May 28, 2020, Pl's Br. at p. 30, and on October 5, 2020, the trial court entered a further order directing that its February 12, 2020 decision be treated as a final decision on the merits under Superior Court Rule 46(c)(1). Pl's Br. at p. 29. This single-question

appeal contesting the trial court's interpretation of the immunity provided by the CDA followed.

SUMMARY OF ARGUMENT

The trial court correctly determined that MacDuffie and his fellow Re-Tweeters were "users" under the CDA entitled to immunity for their alleged republication of defamatory material on Twitter. Section 230(c)(1) of the CDA protects from liability a "user" of an interactive computer service that a plaintiff seeks to hold responsible for disseminating information provided by another. As a "naked retweeter" of the Website Tweeter's original message, MacDuffie fits squarely within the scope of immunity provided by Congress to users of online services by Section 230(c)(1). The trial court's well-reasoned decision granting the Re-Tweeters' motions to dismiss should therefore be affirmed.

In this appeal, Banaian argues only that MacDuffie and the other alleged Re-Tweeters should not be considered "users" under the CDA. In support of that argument, Banaian argues primarily that this Court should ignore the plain text of the CDA and instead resort to public policy or legislative intent to find that the immunity provisions of § 230 apply only to "Good Samaritans, online service providers, [or] anyone who provides a front end to the Internet." Pl's Br. at p. 17. The language of the statute does not warrant such a conclusion and this Court should decline Banaian's invitation to rewrite the text the United States Congress saw fit to include in the CDA.

ARGUMENT

I. Background and Application of the Immunity Provided by Section 230 of the CDA

The trial court found in its February 12, 2020 Order that Banaian's claims against MacDuffie and the other alleged Re-Tweeters were barred by Section 230 of the CDA, Pl's Br. at p.27, which in relevant parts provides that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," 47 U.S.C. § 230(c)(1), that an "information content provider" is a person "responsible, in whole or in part, for the creation or development of information provided through the internet or any other interactive computer service," 47 U.S.C. § 230(f)(3), and that "no cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(e). Although section 230(c)(1) does not explicitly mention immunity, the majority of federal courts have interpreted the CDA to establish broad federal immunity to any cause of action that would make providers or users of interactive computer services liable for information originating with others. *See Jones v. Dirty World Entertainment Recordings, et al.,* 755 F.3d 398, 406-07 (6th Cir. 2014) (collecting cases representing a majority of federal circuits interpreting the CDA in this manner).

More recently, this Court had an opportunity in *Teatotaller, LLC v. Facebook, Inc.*, to address the reach of Section 230 and came to the same conclusion. 173 N.H. 442 (2020). In the *Teatotaller* decision, this Court recognized that "[t]here has been near-universal agreement that section 230 should not be construed grudgingly, but rather should be given broad construction." *Id.* at 449 (quotations and citations omitted). Though this

Court in *Teatotaller* ultimately found that a *pro se* small claims contract action might not be barred by the CDA and so remanded the case for further proceedings, the Court did join with those other jurisdictions which have recognized that § 230 confers liability to providers or users of interactive computer services. 173 N.H. at 449-50. This broad immunity provided under section 230 maintains the "robust nature of internet communication and, accordingly... keeps government interference in the medium to a minimum," it "protects against the 'heckler's veto' that would chill free speech," and it encourages self-regulation by service providers. *Jones*, 755 F.3d at 407-08.

Courts, including this one, have uniformly recognized that § 230 applies to bar a claim if the defendant asserting immunity is "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *Teatotaller*, 173 N.H. at 450 (citations omitted); *see also Jones*, 755 F.3d at 409. These three prongs of this test for immunity under § 230 are easily satisfied by MacDuffie and his fellow Re-Tweeters in this case, particularly since Banaian only contests whether the Re-Tweeters qualify as "users" under the first prong of the test – Banaian does not argue at all against the second or third prongs, and the single question she has presented in this appeal asks the Court only to consider whether MacDuffie and the other alleged Re-Tweeters "are 'users' within the meaning of the [CDA]."

II. MacDuffie is a "user" Entitled to Immunity under §230(c)(1)

The first prong of the test for immunity under § 230 asks whether a defendant raising the defense qualifies as a "provider or user of an interactive computer service," and is the only element of the test challenged by Banaian on appeal. Banaian suggests that this Court should look past the plain and

unambiguous meaning of the term "user" found within that definition to find that "user" should *not* include individuals like the Re-Tweeters, but instead only "computer Good Samaritans, online service providers, [and] anyone who provides a front end to the Internet." Pl's Br. at p. 17. The Court should decline Banaian's invitation to rewrite § 230 in this manner and should instead affirm the trial court's decision finding that the Re-Tweeters were entitled to immunity as "users" of an "interactive computer service."

A. The Term "user" Unambiguously Includes Individuals Like MacDuffie and the Other Alleged Re-Tweeters

Though there are very few cases addressing § 230 immunity and individual "users," this Court has previously considered how to define a "user" in the context of the online service Myspace. In *State v. White*, the Court was asked whether a registered sex offender's failure to report to law enforcement that he had created a Myspace profile violated a criminal statute requiring that such offenders report changes to or the creation of "online identifiers." 164 N.H. 418, 420 (2012). That statute defined "online identifiers" to include "user identification" and "user profile information," so this Court was tasked with deciding the threshold question of whether a Myspace account was a "user profile" that would constitute an "online identifier." *Id.* at 421. To start that analysis, the court turned first to the statute's plain language and noted that "[t]he relevant definition of 'user' is '[o]ne who uses a computer, computer program, or online service." *Id.* (quoting *American Heritage Dictionary of the English Language* 1908 (5th ed. 2011)) (citing *Webster's Third New International Dictionary* 2524 (unabridged ed. 2002)). Based upon that definition, the Court concluded that a Myspace account was, indeed a "user profile" and thus an "online identifier," and saliently noted that it would be:

> difficult to imagine what the statute covers by use of the phrase

> 'user profile' if not an account on a social networking website with which users share personal information with others through self-created 'profiles.'

White, 164 N.H. at 424.

The same analysis should apply here to MacDuffie and the other alleged Re-Tweeters. Under the dictionary definition applied by this Court in *White*, MacDuffie's conduct plainly involved the use of "a computer, computer program, or online service," thus making him a "user." At the time of their alleged conduct, MacDuffie and the Re-Tweeters were on and *using* Twitter, which is a social networking site allowing users to share information. Just as in *White*, it would be difficult to imagine what § 230 covers by use of the phrase "user" if not someone like MacDuffie who had an account on Twitter and was actively *using* that social networking service to send the retweet at issue in this case.

A California Court of Appeal reached exactly that conclusion in *Grace v. eBay, Inc.* with respect to § 230 and found "based on the plain meaning of the statutory language that the term 'user' as used in the statute encompasses *all persons who gain access to the Internet through an ISP or other service or system*, *including both individual computer users and website operators*." 16 Cal. Rptr. 3d 192, 198 (Cal. Ct. App. 2004) (vacated and settled after appeal) (all emphasis added). In *Barrett v. Rosenthal*, 146 P.3d 510 (Cal. 2006), a case discussed extensively in the trial court's decision, the California Supreme Court also expressly held that Congress included individuals within the definition of "user" under the CDA. The *Barrett* court found that there was "no basis for concluding that Congress intended to treat service providers and users differently" and it refused to "construe the statute so as to render the term 'user' inoperative." 146 P.3d at 529. This Court should likewise decline Banaian's invitation to set aside the ordinary

meaning of "user," ignore previously utilized definitions for that term, *see White*, 164 N.H. at 424, and essentially rewrite § 230 to "render the term 'user' inoperative." *Barrett*, 146 P.3d at 529.[3,4]

B. Banaian has not Identified an Ambiguity In the Statutory Language Requiring the Court to Resort to Interpretation of Legislative History

Though Banaian urges this Court to review the legislative history of the CDA and reinterpret the statute to define "user" in a manner more to her liking, Banaian has failed to identify an ambiguity in the immunity provisions of § 230 that would justify a look beyond the plain language used in the statute. This Court has long abided by the rule that when interpreting a statute, it "first look[s] to the plain meaning of the words used and will consider legislative history only if the statutory language is ambiguous."

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[3] Several other courts have likewise extended the immunity provided by § 230 to individual users under similar or analogous circumstances. In *Directory Assistants, Inc. v. Supermedia, LLC*, 884 F.Supp. 2d 446, 451 (E.D. Va. 2012), the court found that an individual user forwarding an email was a "user" immune from liability. Likewise in *Mitan v. A. Neumann & Assocs., LLC*, No. 08-6154, 2010 WL 4782771 at *4 (D.N.J. Nov. 17, 2010), the court recognized that an individual reposting defamtory content on the internet received from another was entitled to immunity under § 230.

[4] At least one commentator is also in agreement. In his 2013 article entitled "When Retweets Attack: Are Twitter Users Liable for Republishing the Defamatory Tweets of Others?", Daxton R. Stewart surveyed this very issue and concluded that "courts have yet to treat 'users' and 'providers' of interactive computer services different, and there is no guidance in the language of the law itself or its legislative history that suggests that Congress intended Section 230 immunity to be stronger for providers than users. Quite the contrary, users necessarily come under the definition of 'interactive computer service,' which requires 'multiple users." He concluded after reviewing the decisions in this area that "*it could not be more clear that the 'naked retweet' – that is, pushing the 'Retweet' button to circulate somebody else's tweet to one's own followers... - would not trigger republisher liability for defamation.* ***Section 230 of the [CDA] protects Twitter users when they retweet others.***" Journalism & Mass Communication Quarterly, 90(2) 233-247 (all emphasis added).

Reid v. New Hampshire Att'y Gen., 169 N.H. 509, 522 (2016) (quoting *Union Leader Corp. v. N.H. Retirement Sys.*, 162 N.H. 673, 676 (2011)). Here, there is nothing ambiguous about the term "user" as it is used within § 230 and thus no reason to resort to a review of the legislative history behind its enactment.

To the extent Banaian is suggesting that § 230 should be rewritten to better serve a public policy aimed at protecting children, Pl's Br. at p. 13, she has not sufficiently developed that argument to merit consideration on appeal. Moreover, this Court has long cautioned that public policy "is a very unruly horse, and when once you get astride it, you never know where it will carry you. It may lead you from the sound law." *Hill v. Spear*, 50 N.H. 253, 274 (1870). "Matters of public policy are reserved for the legislature," *In re Kilton*, 156 N.H. 632, 645 (2007), and the question of "what is the public policy of a state, and what is contrary to it... will be found to be one of great vagueness and uncertainty" and one that falls outside the range of a court's traditional "duty and functions." *Glover v. Baker*, 83 A. 916, 932 (N.H. 1912); *see also Tamelleo v. New Hampshire Jockey Club, Inc.*, 102 N.H. 547, 549 (1960) (holding that making drastic changes to public policy "is not a proper function of this court."). Though judicial authority "undoubtedly exists to declare public policy unsupported by legislative announcement," such a judicially-declared policy "must be based on a thoroughly developed, definite, persistent and united state of the public mind. There must be no substantial doubt about it." *Id.; see also Welzenbach v. Powers*, 139 N.H. 688, 689-90 (1995) (citation omitted). In this case, Banaian has not articulated any reason to turn away from the plain and ordinary meaning of "user" in favor of some poorly defined public policy against insulating individuals from liability for the republication of other's material online.

III. Twitter is an "Interactive Computer Service" Provider Under the CDA

The first prong of the test for immunity under § 230 also requires that the "user" be using an "interactive computer service." *Teatotaller*, 173 N.H. at 450; *see also Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009); *Morton v. Twitter, Inc.*, 2021 WL 1181753 (D.C.D. Cal. Feb. 19, 2021) (slip op.). Banaian does not dispute that Twitter would qualify as such a service, and at least one court has determined that "Twitter is clearly an interactive service provider." *Morton*, 2021 WL 1181753 at *3. As the *Morton* court noted, Twitter is an "online microblogging and social media platform [that] allows its users to post messages on the platform for the public to see." Every decision that the *Morton* court reviewed "has treated Twitter as an interactive computer service provider, even at the motion to dismiss stage." *Id.* (collecting cases determining that Twitter is an "interactive computer service"). This Court should follow and find that Twitter qualifies as an "interactive computer service" under § 230. *See Teatotaller*, 173 N.H. at 450 (noting that Facebook was "unquestionably an interactive computer service.").

IV. Banaian's Claims Seek to Treat Re-Tweeters as Publishers or Speakers

The second prong of the test for whether to grant an individual immunity under § 230 looks to whether a plaintiff seeks to hold the defendant "liable as a publisher or speaker." *Teatotaller*, 173 N.H. at 451 (citations omitted); *see also Jones*, 755 F.3d at 409. Banaian does not challenge this aspect of the test, either, presumably because her claims of defamation and emotional distress are all directly based upon such publisher or speaker liability. This Court has recognized that defamation is "[t]he prototypical cause of action" seeking to impose such liability, and that

liability under § 230 may apply where the "duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a publisher or speaker." *Teatotaller*, 173 N.H. at 451 (citations and quotations omitted). While defamation is the "prototypical cause of action" subject to § 230 immunity, "what matters is not the name of the cause of action – defamation versus negligence versus intentional infliction of emotional distress – what matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Morton*, 2021 WL 1181753 at *4. Both Banaian's claims of defamation and emotional distress are based upon alleged republication by the Re-Tweeters and would require the court to treat them as "publishers or speakers" of content provided by the Website Tweeter. Banaian's causes of action therefore fall within the second prong of the test for immunity under § 230, and this aspect of the test is consequently also easily met in this case.

V. The Retweets at Issue Qualify as "Information Provided by Another Information Content Provider"

The third and final prong of the test for whether to grant immunity under § 230 is likewise not challenged by Banaian, nor could it be given the allegations in her complaint. That third prong looks to whether a user published "information provided by another information content provider," *Teatotaller*, 173 N.H. at 450, which is precisely what is alleged to have occurred here.[5] Banaian has alleged only that MacDuffie and his fellow Re-Tweeters retweeted an image created and tweeted by the Website Tweeter.

[5] Under the CDA, an "information content provider" is defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any interactive computer service." 47 U.S.C. § 230(f)(3). Banaian does not argue that MacDuffie or the other Re-Tweeters were responsible for the "creation or development" of the offending tweet, just that they retweeted it.

Pl's Compl., ¶ 6. The "information content provider" is therefore the Website Tweeter[6], not MacDuffie or the Re-Tweeters, so this third and final prong of the test for immunity is met as well.

CONCLUSION AND RELIEF SOUGHT

MacDuffie and his fellow Re-Tweeters qualify as "users" of an "interactive computer service" who are facing state law defamation claims based upon republication of information provided by "another information content provider." The liability shield of § 230 consequently applies to MacDuffie's alleged conduct, and Banaian's claims fail as a matter of law.

The trial court correctly determined that MacDuffie and his fellow Re-Tweeters are "users" within the meaning of the CDA who are immune from liability in this case. The trial court appropriately granted MacDuffie's motion to dismiss. This Court should therefore answer Banaian's single question presented in the affirmative, affirm the trial court's decisions in this case, and uphold the trial court's dismissal of the claims against MacDuffie.

Defendant/Appellee Jacob D. MacDuffie therefore respectfully requests that this Court AFFIRM the challenged decision of the trial court granting his motion to dismiss.

[6] Or perhaps the Website Usurper, but for the Court's analysis here the distinction is one without a difference. All that matters is that MacDuffie and the Re-Tweeters did not "create or develop" the information that was disseminated through their alleged retweets.

Respectfully submitted,

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by his attorneys,

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Dated: June 10, 2021 by: /s/ Adam R. Mordecai

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REQUEST FOR ORAL ARGUMENT

Pursuant to Supreme Court Rule 16(3)(h), Appellee requests fifteen minutes for oral argument on behalf of Jacob D. MacDuffie and designates Adam R. Mordecai, Esq. to represent his interests at that argument.

CERTIFICATIONS

Pursuant to Supreme Court Rule 26(7), undersigned counsel hereby certifies that this brief contains 3683 words and complies with Rule 16(11).

Undersigned counsel further certifies that a copy of this brief has been served upon registered e-filers of of record through the Court's electronic filing system.

Dated: June 10, 2021 /s/ Adam R. Mordecai
Adam R. Mordecai, Esq., #17727