

Nos. 17-35587, -35588

**United States Court of Appeals
for the Ninth Circuit**

VHT, INC., a Delaware corporation,

Plaintiff-Appellee/Cross-Appellant,

– v. –

ZILLOW GROUP, INC., a Washington corporation;
ZILLOW, INC., a Washington corporation,

Defendants-Appellants/Cross-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR WESTERN WASHINGTON, SEATTLE
JAMES L. ROBERT, SENIOR DISTRICT JUDGE

**BRIEF FOR *AMICI CURIAE* THE AMERICAN SOCIETY OF MEDIA
PHOTOGRAPHERS, INC., DIGITAL MEDIA LICENSING
ASSOCIATION, INC., GRAPHIC ARTIST GUILD, INC., AND
NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, INC.
IN SUPPORT OF PLAINTIFF-APPELLEE/CROSS-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* submit the following corporate disclosure statements:

1. American Society of Media Photographers, Inc. states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more its stock.

2. Digital Media Licensing Association, Inc. states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more its stock.

3. Graphic Artists Guild, Inc. states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more its stock.

4. National Press Photographers Association, Inc. states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more of its stock.

s/ Alicia Calzada
Alicia Calzada
Attorney for Amici Curiae
Dated: December 18, 2017

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Pursuant to Federal Rule of Appellate Procedure 29(a), *amici curiae* the American Society of Media Photographers, Inc., Digital Media Licensing Association, Inc., Graphic Artists Guild, Inc., and National Press Photographers Association, Inc. respectfully submit this brief in support of plaintiff-appellee/cross-appellant VHT, Inc. (“VHT”). This brief is submitted with consent by the parties.¹

INTEREST OF AMICI CURIAE

The American Society of Media Photographers, Inc. (“ASMP”) is the largest and oldest professional photographer member organization of its kind in the world. Part of ASMP’s core mission is to protect and promote the interests of still and motion photographers and associated imaging professionals, whose work appears in a wide variety of publications and markets. ASMP’s representatives frequently testify before Congressional committees and subcommittees regarding copyright and related matters, as well as on panels and in hearings organized by the U.S. Copyright Office. ASMP also advances the copyright interests of its members through its membership and participation in national and international copyright organizations. ASMP’s members shoot and register tens of thousands, if not

¹ The parties have consented to the filing of this *amicus* brief pursuant to Fed. R. App. P. 29(a)(2) and 9th Cir. R. 29-3. Pursuant to Fed. R. App. P. 29(a)(4)(E), *Amici* state that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *Amici*, their members, if any, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

hundreds of thousands, of images with the U.S. Copyright Office on an annual basis. Members rely on the copyright registration process as an effective means to secure copyright protection for their published and unpublished works.

Digital Media Licensing Association, Inc. (“DMLA”) (formerly known as the Picture Archive Council of America, Inc.) is a not-for-profit trade association that represents the interests of entities who license still and motion images to editorial and commercial users. Founded in 1951, DMLA’s membership currently includes over 100 image libraries worldwide that are engaged in licensing millions of images, illustrations, film clips, and other content on behalf of thousands of individual creators. Members include large general libraries as well as smaller specialty libraries, all of which support and provide livelihoods to individual visual artists. Over the years, DMLA has developed licensing standards, promoted ethical business practices, and actively advocated for copyright protection on behalf of its members. In addition, DMLA educates and informs its members on issues including technology, tools, and changes in the marketplace.

Graphic Artists Guild, Inc. (“GAG”) has advocated on behalf of graphic designers, illustrators, animators, cartoonists, comic artists, web designers, and production artists for fifty years. GAG educates graphic artists on best practices through webinars, Guild e-news, resource articles, and meetups. The *Graphic Artists Guild Handbook: Pricing & Ethical Guidelines* has raised industry standards,

and provides graphic artists and their clients guidance on best practices and pricing standards. GAG also advocates for graphic artists on Capitol Hill on a wide range of legislative initiatives, as well as internationally through active membership in global umbrella organizations. GAG is working closely with the Copyright Office to encourage the creation of a group registration option for graphic arts.

National Press Photographers Association, Inc. (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. The NPPA’s over 5,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism community all of whom rely on a robust copyright system to protect their livelihoods. Since its founding in 1946, the NPPA has been the *Voice of Visual Journalists*, vigorously promoting the constitutional and intellectual property rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. As part of its mission, the NPPA advocates for a robust copyright law, works with the Copyright Office and Congress in support of strong copyright law, and educates its members on their rights and responsibilities with regard to Copyright.

SUMMARY OF THE ARGUMENT

The Copyright Office and visual artists both have an interest in ensuring that the copyrights in each copyrightable image is registered – a challenge compounded

by the volume of works. Indeed, unlike creators of other types of copyrightable works, visual artists, particularly photographers, can create thousands of images per day, with each having economic value. Recognizing these challenges, the Copyright Office has routinely worked with visual artists and their associations to offer registration practices that permit group registrations of works. Without these group registrations, the burden of registering each work individually would be financially impossible as well as an administrative nightmare for both visual artists and the Copyright Office.

The form of registration does not dictate whether the images registered therein possess independent economic value, nor does it deprive the copyright owner of the statutory benefits ordinarily conferred. Moreover, the Copyright Act states clearly that the copyright in a compilation is independent of the copyright in the preexisting work within the compilation and importantly, and does not negatively affect the protection of the preexisting work.

Zillow would have this Court hold that, although the Copyright Office has permitted and, in fact, instructed visual artists and their associations to register multiple images in the form of “groups” or “databases” in effort to ease financial and administrative burdens, the copyright protections accorded to the individual images registered in such manner should be obliterated.

The undersigned coalition of visual artists associations² files this brief to address the inherent nature of photography and visual art as a means of creative expression resulting in images with unlimited potential for economic use, notwithstanding the manner in which they are registered.

ARGUMENT

I. The Group Registration Options are Designed to Ease the Financial and Administrative Burdens Associated with Registration of Multiple Works, While Conferring the Same Protection and Benefits.

A. Introduction to Group Registrations.

Registration is a time-consuming and expensive process for the copyright owner and the Copyright Office alike, particularly when multiple works are involved. Recognizing as much, the Copyright Office has established a variety of administrative procedures that permit registration of multiple works with one application and one filing fee. Specifically, the Copyright Office currently offers group registration options for the following types of works: serials; daily newspapers; daily newsletters; contributions to periodicals; published photographs; and automated databases. *See Compendium of U.S. Copyright Office Practices* (3d ed. Sept. 29, 2017), <https://www.copyright.gov/comp3/docs/compendium.pdf> (the

² For purposes of this brief, the terms, “visual artists,” “photographers,” and “the photography industry” are used to refer to graphic artists, photographers, and their licensing representatives; and the terms, “photography” and “images” are used to refer to the works they create.

“Compendium”), at § 1104.2. Provided the applicant satisfies the requirements for the applicable group registration option, the Copyright Office will issue one certificate of registration for the entire group of works. *See id.* §§ 1104.3, 1104.4.

The group registration options are intended to alleviate the financial and administrative burdens associated with the registration of a large number of works. As the legislative history of the 1976 Copyright Act explains, allowing “a number of related works to be registered together as a group represents a needed and important liberalization of the law.” H.R. Rep. No. 94-1476, at 154 (1976). Congress recognized that requiring separate applications “where related works or parts of works are published separately” may impose “unnecessary burdens and expenses on authors and other copyright owners.” *Id.* In some cases, requiring separate applications and a separate filing fee may cause copyright owners to forego registration altogether. *Id.*

B. Group Registration is Critically Important to Photographers and Their Licensing Representatives.

Group registration is critically important to photographers and their licensing representatives as a result of the unique way that photographs are created. Unlike creators of other copyrightable works, photographers and other visual artists can create hundreds, and sometimes thousands, of photographs per day. A recent survey indicates that a photographer produces an average quantity of 3,000 photographs per month, and that hundreds of photographs may be produced in a single shoot. *See*

Response Submitted on Behalf of the Coalition of Visual Artists (Jan. 30, 2017) to Notice of Proposed Rulemaking (37 C.F.R. §§ 201, 202), at 67-77.³ While registration is optional, registration is a prerequisite to bringing an action for infringement and for valuable remedies such as statutory damages and attorney’s fees. *See* 17 U.S.C. § 412. Given that registration is essential for copyright enforcement, it is simply unrealistic and unfair to require visual artists to file a separate registration for each individual photograph.

For this reason, “[t]he Copyright Office has long had in place provisions permitting photographers to register groups or collections of photographs.” Registrations of Claims to Copyright, 76 Fed. Reg. 4072, 4073 (Jan. 24, 2011). Since the enactment of the Copyright Act of 1976, the Copyright Office has permitted the registration of groups of unpublished photographs in one application, provided certain requirements have been met. *Id.* The Copyright Office’s existing regulations and registration practices permit four other options for registering multiple photographs with the same application. *Id.* Specifically, in addition to the group registration of unpublished photographs, the Copyright Office now permits group registration of published photographs; contributions to periodicals; collective works; and, of particular relevance here, photographic databases. *See* Group

³ The full response is available at: <http://digitalmedialicensing.org/restricted/library/Submitted%20By%20Online%20Submission%20Procedure.pdf>.

Registration of Photographs, 81 Fed. Reg. 86643, 86644-46 (Dec. 1, 2016); *see also* 37 C.F.R. § 202.3(b).

The procedures for group registration, including the group registration of published photographs, group registration of unpublished photographs, and registration of photographic databases, is relied upon by *Amici* and their members, which collectively represent thousands of photographers who have created millions upon millions of copyrightable photographs. The Copyright Office specifically recommended the database form of registration to *amici* DMLA⁴ and its members, who faced unique registration challenges as they represent the works of thousands of individual creators for commercial licensing. The Copyright Office worked closely with *amici* DMLA, to develop a procedure to accommodate the inherent difficulties in registering catalogs containing thousands of photographs by hundreds of photographers; and later, to adapt that procedure to accommodate the shift in industry practice from delivery of physical images for licensing to delivery of digital images through sophisticated online platforms.

The Copyright Office eventually revised its registration procedures to extend the group database option, which was initially created for non-photographic works (*see* Registration of Claims to Copyright Registration and Deposit of Databases, 54 Fed. Reg. 13177 (Mar. 31, 1989)), to databases that consist predominantly of

⁴ At the time, DMLA was called the Picture Archive Counsel of America.

photographs.⁵ *See Alaska Stock, LLC v. Houghton Mifflin Harcourt Pub. Co.*, 747 F.3d 673, 675 (9th Cir. 2014) (“This form of registration was prescribed by the Register of Copyrights and was consistent with Copyright Office procedure for thirty years.”). Using this form of registration, the copyright owner may file a single application for all of the photographs contained in its database at a given time, and thereafter need only file updates of newly added images at regular intervals (usually every three months to remain compliant with 17 U.S.C. § 412). *See* 37 C.F.R. § 202.3(b)(5)(ii). *See Alaska Stock*, 747 F.3d at 686 (expressly upholding photographic database registration procedure).

The focus of the group registration of photographs has always been to find an effective and cost-conscious alternative to separately register thousands of individual photographs. This alternative procedure was intended to protect the individual photographs just as if they had been separately registered. No sacrifice of the statutorily provided benefits of registration was contemplated in exchange for utilizing it. Indeed, it was understood all along that the primary goal was to obtain registration of the underlying images, not in the database as a compilation *per se*. This is because the value of the *collection* of images included in a particular registration (*i.e.*, the selection and arrangement of the thousands of images) it is not

⁵ “Individual photographers . . . cannot use the group registration option for photographic databases, even if their images have been included in a database that consists predominantly of photographs.” Compendium, § 1117.

substantial. Rather, the value lies in the *individual* images. It is the individual images, not the collection, group, or database of images, that are licensed to third parties. It is also the individual images that are frequently infringed and most require the protection and benefits conferred by registration, including the entitlement to statutory damages.

II. Any One Work that has “Independent Economic Value” Should Count as a Separate “Work” for Purposes of Statutory Damages, Notwithstanding the Manner in which it was Registered.

A copyright owner is entitled to recover one award of statutory damages for each “work” that is infringed. 17 U.S.C. § 504(c)(1). *See also Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186, 1193 (9th Cir. 2001) (“each *work* infringed may form the basis of one award”) (citation and internal quotation marks omitted) (emphasis in original). Although the Copyright Act does not define the term “work,” under the well-established “independent economic value” test adopted by the Ninth Circuit, any work that has “independent economic value and is, in itself, viable” constitutes a separate “work” for purposes of calculating statutory damages. *Id. Accord Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1180 (9th Cir. 2012).⁶

⁶ VHT has well-outlined the legal argument in favor of the Ninth Circuit’s “independent economic value” test, and *Amici* adopt that argument and incorporate it herein.

The Court approaches the definition of the term “work” differently for purposes of determining proper copyright registration. *See id.* (noting that “courts approach the definition [of ‘work’] depending on the specific issue, for example, deciding proper registration . . . [or] calculating statutory damages”) (citation omitted). For this reason, courts have often found that what is considered one “work” for purposes of registration, constitutes multiple “works” for purposes of awarding statutory damages. *See, e.g., Gamma Audio & Video, Inc. v. Ean-Chea*, 11 F.3d 1106, 1117-18 & n. 8 (1st Cir. 1993) (holding that four television episodes constituted four separate “works” and therefore warranted four awards of statutory damages, even though all four episodes were under the same group registration); *TVB Holdings (USA), Inc. v. Enom Inc.*, No. 13-CV-624 (JLS) (DFM), 2014 WL 12588473, at *1 (C.D. Cal. Apr. 11, 2014) (holding that individual television episodes constituted separate “works” for purposes of computing statutory damages, even though the episodes were registered under group registrations covering entire television series).

Moreover, the Copyright Act is clear that a copyright in a collective work or compilation is distinct from the copyright in the contributions to the collective work or the preexisting material employed in the compilation. Section 201(c) of the Copyright Act states that “the owner of copyright in the collective work is presumed to have acquired *only the privilege of reproducing and distributing the contribution*

as part of that particular collective work.” 17 U.S.C. § 201(c) (emphasis added). Likewise, Section 103 states that a compilation’s copyright is separate and distinct from the copyright in the preexisting material employed in the work. *See* 17 U.S.C. § 103. Following this clear directive, the United States Supreme Court held that when there is a collective work “the statute recognizes two distinct copyrighted works,” the copyright in the separate contributions, and the copyright in the collective work as a whole, which does not extend to the preexisting material. *See New York Times Co., Inc. v. Tasini*, 533 U.S. 483, 493-94 (2001) (finding protectable copyright in “each separate contribution to a collective work”) (citation omitted).

Importantly, the copyright in a compilation “does not affect . . . any *copyright protection* in the preexisting material” that serves as the parts to the compilation. 17 U.S.C. § 103(b) (emphasis added). As the *Tasini* Court recognized, the clear purpose of the 1976 revision of the Copyright Act was to ensure that while the selection and placement of images and articles in a collective work such as a magazine, newspaper, or in this case, database, is a copyrightable collection, the images in the collective work have independent protectable value. *See Tasini*, 533 U.S. at 494, (noting that the changes under the 1976 Copyright Act were intended by Congress to “clarify and improve [this] confused and frequently unfair legal situation with respect to rights in contributions.”) (citing H.R. Rep. No. 94-1476, at 122). Thus, when reading the Copyright Act as a whole, as interpreted by the *Tasini* court, it is clear

that the inclusion of a work in a collection, group registration, or database does not rob the work of any of its protections, including statutory damages.

III. The Court Should Affirm the District Court’s Calculation of Statutory Damages.

The Court should affirm the District Court’s judgment awarding statutory damages for each individual image that was infringed. To hold otherwise would ignore both the purpose behind group registration and fundamental principles of the Copyright Act; discourage visual artists and their representatives from registering their images; eviscerate basic means of protecting the copyright in their images, namely, recovery of statutory damages; and result in an absurdity where the creation and registration of a compilation work could obliterate the copyright protections in the preexisting copyrighted works employed therein.

A. A Ruling in Favor of Zillow on the Issue of Statutory Damages Would Threaten *Amici* and Their Members’ Ability to Enforce Their Copyrights.

As this Circuit has recognized, “[this Court is] not performing a mere verbal, abstract task when we construe the Copyright Act. [It is] affecting the fortunes of people, many of whose fortunes are small.” *Alaska Stock*, 747 F.3d at 686. The photography industry as a whole has been subject to intense economic disruption over the past two decades as the ability to infringe images in the digital world has become easy and cheap. Independent business owners whose livelihoods depend on the licensing of images operate on narrow profit margins and depend on a healthy

copyright law to protect the value of their work. Yet a sense of entitlement to whatever is found on the internet has led to a world of “right-click gone wild” where businesses take images freely and experience few consequences unless held to account under copyright law. This type of infringement is rampant and the business model of infringers – to profit off of the work of others with virtually no overhead or investment – is an impossible economic model to compete with for those who invest in the creation of images. As a result, the only thing standing between visual artists and a complete collapse of their industry is the ability to enforce their copyrights. Paramount to that ability is the availability of statutory damages.

Zillow asks the Court to reverse the District Court’s well-reasoned decision that each image infringed has “independent economic value,” and warrants a separate award of statutory damages. Zillow’s position contradicts the clear import of the “independent economic value” test, and would devastate the photography industry’s ability to enforce their copyrights against infringers, undermining the very purpose of the group registration system. The photography industry depends now more than ever on the rights and remedies afforded by the Copyright Act. Yet, in effect, Zillow urges the Court to hold that one award of statutory damages is a sufficient remedy for the infringement of thousands of photographs that form part of the same database registration, despite the fact that each photograph is independently economically viable – a fact demonstrated by the infringing uses of the photographs.

Under such a rule, parties could engage in wholesale infringement, relying on the assurance that photographers and image libraries are unlikely to bring a claim because damages commensurate with the number of infringements would be unavailable. This would permit bad actors to create entire mirrors of photographic databases, make extensive profit from the mirror site, and only be subject to a single statutory damages award of between \$200 and \$150,000 per registration. *See* 17 U.S.C. § 504(c)(1)-(2). This would be an impossible economic prospect for the photography industry and would serve as enormous benefit to the illegal, underground industry of content piracy. *See Alaska Stock*, 747 F.3d at 676 (noting that the benefits of registration deter piracy).

Moreover, to strip visual artists and their agencies, including *Amici* and their members, of their right to recover separate awards of statutory damages for each individual work infringed, simply because they adhered to the registration procedures specifically designed by the Copyright Office to make registration-related benefits such as statutory damages more accessible to them, would be a harsh and unintended consequence of developing the procedure in the first place. If the form of registration dictated the award of statutory damages, photographers would have to file hundreds if not thousands of applications for each photo shoot in order to recover reasonable statutory damages. In addition to being a financial burden on photographers, this would completely overload the Copyright Office.

Infringement actions to enforce and protect copyrights are only economically viable when statutory damages are commensurate with the burden of taking a claim to federal court, given that the actual damages associated with the infringement of images are often relatively small. Thus the various forms of group registration – and the ability to obtain statutory damages for each work within a group registration – serve an important function in protecting licensable images, and protect the licensing model crucial to the livelihood of photographers. Neither of these should be diminished to ease the comfort level of companies that engage in mass infringement, who gain the economic benefit of photography without having to burden themselves with the cost of creating the work.

B. The Inclusion of a Work in a Collective Work has Never Diminished the Value of the Copyright or the Protections Afforded to the Preexisting Work.

Permitting the value of a work with an independent economic life to be obliterated simply by its inclusion in a database would be an absurd interpretation of the Copyright Act. *See Ma v. Ashcroft*, 361 F.3d 553, 558 (9th Cir. 2004) (“[S]tatutory interpretations which would produce absurd results are to be avoided.”) (citing *United States v. Wilson*, 503 U.S. 329, 334 (1992)). *New York Times Co., Inc. v. Tasini* illustrates this perfectly. In *Tasini*, freelance authors of articles that were published in newspapers and magazines brought an infringement action against the publishers who relicensed their articles to electronic databases, and against the

owners of electronic databases that sold copies of their articles. *See Tasini*, 533 U.S. at 483-84. The Supreme Court held that the periodical’s copyright in a collective work – in that case newspapers and magazines – was separate from the preexisting material employed in the work. *Id.* at 493-94. The defendants in *Tasini* did not duplicate the preexisting collective work. Rather, they took the underlying works – each of which had their own copyright life – and presented them in a new context. *Id.* at 487. And the inclusion of the underlying works in databases and in other collective works did not lessen the copyright protection of the underlying works. *Id.* at 485.

Further, the fact that works are related does not detract from their independent economic value. In *Agence France Presse v. Morel*, photojournalist Daniel Morel created some of the first journalistic images of the devastating 2010 earthquake in Haiti. No. 10-CV-2730 (AJN), 2015 WL 13021413 (S.D.N.Y. Mar. 23, 2015), *aff’d sub nom. Presse v. Morel*, 645 Fed. App’x 86 (2d Cir. 2016). While Mr. Morel took the photos of the same event within moments of each other, and distributed them together via an online service called “Twitpics,” the images—which were widely infringed and the subject of a copyright infringement lawsuit—were each considered a separate work. And appropriately, the court awarded a separate award of statutory damages for each image that was infringed. *Id.* The Morel Court did not take the

absurd position that the images were all one “work” just because the images were related or distributed together.

Whether a photographer registers their work with the Copyright Office as a collection of unpublished photographs, files a group registration of published works, or his or her stock image library files a database registration that consists predominantly of photographs, the form of the registration should not determine the amount of statutory damages available to the copyright owner if a number of works from each registration is infringed. An infringed work with independent economic value, properly registered before the infringement, should entitle the copyright owner to seek statutory damages. In particular, the copyright owner should not be deprived of statutory damages when they complied with a registration procedure devised by the Copyright Office to ease the burden of registering a large number of visual works. As the Ninth Circuit held in *Alaska Stock*, the reliance of photographers on the administrative guidance of the Copyright Office should be honored. *See Alaska Stock*, 747 F.3d at 686. Twisting a Copyright Office administrative practice of permitting database registrations for photographs made available online into something that would deny visual artists the statutory benefits intended from that reliance would be manifestly unjust. *Id.*⁷ A work of visual art

⁷ This court itself wrote: “Their reliance upon a reasonable and longstanding administrative interpretation should be honored. Denying the fruits of reliance by

that has independent economic value should be entitled to statutory damages, regardless of the form of the registration.

CONCLUSION

For the reasons set forth above, and for those set forth in VHT's brief, *amici curiae* respectfully request that the decision below on the availability of separate statutory damages awards be affirmed.

Dated: December 18, 2017

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citizens on a longstanding administrative practice reasonably construing a statute is unjust.” *Alaska Stock*, 747 F.3d at 686.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,269 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as counted by Microsoft® Word, the word processing software used to prepare this brief.

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, Times New Roman, 14 point.

s/ Alicia Calzada
Alicia Calzada
Attorney for Amici Curiae
Dated: December 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that, on December 18, 2017, a true and correct copy of the foregoing Brief of *Amici Curiae* was timely filed in accordance with Fed. R. App. P. 25(a)(2)(D) and served on all counsel of record via CM/ECF.

s/ Alicia Calzada
Alicia Calzada
Attorney for Amici Curiae
Dated: December 18, 2017