No. 17-17246

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN MCARDLE,

*Plaintiff-Appellee,*

v.

AT&T MOBILITY LLC; NEW CINGULAR WIRELESS PCS LLC; NEW CINGULAR WIRELESS SERICES, INC.,

*Defendants-Appellants.*

On Appeal from the United States District Court for the Northern District of California, Case No. 4:09-cv-01117, Honorable Claudia Wilken, presiding

# PLAINTIFF-APPELLEE'S RESPONSE TO PETITION FOR REHEARING EN BANC

SCOTT L. NELSON
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

ADAM J. GUTRIDE
SETH A. SAFIER
GUTRIDE SAFIER LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
(415) 639-9090

MATTHEW T. MCCRARY
GUTRIDE SAFIER LLP
265 Franklin Street, Suite 1702
Boston, MA 02110
(214) 502-2171

*Attorneys for Plaintiff Appellee*

September 30, 2019

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## Cases

## INTRODUCTION

Applying well-established Supreme Court precedent, the panel's decisions in this case and two others decided simultaneously—including *Blair v. Rent-A-Center*, 928 F.3d 810 (9th Cir. 2019)—correctly held that the Federal Arbitration Act (FAA) does not preempt a state law rule prohibiting the waiver of an individual's right to seek *in any forum* an important substantive remedy: public injunctive relief (the "*McGill* rule")[1]. The panel reached its conclusion in accordance with *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), and *Epic Systems, Inc. v. Lewis*, 138 S. Ct. 1612 (2018), because the *McGill* rule neither discriminates against arbitration nor interferes with any of its "fundamental attributes"—i.e. its procedural informality or individualized, bilateral format. Rather, the parties are free to arbitrate a claimant's entitlement to public injunctive relief on a one-on-one basis using whatever arbitral procedures they choose.

AT&T attempts to manufacture a conflict with *Epic Systems* by distorting the term "individualized" from that case. According to AT&T,

[1] The name is derived from the California Supreme Court's decision in *McGill v. Citibank, N.A.*, 393 P.3d 85 (2017).

arbitration is "individualized" only if it involves consideration of evidence relating *solely* to the individual plaintiff and the remedy *solely* affects that individual plaintiff. AT&T Pet. 8-10. But AT&T's interpretation contradicts binding precedent. Antitrust claims require evidence relating to market participants other than the named parties, and any antitrust injunction must benefit "competition" as a whole (*i.e.*, the general public), rather than any specific competitor. Yet the Supreme Court has expressly held that antitrust claims are arbitrable. *American Express v. Italian Colors Restaurant*, 570 U.S. 228 (2013). The same is true of Civil RICO and Securities Act claims, among others, all of which are arbitrable, but none of which would be "individualized" according to AT&T. The Supreme Court used the term "individualized" in *Epic* not to announce a new arbitration standard, but simply to refer to *Concepcion*'s principle that the FAA protects procedurally informal, bilateral arbitration—a principle with which the *McGill* rule complies. Indeed, *Epic* repeatedly refers to "individualized arbitration *proceedings*" and the agreement of the parties to use "individualized rather than class or collective action *procedures*." 138 S. Ct. at 1621 1622, 1623 (emphasis added).

AT&T also claims hyperbolically that this case is "exceptionally important" because it will "invalidate every consumer … arbitration agreement in California." AT&T Pet. 3. In fact, neither the *McGill* rule nor the panel's decision invalidates *any arbitration agreement*. They invalidate only a provision waiving the right to seek public injunctive relief in any forum. Here, the panel's decision voided AT&T's arbitration agreement only because the agreement contained a non-severability clause providing that "the entirety of this arbitration provision shall be null and void" in the event any provision were deemed unenforceable. *See* Slip Op. 2. AT&T provides no evidence that "every" consumer contract in California has a non-severability clause, and in fact, the far more standard practice is to include a severability clause. Regardless, companies that desire arbitration can easily protect themselves by writing their agreements to ensure that public injunctive relief can either be arbitrated or litigated after arbitration of the underlying claims.

AT&T's request for rehearing en banc identifies neither a genuine conflict with precedent nor an issue of exceptional importance. The panel's decisions are consistent with *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425 (2015), a decision for which this Court denied

rehearing en banc and the Supreme Court has repeatedly denied petitions for certiorari. No Supreme Court decision has ever held that a state law prohibiting the contractual waiver of a substantive right is preempted by the FAA when applied evenhandedly to arbitration agreements. Rather, the Supreme Court's decisions make clear that the FAA requires enforcement of agreements to *arbitrate* claims, not agreements to waive them. AT&T's petition should be denied.

## ARGUMENT

### I. The panel's ruling is fully consistent with Supreme Court precedent.

AT&T concedes that the panel's decisions follow this Court's precedent. *E.g.*, *Sakkab v*, 803 F.3d 425 *reh'g & reh'g en banc denied* (9th Cir. Feb. 2, 2016). (holding that the FAA did not preempt the rule announced in *Iskanian v. CLS Transp. Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014), *cert. denied*, 135 S. Ct. 1155 (2015)). AT&T also identifies no conflict with precedents of other courts of appeals or state supreme courts. It contends only that the panel's holding conflicts with decisions of the Supreme Court—in particular, *Epic Systems,* 138 S. Ct. 1612, and *Concepcion*, 563 U.S. 333. AT&T is wrong.

### A. The panel decisions are consistent with *Epic* and *Concepcion*.

Neither *Epic* nor *Concepcion* involved or even addressed whether the FAA requires courts to enforce provisions in arbitration agreements purporting to waive substantive claims for relief. *Concepcion* held that a state-law rule prohibiting waiver of the ability to bring class proceedings conflicted with the FAA because it would impose multi-party *procedures* incompatible with the "fundamental attributes of arbitration." 563 U.S. at 344. Similarly, *Epic* held that the National Labor Relations Act (NLRA) did not protect employees' right to use multiparty procedural devices—class or collective actions—and that requiring those *procedures* conflicted with the FAA. *Id.* at 1624–30. It also held, consistent with *Concepcion*, that the FAA requires courts "to respect and enforce the parties' chosen arbitration *procedures*," *id.* at 1621 (emphasis added). Thus, the FAA compels enforcement of parties' "intention to use *individualized* rather than class or collective action *procedures*." *Id.* (emphasis added). In other words, the FAA prohibits a court from holding "that a contract is unenforceable *just because it requires bilateral arbitration*." *Id.* at 1623. In these respects, *Epic* made no new law, but followed *Concepcion* and a "mountain of precedent." *Id.* at 1630.

Below, the panel carefully considered *Epic* and *Concepcion* and concluded that the *McGill* rule is consistent with those decisions. As the panel explained in *Blair*, because "arbitration of a public injunction does not interfere with the bilateral nature of a typical consumer arbitration," *McGill* does not impermissibly "render[] an agreement 'unenforceable just because it require[s] bilateral arbitration.'" *Blair*, 928 F.3d at 829, (quoting *Epic*, 138 S. Ct. at 1623). Instead, *McGill* "leaves undisturbed an agreement that both requires bilateral arbitration and permits public injunctive claims," *id.*, and thus does not "require[] a 'switch from bilateral … arbitration' to a multi-party action." *Id.* (quoting *Concepcion*, 563 U.S. at 348). Indeed, *Epic* holds only that the FAA "requires courts 'rigorously' to enforce" terms in an arbitration agreement"that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted." 138 S. Ct. at 1621. The *McGill* rule violates neither of these principles.

*AT&T* asserts that *Epic* and *Concepcion* condemn more than just *procedures* incompatible with the informal nature of arbitration and insists that those decisions require courts to enforce arbitration provisions that waive substantive rights. Nothing in either decision,

however, suggests that the FAA compels courts to enforce a contractual provision that *prevents* asserting a claim rather than specifying the procedures for arbitrating that claim. *Epic* and *Concepcion* in no way call into question the Supreme Court's longstanding recognition that "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985); *accord Italian Colors*, 570 U.S. at 236. That principle is applicable to state-law claims as well as federal ones. *See Preston v. Ferrer*, 552 U.S. 346, 359 (2008).

### B. The panel correctly rejected AT&T's argument that public-injunction claims are incompatible with "individualized" arbitration.

AT&T argues that public-injunction claims would, like class arbitration, interfere with fundamental attributes of AT&T's conception of "individualized" arbitration. It bases this argument on its assertion that claims for public injunctive relief may involve complex, high-stakes issues involving interests beyond those of the immediate parties. AT&T's argument is misguided.

The Supreme Court has expressly ruled that many types of claims requiring consideration of evidence beyond the individual parties are arbitrable. For example, the Supreme Court has required arbitration of antitrust claims, despite their notorious complexity, which often necessitates examining evidence of transactions involving nonparties to determine such matters as the existence of a conspiracy and the presence or absence of anticompetitive effects across markets. *Mitsubishi*, 473 U.S. at 633–34. The Supreme Court has also held that often-complex claims under the Securities Exchange Act of 1934 and the Securities Act of 1933 are subject to arbitration, so long as the arbitration agreement does not restrict a party's substantive claims or defenses. *See id.* at 229–33 (Exchange Act); *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 480–81 (1989).

Likewise, the Supreme Court has permitted arbitration of civil RICO claims, *see Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 238–42 (1987), although the requirement of proof of a pattern of racketeering activity often involves both factual and legal complexity and consideration of transactions not limited to those involving the plaintiff. Similarly, the Supreme Court has held that claims of employment

discrimination under federal civil rights laws are subject to arbitration, *see 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (1991); *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20, 33–35 (1991), even though such claims often involve evidence of patterns and practices of discrimination or disparate impact that require consideration of the effects of a defendant's conduct on employees other than the individual plaintiff.

Each of these decisions is inconsistent with AT&T's submission that the "individualized" nature of arbitration precludes arbitration of claims that involve inquiry into the effects of the defendant's conduct on persons other than the plaintiff. And in each case, the Supreme Court concluded that prohibitions on waivers of the substantive rights at issue were fully compatible with implementation of the FAA's command that courts enforce contractually valid agreements to use arbitration procedures to adjudicate the parties' substantive claims, however complex those claims might be. *See Pyett*, 556 U.S. at 265–69.

AT&T attempts to counter that the "focus" of those claims is still on the individual, whereas a public injunction "focuses" on others. As an initial matter, that assertion is wrong because no plaintiff is entitled to

a public injunction without first establishing liability on his or her individual claim. And second, antitrust injunctions are precisely the same in that they "focus" on the public at large rather than individual competitors. Indeed, the Supreme Court has held that antitrust injunctions are intended not merely to "provide private relief, but to serve as well the high purpose of enforcing the antitrust laws." *California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990). As a result, antitrust injunctions must be "flexible and capable of nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Id.*; *see also Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016) (holding that federal law requires considering whether the impacts of an injunction under the antitrust laws "would be in the public interest" because "the central purpose of the antitrust laws . . . is to preserve competition"); Yet antitrust claims, and all forms of available relief thereunder, including injunctions, are subject to arbitration. *See, e.g., Italian Colors*, 570 U.S. 228, *Am. Cent. E. Tex. Gas Co. v. Union Pac. Res. Grp., Inc.*, 93 F. App'x 1, 11 (5th Cir. 2004) (confirming arbitral award that included broad injunctive relief under antitrust statutes).

### C. AT&T Identifies No Procedural Complexity.

AT&T asserts that "an arbitration of a public-injunction claim will be far more procedurally complex than a typical individual consumer arbitration," (AT&T Pet. 15), yet AT&T fails to identify a single additional procedure required to arbitrate a public injunction. AT&T identifies only additional *evidence* that an arbitrator will have to consider in weighing competing interests in crafting the injunction, but any need for such evidence reflects the claim's *substantive* complexity, not *procedural* complexity. The Supreme Court has long held that arbitration agreements are enforceable with respect to complex statutory claims requiring mountains of evidence and has rejected arguments against arbitration of such claims based on "general suspicion of … the competence of arbitral tribunals" and "mistrust of the arbitral process." *McMahon*, 482 U.S. at 231. Indeed, in *Mitsubishi* the Supreme Court flatly held that "the factor of potential complexity alone does not persuade us that an arbitral tribunal could not properly handle an antitrust matter." *Mitsubishi*, 473 U.S. at 633–34.

Moreover, as the panel pointed out, the Supreme Court has never held or suggested that the substantive complexity of a claim is a ground

for holding that the FAA requires enforcement of an agreement waiving the claim altogether. *See Blair*, 928 F.3d at 829. The FAA neither prohibits states from granting individuals substantive rights that may be challenging to arbitrate, nor empowers a defendant to avoid its substantive liabilities under state law by requiring plaintiffs to waive claims the defendant may find inconvenient to arbitrate. Because extinguishing complex substantive claims is not among the FAA's purposes, "[a] state-law rule that preserves the right to pursue a substantively complex claim in arbitration without mandating procedural complexity does not frustrate the FAA's objectives." *Id.* at 829.

Ironically, AT&T attempts to demonstrate procedural complexity by quoting the California Supreme Court's holding in *Broughton v. Cigna Healthplans of Cal., Inc.*, 988 P.2d 67, 77 (Cal. 1999), that the "continuing supervision of an injunction . . . is a matter of considerable complexity" not suitable to arbitration. AT&T Pet. 16-17. However, AT&T fails to mention that this Court in *Ferguson v. Corinthian Colleges, Inc.*, expressly disapproved of the reasoning in *Broughton* and found its rule preempted by the FAA. 733 F.3d 928, 935 (9th Cir. 2013). Indeed, this Court held that state law could not exclude public-injunction claims from

arbitration based on the view that the courts have an "institutional advantage" in adjudicating such claims or on the supposition that such injunctions are "beyond the arbitrator's power to grant." *Id.* at 936–37. Moreover, AT&T's assertion that the panel "simply failed to confront" the points for which AT&T cites *Broughton*, *see* AT&T Pet. 17, is untrue: The panel did so, at length, and concluded that arbitrators have the practical ability to resolve claims for public injunctive relief, just as they indisputably have the institutional competence to issue "private" injunctive relief. *See Blair*, 928 F.3d at 829–30.

## II. No reasons of exceptional importance require rehearing.

### A. The panel's decisions do not threaten to "blow up" consumer arbitration in California.

Despite the panel's careful consideration of *Epic* and *Concepcion*, and the absence of any suggestion in those cases or any other Supreme Court decision that the FAA preempts state laws that invalidate waivers of substantive claims for relief, AT&T contends that its request to extend those decisions to agreements waiving public-injunction claims presents a matter of sufficient importance to merit en banc review. But AT&T's insistence that the panel's decision (together with *Sakkab*) "will invalidate every consumer and employment arbitration agreement in

California—unless the agreement permits an arbitrator to award these broad, non-individualized forms of relief," AT&T Pet. 3, is flatly wrong, both legally and factually. In this case, the consequence of applying the *McGill* rule was to render AT&T's arbitration agreement unenforceable. That result, however, did not stem directly from *McGill*, but from AT&T's decision to provide in its arbitration agreements that, if the waiver of public injunctive relief is unenforceable, "then the entirety of this arbitration provision shall be null and void." *See* Slip Op. 2. AT&T could easily have written its agreement to provide for severability of the public-injunction ban. It cannot now blame the panel for its own unambiguously expressed decision to wager its entire arbitration agreement against the known possibility that the public-injunction waiver was invalid.

Further, nothing in the panel's rulings or reasoning requires a party that drafts an arbitration agreement to authorize the arbitrator to award public injunctive relief. On a going-forward basis, the panel's opinion offers many options for companies like AT&T that profess to find arbitration of public-injunction claims unacceptable. They can, for example, require arbitration of all claims other than claims for public injunctive relief—including claims for other forms of relief under the

CLRA, UCL, and FAL. The result of such an agreement would likely be to require a consumer plaintiff to arbitrate her common-law and statutory claims while the claim for public injunctive relief was stayed pending arbitration. *See* 9 U.S.C. § 3; *KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011); *see also McGill*, 393 P.3d at 966 ("Moreover, case law establishes that a stay of proceedings as to any inarbitrable claims is appropriate until arbitration of any arbitrable claims is concluded."). The case would then return to court for consideration of public injunctive relief after conclusion of the arbitration, although the arbitration could moot the claim for injunctive relief if it resulted in a valid determination that the plaintiff's claims failed on the merits. *Cf. Ferguson*, 733 F.3d at 938 ("In the event that the arbitrator concludes that [the defendant] has violated the UCL, FAL, or CLRA, and that entry of an injunction might be appropriate, but further determines that it lacks the authority under the agreements at issue to grant the requested injunction, Plaintiffs may seek the requested injunction in court.").

Thus, contrary to AT&T's assertion—based on a press article that uncritically accepts similar assertions by AT&T's amici—the panel hardly "blew up" consumer arbitration or enabled evasion of arbitration

"in 'virtually every case' under California consumer protection statutes." AT&T Pet. 6. The panel's rulings prevent defendants in consumer cases only from exempting themselves from a particular form of relief authorized by substantive California law. Whether claims for public injunctive relief proceed in court or in arbitration depends on choices defendants make in drafting their arbitration agreements. Even assuming, however, that defendants adhere to their stated preference for excluding such claims for relief from arbitration, they will remain free to require arbitration of other consumer claims—including claims for other relief under the very same statutes authorizing public injunctive relief. The continued availability (in either arbitration or litigation) of public injunctive relief is, undoubtedly, a "big deal," *see* AT&T Pet. 21, because it would be an extraordinarily harmful and erroneous extension of FAA case law to allow defendants to use arbitration to opt out of substantive liabilities created by state law. But the panel's rulings will not lead to wholesale invalidation of arbitration obligations unless defendants (like AT&T here) deliberately choose that outcome by making their public-injunction bans inseverable from their arbitration agreements. Reports of consumer arbitration's demise in California are greatly exaggerated.

### B. This case does not turn on AT&T's policy arguments about PAGA litigation.

AT&T's complaints about the scope of PAGA litigation add nothing to its claims about the supposed adverse consequences of the panel's rulings. Although the panel correctly pointed out that the outcome in these cases follows almost necessarily from *Sakkab*, *see Blair*, 928 F.3d at 825, that is because the issue here is *easier* than *Sakkab*. A PAGA claim requires a determination of the number of violations affecting other employees similarly situated to the individual PAGA plaintiff who sues for penalties for those violations on behalf of the state. In contrast, a claim for public injunctive relief does not involve determination of the number of individual consumers who have been subject to violations or require any attention to the particulars of such violations. Information about "similar practices involving other members of the public who are not parties to the action" may be "relevant to" a claim for public injunctive relief, but it is not essential. *Blair*, 928 F.3d at 830. Thus, whether or not PAGA claims are, as AT&T wrongly asserts, stand-ins for class actions, *see* AT&T Pet. 23, public-injunction claims can by no means be

characterized as a way of sidestepping *Concepcion* by providing victim-specific relief while avoiding class procedures.[2]

In any event, AT&T's assertion that PAGA claims threaten to subsume, and displace arbitration of, all other claims in employment cases is already outdated. The California Supreme Court has recently held that PAGA claims do not provide a vehicle for recovering unpaid wages of aggrieved employees, but are limited to recovery of penalties that accrue primarily to the state. *ZB, N.A. v. Super. Ct.*, __ P.3d __, 2019 WL 4309684 (Cal. Sept. 12, 2019). Plaintiffs must seek other forms of relief through other means, and whether they must arbitrate such claims does not depend on whether their representative PAGA claims are arbitrable. The effects of *ZB* have yet to play out, but the decision is likely to have a significant bearing on the impact of *Sakkab* and *Iskanian*.

---

[2] In addition, PAGA claims and claims for public injunctive relief may have different consequences for a defendant's ability to adjust the scope of arbitration to reflect the unenforceability of substantive waivers. Because all PAGA claims are on behalf of the state, and all seek penalties based on the number of violations suffered by the affected employees, *see Sakkab*, 803 F.3d at 436 n.11, defendants may not be able to apportion parts of PAGA claims to arbitration while reserving other parts to litigation in court. As noted above, however, *McGill* leaves defendants with considerable flexibility in drafting an arbitration agreement to maximize the extent to which consumer claims are arbitrable.

In any event, this Court has already rejected the argument that the en banc review is needed to consider whether *Sakkab* conflicts with *Concepcion*. After this Court decided *Sakkab*, the attorneys now representing AT&T made the same argument they advance here: that the substantive non-waiver principle applied in *Sakkab* conflicts with *Concepcion*'s holding that the FAA preempts state laws mandating *procedures* irreconcilable with arbitration. This Court denied en banc review.

The Supreme Court has also denied at least three petitions for certiorari challenging decisions of this Circuit applying *Sakkab*: The Court denied one petition shortly after its decision in *Kindred*, *see Bloomingdale's, Inc. v. Vitolo*, 137 S. Ct. 2267 (2017), and denied two in the immediate aftermath of *Epic*, *see Five Star Senior Living Inc. v. Lefevre*, 139 S. Ct. 68 (2018); *Five Star Senior Living v. Mandviwala*, 138 S. Ct. 2680 (2018). Of course, neither the denial of rehearing in *Sakkab* nor the subsequent denials of certiorari in cases challenging *Sakkab*'s holding are precedential rulings. But the fact that neither this Court in *Sakkab* nor the Supreme Court in the cases that followed considered the claim of conflict with *Concepcion* that is recycled here to be a matter of

sufficient importance to merit further review significantly undermines AT&T's contrary argument—especially given that AT&T's arguments are directed as much (or more) against the *Sakkab* ruling, which was the subject of all those denials, as they are against the panel's ruling regarding public injunctions.

Ultimately, though, this case turns on whether the FAA preempts *McGill*, not on the correctness of the rulings in *Sakkab* and *Iskanian* regarding PAGA. If there were reasons to believe that *Sakkab* merited reconsideration, they would best be addressed in a case that involved PAGA, not this one.[3]

## CONCLUSION

For the foregoing reasons, this Court should deny the petition for rehearing or rehearing en banc.

[3] McArdle joins and fully incorporates the arguments presented in Tillage's opposition to rehearing en banc in *Tillage v. Comcast Corp.*, No. 18-15288.

Respectfully submitted,

/s/ MATTHEW T. MCCRARY

ADAM J. GUTRIDE
SETH A. SAFIER
GUTRIDE SAFIER LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
(415) 639-9090

MATTHEW T. MCCRARY
GUTRIDE SAFIER LLP
265 Franklin Street, Suite 1702
Boston, MA 02110
(214) 502-2171

SCOTT L. NELSON
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

September 30, 2019

## CERTIFICATION RE WORD COUNT

Pursuant to the Federal Rules of Appellate Procedure, Rule 32(a)(7)(c), I hereby certify that the foregoing brief of Plaintiffs-Appellants complies with the word count limitation of Rule 35(b)(2)(A). There are 3897 words in the brief according to the word count function of Microsoft Word 2010, the word-processing program used to prepare the brief.

/s/ Matthew T. McCrary
Matthew T. McCrary

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed Appellant's Response to the Petition for Rehearing En Banc with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on September 30, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Matthew T. McCrary
Matthew T. McCrary