No. 18-3484

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THOMAS COX, ET AL,

Plaintiffs-Appellants

v.

SPIRIT AIRLINES, INC.

Defendant-Appellee

On Appeal from the United States District Court
for the Eastern District of New York
No. 17-cv-5172 WFK-VMS
Hon. William F. Kuntz, II

BRIEF OF NATIONAL CONSUMERS LEAGUE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS - APPELLANTS

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INTEREST OF AMICUS CURIAE

The National Consumers League (NCL) provides government, businesses, and other organizations with the consumer's perspective on concerns including child labor, privacy, food safety, and medication information. The mission of the National Consumers League is to protect and promote social and economic justice for consumers and workers in the United States and abroad. NCL is an advocacy group representing consumers on marketplace and workplace issues. Founded in 1899, the NCL is the nation's oldest consumer organization.[1]

For more than 100 years, the NCL has followed its founding principles, which include the goal that consumers receive safety and reliability from the goods and services they purchase. Promoting a fair marketplace for consumers was one of the chief reasons for the League's founding in 1899 and still guides the NCL into its second century.

NCL's interest in this appeal is to ensure that duly created contracts are honored and enforced in our legal system.

The parties to this appeal consent to the submission of this *Amicus* Brief.

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[1] Pursuant to L.R. 29.1(b), NCL states that the Appellants did not author this Brief in whole or in part, the Appellants contributed funds to the preparing of the Brief, and no other person or entity contributed in any manner to the funding of the Brief.

ISSUE PRESENTED

1. Whether the District Court erred in concluding that Plaintiffs' breach of contract claim was preempted under the Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713(b)(1), based on the court's view that Plaintiffs were required to identify an express stipulation in the parties' agreement that the airline breached?

STATEMENT OF THE CASE

Introduction

This appeal concerns the dismissal of Plaintiffs' class action complaint, filed by airline travelers who were refused boarding unless they paid last-minute and previously undisclosed fees for bringing a carry-on item, purse or similar personal item onto Appellee's aircraft. Defendant / Appellee, Spirit Airlines, Inc. ("Spirit Airlines") entered into binding online contracts with the Plaintiffs. Each contract was for a specified amount of money, under which Spirit Airlines agreed to transport Plaintiffs to their respective destinations for a contract price. However, when Plaintiffs arrived at their respective gates to board, Spirit Airlines demanded each of the Plaintiffs to pay an additional amount to bring a carry-on item onto the airplane. In some instances, these last-minute fees equaled or exceeded the amount of the ticket itself. At the gate, the Plaintiffs were told to either "pay" or "stay",

meaning if these fees were not immediately paid at the gate, Plaintiffs would be denied boarding.

Spirit Airlines moved to dismiss Plaintiffs' Second Amended Complaint, arguing that Plaintiffs' claims for breach of contract, unjust enrichment and fraud were preempted by the Airline Deregulation Act ("ADA"). 49 U.S.C. § 41713(b)(1) (previously codified at 49 U.S.C. §1305(a)(l)).

On November 20, 2018, the Honorable William F. Kuntz, II, District Judge, entered an order dismissing the action, finding that all of Plaintiffs' claims were preempted by the ADA.

Plaintiffs appeal only the dismissal of their breach of contract claim.

Facts Alleged in Second Amended Complaint

Spirit Airlines offered to sell the Plaintiffs, and similarly-situated individuals, airline tickets to various locations within the United States. Plaintiffs accepted the offers, thereby creating binding contracts with Spirit Airlines. The Plaintiffs bought their airline tickets online, and they bought such tickets only through third parties. A24-31.

The parties' contract fully contemplated the inclusion of a carry-on item as part of the ticket purchase. A32, ¶39. Spirit Airlines chose to limit the terms of the agreement to the price and destinations and dates. A32-33, ¶¶39-40. In many instances, Plaintiffs were at the gate, ready to board their flight, when Spirit

Airlines told them they could not board their respective flights without paying additional carry on fees, over and above the contracted price of the ticket. A32-33, ¶¶39-43.

In their Second Amended Complaint ("SAC"), Plaintiffs detailed how they purchased their tickets through various online travel agents. A24-31. The Plaintiffs also alleged that "[t]he Defendant offered to the Plaintiff[s] travel tickets for a specific price, which the Plaintiffs agreed to pay." A32, ¶39. The Plaintiffs allege that Spirit Airlines represented that the agreed upon cost of the ticket would be at a set amount, and then later charged additional fees for carry-on bags that a reasonable consumer would believe would be part of the bargain reached between the parties at the time the contract was formed. A32-33, ¶39-41.

Plaintiffs also allege that in forming a contract for airline travel, Spirit Airlines never disclosed the fact that, at the gate, Spirit Airlines would condition travel on Plaintiffs' payment of additional fees for carry-on and personal items, which in some instances equaled the contract price of the ticket. A33, ¶¶ 40-44.

SUMMARY OF THE ARGUMENT

Plaintiffs' breach of contract claim against Spirit Airlines is not preempted under the Airline Deregulation Act. Pursuant to the Supreme Court's holding in *Wolens,* a plaintiff's breach of contract claim is not preempted simply because a court is called upon to apply state-law breach of contract principles. The exception

carved out by the Court in *Wolens* is applicable in this case, because Plaintiffs have alleged that Spirit Airlines agreed to a fixed price for travel, and the parties' contract did not provide Spirit Airlines with the right to impose last-minute and previously undisclosed carry-on fees while Plaintiffs were attempting to board their respective flights.

STANDARD OF REVIEW

This Court reviews a district court's application of preemption principles *de novo. New York SMSA Ltd. P'ship v. Town of Clarkstown,* 612 F.3d 97, 103 (2d Cir. 2010) (per curiam); *Drake v. Lab. Corp. of Am. Holdings*, 458 F.3d 48, 56 (2d Cir. 2006) (reviewing Federal Aviation Act preemption de novo)

ARGUMENT

I. PLAINTIFFS' BREACH OF CONTRACT CLAIM IS NOT PREEMPTED BY THE AIRLINE DEREGULATION ACT.

The Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713(b), was enacted in 1978 after Congress determined that "maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety [and] quality . . . of air transportation." Congress intended the FAA, as amended by the ADA, to occupy the field of air safety. *Goodspeed Airport LLC v.*

East Haddam Inland Wetlands & Watercourses Comm'n, 634 F.3d 206, 210 (2d Cir. 2011).

The scope of ADA preemption was articulated by the United States Supreme Court in *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 115 S. Ct. 87 (1995) ("*Wolens*") and more recently in *Northwest, Inc. v. Ginsberg,* 572 U.S. 273, 134 S. Ct. 1422, 188 L. Ed. 2d 538 (2014). In *Wolens*, the Supreme Court addressed ADA preemption in the context of a passenger's breach of contract claim stemming from American Airline's modification of its frequent flier program. The *Wolens* court determined that administration of frequent flyer programs fell within the parameters of the ADA in that they related to the airline's rates and service. *Wolens*, 513 U.S. at 226. The *Wolens* court held, however, that plaintiff's breach of contract claims were not preempted by the ADA. As the court stated, "[w]e do not read the ADA's preemption clause, however, to shelter airlines from suits alleging no violation of state-imposed obligations, but seeking recovery solely for the airline's alleged breach of its own, self-imposed undertakings." *Id*. at 228.

In 2014, the Supreme Court again addressed ADA preemption in *Northwest, Inc. v. Ginsberg*. In *Ginsberg*, the Court held that the ADA preempted a state law claim for breach of the implied covenant of good faith and fair dealing because the claim sought to "enlarge the contractual obligations that the parties voluntarily adopt[ed]." 134 S. Ct. at 1426. The common law claim in *Ginsberg*, which also

arose from a frequent flyer program, went beyond the voluntarily imposed undertakings of the parties and thus represented a "state-imposed obligation" under Minnesota law. *Id*. at 1431. Notably, the Court went out of its way to find that "respondent's claim of ill treatment by Northwest might have been vindicated if he had pursued his breach-of-contract claim after its dismissal by the District Court," but plaintiff failed to appeal the dismissal of that claim. *Id*. at 1433.

a. The Supreme Court in *Wolens* Directly Held that Private Contractual Undertakings by Air Carriers are Not Preempted

In *Wolens*, the United States Supreme Court unambiguously held that breach of contract claims are not preempted by the ADA as they cannot be considered state action. *Wolens* at 232. The Court held that preemption does not apply "…to a party who claims and proves that an airline dishonored a term the airline itself stipulated. This distinction between what the State dictates and what the airline itself undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Id*. at 232-33.

In *Wolens*, passengers alleged that American Airlines' retroactive modification of the terms of its frequent flyer program constituted a breach of contract. *Id*. at 225. The class of plaintiffs alleged, among other things, that American Airlines put restrictions on what seats were available for the redemption of miles and that Americans' actions constituted a breach of contract. *Id*. American

Airlines argued strenuously that by invoking the common law of the State, plaintiffs' case necessarily was preempted under 49 U.S.C. § 41713. *Id*. at 233.

In rejecting the airline's preemption argument, the Supreme Court held that Congress did not intend to remove remedies that existed at the time of the ADA's enactment, chief among them being remedies for breach of contract. *Id*. at 232-33. Under *Wolens*, parties are freely allowed to seek redress for claims that the airlines breached their agreements and seek a return of the consideration paid. *Id*. at 232-33. Moreover, the Court reasoned that the ADA preserved common law remedies (rather than preempting them), because "[t]he conclusion that the ADA permits state-law-based court adjudication of routine breach-of-contract claims also makes sense of Congress' retention of the FAA's saving clause, § 1106, 49 U.S.C. § 1405 (preserving 'the remedies now existing at common law or by statute')." *Id*. at 232.

Given this background, it is clear that Plaintiffs' claims do not attempt to place obligations imposed by statute, regulation or law upon Spirit Airlines. The SAC does not challenge that Spirit Airlines has a right to generally charge a fee for carry-on items. The SAC does not challenge how much Spirit Airlines can charge for that fee, or how many times the fee can be charged. Instead, Plaintiffs allege that they formed a complete contractual agreement with Spirit Airlines at the time of purchase, which Spirit Airlines breached by imposing additional and previously undisclosed fees at the time of boarding. By waiting until Plaintiffs were about to

board their flights before insisting on a carry-on baggage fee, Plaintiffs assert that Spirit Airlines breached the terms of its contract.

b. The District Court Erred in Requiring that Plaintiffs Show an Express "Stipulation" Entered into By Spirit Airlines.

In its November 20, 2018 Order, the District Court found Plaintiffs' breach of contract claim was preempted by the ADA because in the Court's view, "Plaintiffs do not base their claim on any agreement made by Spirit." (A270). In their complaint, Plaintiffs alleged that they entered into a contract with Spirit Airlines to purchase travel tickets for a set price that contemplated no additional fees would be paid, and that Spirit Airlines breached the agreement by requiring additional fees for carry-on baggage once the Plaintiffs arrived at the gate for boarding. (A32-33, ¶¶ 39-41).

In the District Court's view, in order to survive dismissal, a plaintiff must point a specific term or promise that the airline "itself stipulated." (A270, citing *Wolens*). The District Court concluded that while Plaintiffs' subjective belief that the right to travel with a carry-on bag was included in the contracted price may be relevant to assessing a breach of contract under state law, "the ADA does not permit a claim based on state law obligations." (A271).

In reaching these conclusions, the District Court misapplied the Supreme Court's holding in *Wolens*. While *Wolens* found an exception to preemption to

terms that an airline "itself stipulated", the Court did not limit its holding to express stipulations in the parties' contract. Instead, the Court drew a "distinction between what the State dictates and what the airline itself undertakes," which "confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Wolens* at 233.

In the District Court's view, the mere act of looking to state law transformed Plaintiffs' claim into one seeking an "enlargement or enhancement" of the parties' agreement. (A271). However, a finding of preemption is not mandated simply because a court is called on to apply state-law breach of contract principles. In fact, this view was rejected by the *Wolens* Court itself.

In *Wolens*, American Airlines argued that the court could not reach the merits of plaintiffs' claims without interpreting the contract to determine whether American Airlines had reserved the right to change its frequent flyer program and thus plaintiffs' claims "inescapably depend on state policies that are independent of the intent of the parties." *Wolens*, 513 U.S. at 233 (citations omitted). The *Wolens* court rejected that argument because "it assumes the answer to the very contract construction issue on which plaintiffs' claims turn . . . [and] [t]hat question of contract interpretation has not yet had a full airing. . ." *Id*. (emphasis added).

Ultimately, the *Wolens* court noted that the critical distinction between principles of contract law that fall within or outside the *Wolens* exception is whether they "seek to effectuate the intent of the parties rather than the State's public policies." *Wolens*, 513 U.S. at 233 n.8. Here, in directing the court to New York state law, the Plaintiffs seek to effectuate the intent of the parties – namely that the Plaintiffs would not be surprised with additional, undisclosed carry-on baggage fees once they arrived at the terminal to board their flights. (A23, ¶¶ 10-11, A33, ¶40-42).

The case of *In re JetBlue Airways Corporation Privacy Litigation* is instructive. In attempting to defeat a class-action breach of contract claim premised on JetBlue's alleged disclosure of private passenger information, JetBlue argued that even if a contract was found to exist, preemption existed because the court would have to look outside the terms of the contract to provide relief. *In re JetBlue Airways Corp. Privacy Lit.,* 379 F. Supp. 2d 299, 317 (E.D.N.Y. 2005). The *JetBlue* court rejected this preemption argument, stating "[i]f JetBlue's position were correct, there would be very little left of the *Wolens* exception, as most contractual arrangements that become the subject of litigation present some question that requires resort to general principles of state contract law." *Id*. at 317 (holding that plaintiffs' breach of contract claim was not preempted).

Other cases have reached similar holdings, finding that a court may look to state contract law to determine the scope or boundaries of an agreement with an airline. For instance, in *Wagner v. Summit Air Ambulance, LLC*, 2017 U.S. Dist. LEXIS 177709, 2017 WL 4855391 (D. Mont. Oct. 26, 2017), the plaintiffs alleged that they authorized the air carrier companies to provide air ambulance services for their son. The air carrier companies did not specify a price for their services. Thereafter, the air carrier companies attempted to collect the balance due and plaintiff filed suit, alleging that the air carrier companies' bill exceeded the reasonable amount typically charged by similar air-ambulance transport services.

The air carrier companies moved to dismiss, arguing that the plaintiffs' claim was preempted by the ADA. The court held that the *Wolens* and *Ginsberg* decisions "leave room for suits . . . that seek to vindicate the parties' understanding of the contract," and pointed out that the "[p]laintiffs contend that the parties' understanding of the contract reasonably assumed that [the air carrier companies] would charge 'reasonable worth' absent a price specified." As a result, the court denied the air carrier companies' motion to dismiss on preemption grounds.

In *Lyn-Lea Travel Corp. v. Am. Airlines,* 283 F.3d 282 (5th Cir. 2002), the Fifth Circuit held that a fraudulent inducement affirmative defense as to a counterclaim was not preempted, relying on the *Wolens* court reasoning "that because contract law is, at its 'core,' uniform and non-diverse, there is little risk of

inconsistent state adjudication of contractual obligations." *Id*. at 290. The Fifth Circuit concluded that a fraudulent inducement defense is "among those core concepts as it relates to the validity of mutual assent," and that "[t]he defense does not reflect a state policy seeking to expand or enlarge the parties' agreement," and because the court could use ordinary principles of contract law to ascertain whether there was a binding agreement between the parties. *Id*.; s*ee also Med. Mut. of Ohio v. Air Evac EMS, Inc*., No. 1:16 CV 80, 2018 U.S. Dist. LEXIS 158131, *24-25 (N.D. Ohio Sep. 17, 2018)(finding no ADA preemption for a breach of an implied contract, where plaintiffs alleged a contract implied in fact, which included a definite price term); *All World Prof'l Travel Servs., Inc. v. Am. Airlines, Inc.,* 282 F. Supp. 2d 1161, 1168 (C.D. Cal. 2003)(finding part of plaintiff's contract claim that airline "acted extra-contractually does not allege 'a violation of state-imposed obligations, but rather ... that the airline breached a self-imposed undertaking.'")

Wagner and other cases included agreements where the plaintiff alleged an implied contract, or where the price was a missing element of the alleged contract - and various courts still found a lack of ADA preemption. While some of these cases toe the boundary of the *Wolens* breach of contract exception, those cases do not involve express contracts like the ones pled in this case. *Compare, e.g. Worldwide Aircraft Servs. v. United Healthcare Ins. Co*., No. 8:18-cv-2549-T-24 TGW, 2018 U.S. Dist. Lexis 210746, *11-12 (M.D. Fla. Dec. 14, 2018)(analyzing

preemption of a contract implied-in-law and a contract implied-in-fact) with *Stout v. Med.-Trans Corp*., 313 F. Supp. 3d 1289, 1298 (N.D. Fla. 2018)(distinguishing *Wagner* and finding claim preempted, because plaintiffs sought to impose state-policy based rates on airline).

Here, Plaintiffs' breach of contract claim is safely within the *Wolens* exception. In their SAC, Plaintiffs allege an express contract with Spirit Airlines. (A33, ¶¶39). Plaintiffs do not rely on New York law to impose any additional obligation on Spirit Airlines that Spirit itself did not agree to. In fact, the state-law contract principles applicable in this case are the core or basic principles of contract law that any court would look to in any case falling under the *Wolens* exception.

For instance, in New York, like any other state, a party to a contract is not free to substitute or alter the terms of a finalized agreement on a whim. Similarly, when contracting parties agree to a fixed price for services, a party is generally not free to withhold performance unless the other party pays additional, previously undisclosed compensation. *See Dobson v. Hartford Fin. Servs. Grp*., 389 F.3d 386 (2d Cir. 2004), *citing Sacramento Navigation Co. v. Salz*, 273 U.S. 326, 329, 71 L. Ed. 663, 47 S. Ct. 368 (1927) ("[A] contract includes, not only the promises set forth in express words, but, in addition, all such implied provisions as are

indispensable to effectuate the intention of the parties and as arise from the language of the contract and the circumstances under which it was made.")

These are not expansions of Spirit Airlines' voluntary undertaking, nor do they rely on New York consumer protection laws. Rather, Plaintiffs' breach of contract claims involve the same "core," uniform and non-diverse principles of contract law that the *Wolens* court excluded from preemption, because they present little risk of inconsistent state adjudication. *See Wolens,* 513 U.S. at 233 n.8.

c. The District Court's Narrow Application of *Wolens* was Erroneous, as Plaintiffs Need Not Show an Express Contractual Clause or Stipulation that Spirit Airlines Breached.

In dismissing Plaintiffs' breach of contract claim, the District Court relied on two cases, *Hickcox-Huffman v. US Airways, Inc*., 855 F.3d 1057 (9th Cir. 2017) and *Alatortev v. JetBlue Airways, Inc*., No. 3:17-cv-04859-WHO, 2018 U.S. Dist. LEXIS 21194 (N.D. Cal. Feb. 7, 2018)(*See* A269-70). In *Hickcox-Huffman,* the court reversed an order dismissing a plaintiff's class action complaint alleging breach of contract and related state law claims against U.S. Airways, on the grounds that they were preempted by the Airline Deregulation Act. 855 F.3d at 1060.

The Ninth Circuit held that plaintiff's claims were not preempted, because under the airline's contract with plaintiff, U.S. Airways did not merely agree to use

its "best efforts" for finding and delivering delayed baggage, but instead "assented to be bound to deliver checked baggage on a passenger's arrival." *Id*. at 1063-64.

In this case, the District Court distinguished *Hickcox-Huffman* – based on the fact that the airline in *Hickcox-Huffman* expressly agreed to deliver the checked baggage at the time of delivery. (A269-70). Under the District Court's analysis, the lack of a stipulation under which Spirit Airlines agreed to not charge hidden and surprise carry-on fees at the time of boarding was fatal to Plaintiffs' claim. In support of that holding, the District Court relied heavily on *Alatortev v. JetBlue Airways, Inc.,* supra, 2018 U.S. Dist. Lexis 21194. (A270).

In *Alatortev*, the court distinguished *Hickcox-Huffman*, because the airline in *Alatortev* never committed to "on time" delivery of baggage. *Id*. at *15. Instead, it "endeavor[ed]" to deliver baggage on time. *Id*. The court found that this type of promise, under which the airline would use its best-efforts, was aspirational in nature and did not create a binding commitment to deliver baggage on time. *Id*. at *15-16. Ultimately, the *Alatortev* court found that in its current form, the plaintiff did not adequately plead a breach of contract claim and that to prevail on his existing theory, plaintiff would be forced to rely on an enlargement or enhancement of the parties' agreement. *Id*. at *17-18.

Notably, while the District Court in the instant case dismissed Plaintiffs' claims, the court in *Alatortev* dismissed with leave to amend, because the plaintiff

"may be able to amend his complaint to state a claim based on JetBlue's self-imposed undertaking." *Id*. at *18.

Here, the District Court viewed *Alatortev* as creating an obligation under which a plaintiff must show an express written stipulation that the airline failed to adhere to. Not only is such a requirement unsupported by *Wolens*, but *Alatortev* itself never reached that interpretation.

The defect in *Alatortev's* complaint was the plaintiff's failure to identify any contractual undertaking by the airline, in large part because the contractual language relied upon by plaintiff was contradictory to the plaintiff's claim of a binding agreement to deliver baggage at the time of arrival. The language in the parties' contract did not contain such a duty on the airline's part, and without any additional allegations to support plaintiff's theory – plaintiff could not state an actionable breach of contract claim.

Alatortev does not stand for the proposition that a plaintiff must identify an express stipulation by the airline to avoid preemption. Plaintiffs' reading of *Alatortev* is bolstered by the fact that the district court afforded leave to amend in that case, thereby providing plaintiff with an opportunity to identify a "voluntary undertaking" that may not have been expressly set forth in the agreement.

When parties agree and establish a contract price, they necessarily agree that one side will not unilaterally insist on a higher price at a later date. A court does not need to infer any additional obligations in that scenario – nor does a party need to rely on a state's public policy or consumer protection statutes to expand the contractual undertaking.

If Spirit Airlines agreed to charge $25 for each carry-on bag and collected that amount at the time of booking, and then on the day of travel insisted that the carry-on fee was now $300, most courts would find no issue with a breach of contract claim - even if plaintiff could not identify a specific clause where Spirit Airlines stated it would not unilaterally raise the price at a later date.

Similarly, if a plaintiff contracted with Spirit Airlines for transportation to Los Angeles, and during the flight Spirit Airlines instead decided to fly plaintiff to Miami – courts would agree that such conduct amounts to a breach of a voluntary undertaking by the airline – even though there is no specific contractual language prohibiting Spirit Airlines from dropping plaintiff off in a distant city.

Under *Wolens*, there is no requirement for a plaintiff to identify a particular clause in the parties' contract where the airline engaged in some task it promised not to do. The District Court adopted an overly narrow reading of *Wolens* and erred in dismissing Plaintiffs' breach of contract claim.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the case remanded for consideration of Plaintiffs' breach of contract claims on the merits.

Date: February 21, 2019:

Respectfully Submitted,

BY:_____/s/_____

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CERTIFICATE OF COMPLIANCE

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

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,187 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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 proportionately spaced typeface using Microsoft Word, Times New Roman 14-point font.

Date: February 21, 2019.

_____/s/_____
Kim Richman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: February 21, 2019.

_____/s/_____
Kim Richman, Esq.