Case No. 19-13926-C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

On Appeal from the United States District Court
for the Southern District of Florida, The Honorable Kenneth A. Marra
No. 08-md-1916
(Nos. 07-60821, 08-80421, 08-80465, 08-80480, 08-80508, 10-60573, 10-80652, 17-81285, 18-80248)

DEFENDANTS-APPELLEES/CROSS-APPELLANTS' OPPOSITION TO AMICI'S MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE HUMAN RIGHTS PRACTITIONERS AND SCHOLARS IN SUPPORT OF PLAINTIFFS-APPELLANTS AND SUPPORTING REVERSAL

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APPELLEES/CROSS-APPELLANTS' CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE

Pursuant to Rule 26.1-1(a) of the Eleventh Circuit Rules, counsel for Appellee-Cross-Appellant Chiquita Brands International, Inc. ("Chiquita") on behalf of all Appellees/Cross-Appellants, hereby certifies that no publicly held corporation owns 10% or more of Chiquita's stock. Counsel also certifies that the following is a complete list of the trial judge, all attorneys, persons, associations of persons, firms, partnerships, or corporations (none of which is publicly listed) known to Chiquita that have an interest in the outcome of the particular case on appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, and other identifiable legal entities related to a party:

Abrams, Louis D.

Agrícola Bananera Santa Rita, S. de R. L.

Agroindustria Santa Rosa de Lima, S.A.

Alamo Land Company

Alexander, Lauren

Alsama, Ltd.

American Produce Company

Americana de Exportación S.A.

Arnold & Porter Kaye Scholer LLP

ASD de Venezuela, S.A.

B C Systems, Inc.

Bandy, Kevin M.

Blalack II, K. Lee

Blank Rome LLP

Blue Fish Holdings Establishment

Boies Schiller Flexner LLP

Borja, Ludy Rivas

Borja Hernandez, Genoveva Isabel

Brackman, Lisa J.

Bronson, Ardith M.

Brown, Benjamin D.

Buckley LLP

Burman, John Michael

Carrillo, Arturo

Carter, Melanie

Charagres, Inc., S.A.

Chiquita (Canada) Inc.

Chiquita Brands Costa Rica Sociedad de Responsabilidad Limitada

Chiquita Banana Ecuador CB Brands S.A.

Chiquita Brands International Sàrl

Chiquita Brands International, Inc.

Chiquita Brands L.L.C.

Chiquita Compagnie des Bananes

Chiquita Europe B.V.

Chiquita Finance Company Limited

Chiquita For Charities

Chiquita Fresh North America L.L.C.

Chiquita Guatemala, S.A.

Chiquita Holding SA

Chiquita Holdings Limited

Chiquita Honduras Company Ltd.

Chiquita Logistic Services El Salvador Ltda.

Chiquita Logistic Services Guatemala, Limitada

Chiquita Logistic Services Honduras, S. de R.L.

Chiquita Mexico, S. de R.L. de C.V.

Chiquita Nature and Community Foundation

Chiquita Panama L.L.C.

Chiquita Relief Fund - We Care

Chiquita Tropical Fruit Company B.V.

Chiquita Tropical Ingredients, Sociedad Anónima

Chiquita US Corporation

Chiriqui Land Company

Chomsky, Judith Brown

Cioffi, Michael L.

CILPAC Establishment

Cohen Millstein Sellers & Toll PLLC

Collingsworth, Terrence Patrick

Colombian Institute of International Law

Compañía Agrícola de Nipe, S.A.

Compañía Agrícola e Industrial Ecuaplantation, S.A.

Compañía Agrícola Sancti-Spiritus, S.A.

Compañía Bananera La Ensenada, S. de R.L.

Compañía Caronas, S.A.

Compañía Cubana de Navegación Costanera

Compañía Frutera América S.A.

Compañía La Cruz, S.A.

Compañía Productos Agrícolas de Chiapas, S.A. de C.V.

Compañía Tropical de Seguros, S.A.

Conrad & Scherer, LLP

Dante, Frank A.

Davenport, Jonathan

De Leon, John

Desarrollos Agroindustriales del Istmo, S.de R.L.

DLA Piper LLP (US)

Doe 7, Jane*[1]

Doe 7, John*

Doe 11, Juana*

Doe 11A, Minor*

Doe 46, Jane*

Durango, Pastora

EarthRights International

Exportadora de Frutas Frescas Ltda.

Fontalvo Camargo, Juvenal Enrique

Freidheim, Cyrus

[1] Jane Doe 7, John Doe 7, Juana Doe 11, Minor Doe 11A, Jane Doe 46, the unnamed children of Jose Lopez 339, and Juana Perez 43A were proceeding in the district court under pseudonym until the district court order that required each to proceed under his or her actual name. On July 10, 2019, this Court stayed enforcement of the district court's order precluding continued use of pseudonym by these Appellants pending resolution of the interlocutory appeal in Case No. 19-11494, which has been fully briefed and argued, and that appeal remains pending. The real name of each anonymous Appellant will be furnished if directed by this Court. The pseudonymous Appellants are denoted herein by an asterisk.

Fresh Express Incorporated

Fresh Express Vegetable LLC

Fresh Holding C.V.

Fresh International Corp.

Fryszman, Agnieszka M.

Frutas Elegantes, S. de R.L. de C.V.

G W F Management Services Ltd.

Golembe, Stephen

Graziano, MacKennan

Great White Fleet Corp.

Great White Fleet Liner Services Ltd.

Great White Fleet Ltd.

Green, James Kellogg

Heaton Holdings Ltd.

Herz, Richard

Hills, Carla as personal representative of the Estate of Roderick M. Hills, Sr.

Hoffman, Paul L.

International Rights Advocates

Istmo Holding LLC One

Istmo Holding LLC Two

James K. Green, P.A.

Jones, R. Stanton

Jost-Creegan, Kelsey

Keiser, Charles

Kenny Nachwalter, P.A.

Kistinger, Robert

Krakoff, David S.

Krezalek, Martin S.

Kroeger, Leslie M.

La Ensenada Holding LLC One

La Ensenada Holding LLC Two

Landon III, Robert D.W.

Law Firm of Jonathan C. Reiter

Law Offices of Chavez & De Leon, P.A.

Law Offices of Judith Chomsky

Leopold, Theodore J.

Lindner, Keith

Lopez 339, Jose (unnamed children of)*

Marcus, Bradley A.

Marcus Neiman & Rashbaum

Marra, Kenneth A.

McCawley, Sigrid

Melitsky, Anton

Mitchell, Douglass

Mora Lemus, Nancy

Mrachek, Lorin Louis

Mrachek, Fitzgerald, Rose, Konopa, Thomas & Weiss, P.A.

Munoz, Gloria Eugenia

Murphy, Melissa F.

Murray, Jr., John Brian T.

Neiman, Jeffrey A.

Olson, Robert

O'Melveny & Myers LLP

Orlacchio, Adam V.

Perez 43A, Juana*

Portnoi, Dimitri D.

Powers, Sean

Preheim, Elissa J.

Procesados IQF, S.A. de C.V.

Reiter, Jonathan

Ronald Guralnick, P.A.

Santa Rita Holding LLC One

Santa Rita Holding LLC Two

Scarola, John

Scherer III, William R.

Schonbrun, Seplow, Harris & Hoffman LLP

Searcy Denny Scarola Barnhart & Shipley, PA

Servicios Chiquita Chile Limitada

Servicios de Logistica Chiquita, S.A.

Servicios Logisticos Chiquita, S.R.L

Silbert, Earl

Simons, Marco Benjamin

St. James Investments, Inc.

Soto, Edward

Stephen J. Golembe & Associates, P.A.

Stewart, Thomas H.

Three Sisters Holding LLC

Torres, Ana Ofelia

Tsacalis, William

TransFRESH Corporation

UNIPO G.V., S.A.

United Fruit Transports S.A.

United Reefer Services S.A.

Vahlsing, Marissa

Villegas Echavarria, Maria Emilse

Wayne, Charles B.

Weil, Gotshal & Manges LLP

Wichmann, William J.

William J. Wichmann, P.A.

Wolf, Paul

Wolosky, Lee

Yanez, Anthony

Counsel for Chiquita further certifies that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

Dated: June 15, 2020

Respectfully submitted,

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INTRODUCTION

In this consolidated appeal, Plaintiffs-Appellants/Cross-Appellees ("Plaintiffs") appeal the district court's Fed. R. Civ. P. 54(b) grant of summary judgment against them on their Colombian law tort claims and claims under the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350, note. After excluding much of Plaintiffs' proffered documentary and testimonial evidence as hearsay not subject to any exception, and the testimony of many of Plaintiffs' experts under Federal Rule of Evidence 702, the district court ruled that Plaintiffs could not "identify any admissible evidence supporting their foundational allegation that the AUC [*Autodefensas Unidas de Colombia*, in English, the United Self-Defense Groups of Colombia] killed their decedents, [so that] they cannot prevail upon their claims against Chiquita or the Individual Defendants [Appellees]." Appx. 7580 (district court opinion).

As in any appeal of a summary judgment decision, the Court must review the factual record developed by the parties to determine: (1) whether the district court abused its discretion in excluding certain of Plaintiffs' proffered documents and testimony from that record; and (2) whether the record of admissible evidence contains any genuine issues of material fact that would allow a jury to find that a member of the AUC killed any Plaintiff's decedent. This appeal, therefore, hinges on straightforward issues of application of the Federal Rules of Evidence and

evaluation of the admissible evidence. The factual allegations and sensational rhetoric in the underlying complaints were extraordinary—and often, highly implausible—but they ultimately were not borne out by the evidence. Indeed, the evidentiary rulings, resulting record, and the propriety of summary judgment to be addressed in this appeal are markedly ordinary.

Even so, the Center for Justice and Accountability and Partners in Justice International as well as other self-described international human rights lawyers and scholars[2] (collectively, "Movants") have requested leave ("Motion") to amplify Plaintiffs' mischaracterizations of United States case law and to interject arguments from international tribunals into this legally simple case under the guise of an *amicus curiae* brief ("Proposed Brief"). *See* Motion at 7 ("*Amici* . . . are concerned that upholding the District Court's ruling will undermine the well-established evidentiary standards that are regularly used in such litigation, both in the United Stated and in international tribunals."). *See also* Proposed Brief at iii-v (citing 17 international cases). Knowing that Plaintiffs will not succeed in this appeal under application of the Federal Rules of Evidence, Movants seek instead to distort the United States case

[2] These lawyers and scholars consist of a professor at the Chinese University of Hong Kong, an associate professor at the University of Amsterdam, a fellow at the United States Holocaust Memorial Museum, a George Washington University law professor, a Northwestern University law professor, a Rutgers University law professor, and a visiting law professor at Stanford University.

law and make arguments under foreign law evidentiary standards.[3] This is not only improper but further not the role of a "friend of the court."

It is also improper—and not the role of a "friend of the court"—to try to cure deficiencies in the record by augmenting the record on appeal with third-party hearsay that was not before the district court when it granted summary judgment.[4] This effort echoes Plaintiffs' own attempts in the district court to smuggle inadmissible hearsay facts into the record via expert testimony (which will be addressed in Defendants' Response brief) and their similar efforts to introduce new facts and circumvent contrary evidentiary rulings on appeal through a motion for judicial notice. Defendants oppose submission of Movants' Proposed Brief.

The Proposed Brief is precisely what has been described as an "abuse" of the *amicus curiae* procedure. *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, C.J., in chambers). Namely, the Proposed Brief adds nothing of value to this litigation, instead repeating—nearly verbatim—arguments already made by the 20 attorneys across 14 law firms representing all the Plaintiffs on appeal, albeit placing their international human rights law gloss on the arguments while still

[3] Motion at 8; Proposed Brief at 3, 6-7, 12, 21-24.

[4] *See, e.g.*, Motion at 21-25 (citing to nothing in the record, but instead to third-party reports and foreign tribunal decisions that were not presented to the district court and are not in the record on appeal).

mischaracterizing even the United States law cited in the Proposed Brief. Moreover, Movants do not identify another case with an interest that would be affected by the outcome of this appeal. Indeed, Movants' apparent interest in this case is their wish that the Court not apply the Federal Rules of Evidence—but instead their stated principles of international human rights evidentiary jurisprudence—to the facts of record. But Plaintiffs chose to sue Defendants in the United States and resisted vehemently and successfully Defendants' motion to dismiss for *forum non conveniens* to allow Plaintiffs' claims to be adjudicated in their home country of Colombia. Movants should not now be heard to argue on behalf of Plaintiffs that international law evidentiary standards in foreign tribunals govern the admissibility of evidence proffered in a United States federal court proceeding.

The input of Movants is unnecessary and confounds the Court's abuse-of-discretion review of basic evidentiary questions that will inform the Court's ultimate decision. Plaintiffs whom Movants seek to support have already been allocated and mostly used twice the length applicable to an appellate brief. Another group of Appellants have been allocated and filed a separate, normal-length brief. There is no reason to burden the Court and Defendants with briefs of non-parties, adding no substance to the appeal, and raising inapplicable legal standards when the only purpose of the Proposed Brief is to re-hash arguments already made in Plaintiffs' Opening Brief from any international point of view or to reiterate distortions of

United States case law already distorted in Plaintiffs' Opening Brief. For these reasons, as explained more fully below, the Motion should be denied.

ARGUMENT

Because all parties did not consent, under Rule 29 of the Federal Rules of Appellate Procedure, "whether to allow the filing of an *amicus curiae* brief is a matter of 'judicial grace.'" *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542 (7th Cir. 2003) (Posner, J., in chambers) (quoting *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000)). A proposed *amicus* brief should only be permitted when (1) a party is not competently represented, or is not represented at all; (2) when the proposed *amicus* has an interest in some other identified case that may be affected by the decision in the present case; or (3) when the proposed *amicus* has unique information or a unique perspective that can help the Court beyond what lawyers for the parties can provide. *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers).[5] In all other instances, leave to file an *amicus* brief should be denied. *Id.*

[5] District courts in this Circuit regularly follow *Ryan* in deciding whether to permit amicus briefs. *See Alabama v. United States*, No. 2:16-cv-0029-JEO, 2016 U.S. Dist. LEXIS 16854, **5-6 (N.D. Ala. Apr. 22, 2016); *Maples v. Thomas*, No. 5:13-cv-2399-SLB-MHH, 2013 U.S. Dist. LEXIS 135508, *14 (N.D. Ala. Sept. 22, 2013); *Florida v. United States, Dept. of Health & Human Svcs.*, No. 3:10-cv-91-RV/EMT, 2010 U.S. Dist. LEXIS 152369, **6-7 (N.D. Fla. June 14, 2010).

Movants fail to satisfy any of these three grounds, and the Motion is opposed by all Defendants and some other Plaintiffs in this appeal. Movants provide no reason—let alone any convincing reason—why Plaintiffs' Opening Brief is insufficient to address the federal evidentiary and procedural standards at issue in this appeal. *Ryan*, 125 F.3d at 1064. Accordingly, the Court should deny the Motion.

First, Plaintiffs are and have been competently represented by counsel. Movants seek to file the Proposed Brief on behalf of solely the two Plaintiffs (John Doe 7 and Jane Doe 7) represented by EarthRights International, Cohen Milstein, Schonbrun Seplow Harris Hoffman & Zeldes LLP.[6] Those two Plaintiffs are represented by eleven attorneys across five law firms or legal organizations.[7] That number is more than sufficient to brief the basic evidentiary issues in this appeal. Indeed, together they produced a 102-page/24,504-word opening brief. Accordingly, the first ground for allowing the Proposed Brief is not met.

[6] (Motion at 6-7 n.2.) Movants' position is odd, to say the least, given that these are but two of the seventeen Plaintiffs who filed Plaintiffs' Opening Brief on May 29, 2020.

[7] *See id.* (listing counsel). Even if Movants intend the Proposed Brief to support all Appellants except those represented by Attorney Paul Wolf (i.e., Plaintiffs as defined previously), the point remains the same: according to the cover page of their Opening Brief, Plaintiffs are represented by 20 attorneys across 14 law firms or legal organizations.

Second, Movants do not identify any other litigation they are involved in that could be affected by the outcome of this appeal. This alone establishes that the second ground for an amicus brief is not satisfied here. *Ryan*, 125 F.3d at 1063 (proposed *amicus* brief should only be allowed where the proposed "*amicus* has an interest in some other case that may be affected by the decision in the present case").

Movants' **only** claimed interest in this litigation "is in ensuring bedrock principles of evidence common to complex litigation, particularly those involving mass atrocities, are maintained." (Motion at 6.) This purported interest falls woefully short of one which justifies filing of the Proposed Brief—indeed, every litigator in the federal court system shares an interest in ensuring that the Federal Rules of Evidence are applied in every federal case. That simply cannot be the standard for allowing Movants here to file their Proposed Brief, which already greatly distorts existing federal case law and the district court's summary judgment decision.[8]

Close review of the Motion and Proposed Brief, however, reveals Movants' true purpose in seeking to file the Proposed Brief: Movants' interest in this litigation

[8] Indeed, Defendants have an interest in ensuring the "same bedrock principles of evidence"—*e.g.*, the Federal Rule of Evidence—are applied equally in all federal litigation, which is exactly what happened below. Movants (and Plaintiffs) are the ones seeking to impose some different evidentiary standards for what they deem to be "complex" or "mass atrocity" litigation.

amounts to nothing more than an apparent fear that rigorous and proper application of the Federal Rules of Evidence to what they deem "mass atrocity cases" and other complex litigation in United States federal courts will affect a plaintiff's ability to succeed in other unidentified litigation. Indeed, Movants' arguments that the Court should look to international law in determining whether the district court abused its discretion in making evidentiary decisions in this case and whether the district court properly granted summary judgment on the record here[9] concedes that, under proper application of United States federal law, like that applied by the district court below, Plaintiffs cannot prevail in this appeal.

Plaintiffs chose to sue in United States District Court where the action would be governed by the Federal Rules of Evidence, not the evidentiary standards that may have applied if they had sued in their home country of Colombia or elsewhere. Contrary to Movants' arguments (Proposed Brief at 7-12, 16-25), neither the district court's rulings under the Federal Rules of Evidence—nor the Court's standard of review of those rulings—are altered merely because Plaintiffs' claims arise in a foreign country or constitute what Movants deem "mass atrocity" cases. Neither the complexity of a case nor where the alleged actions giving rise to a claim occurred can displace the Federal Rules of Evidence in federal litigation in favor of application of evidentiary standards purportedly used in foreign tribunals.

[9] Motion at 8; Proposed Brief at 3, 6-7, 12, 21-24.

The Proposed Brief confirms that Movants simply believe that the district court should have forgone its correct application of the Federal Rules of Evidence in deciding summary judgment and should have applied lesser and inapplicable evidentiary standards used by the International Criminal Court or other foreign tribunals. (Motion at 8; Proposed Brief at 3, 6-7, 12, 21-24.) Whatever evidentiary standards Movants contend are employed in foreign tribunals are irrelevant to the Court's resolution of this appeal. Plaintiffs chose to file suit in United States federal court and successfully opposed Defendants' motion to dismiss the litigation below for *forum non conveniens*. Movants' desire that lesser evidentiary standards applied in United States federal courts, and implicit concession that Plaintiffs cannot satisfy the burdens imposed by the Federal Rules of Evidence and Federal Rules of Civil Procedure, is not an interest granting them the right to file an amicus brief.

At bottom, the Proposed Brief is nothing more than an "announce[ment of] the 'vote' of the amici on the decision of the appeal." *Voices for Choice*, 339 F.3d at 545. But, Movants do not and should not have a vote. *Id.* Thus, the second ground for allowing the Proposed Brief is not met here.

Third, the Proposed Brief offers no new or unique information or perspective but instead "essentially . . . cover[s] the same ground the appellants, in whose support they wish to file, do." *Voices for Choices*, 339 F.3d at 545. The Proposed Brief identifies only two issues: an alleged error by the district court in, according to

Movants, not considering the totality of the evidence submitted by John Doe 7 and Jane Doe 7; and, an alleged error by the district court's finding that speculative evidence offered by Jane Doe 7 and John Doe 7 was insufficient to defeat summary judgment.[10]

But Plaintiffs have already made these arguments, mischaracterizing United States case law in the same manner as Movants' Proposed Brief. *Compare* Plaintiffs' Opening Brief at 21 ("The district court improperly considered Plaintiffs' individual pieces of evidence 'standing alone' rather than considering Plaintiffs' circumstantial evidence in its totality.") *with* Proposed Brief at 7 ("In determining whether there is a genuine issue of fact, the court must consider all evidence in its totality rather than in a piecemeal manner."); *compare* Plaintiffs' Opening Brief at 21-29 (arguing that circumstantial evidence, including alleged "modus operandi" and "pattern" evidence presented by Plaintiffs was sufficient to withstand summary judgment), *with* Proposed Brief at 14 ("Circumstantial evidence, including pattern evidence, can suffice to survive summary judgment.").) "While the [Movants' proposed] *amicus* brief[] sought to be filed in this case contain[s] a few additional citations not found

[10] (Proposed Brief at 3-4.) Because Plaintiffs address these same issues in their Opening Brief, Defendants will not respond to Movants' misrepresentation of the district court's summary judgment analysis here. It suffices to say that Movants' characterizations of the district court's decision are plainly inaccurate. Defendants will address these alleged errors in their Response Brief, because the same arguments were already raised separately in both sets of Plaintiffs' Opening Briefs.

in [Plaintiffs' Opening Brief] and slightly more analysis on some points, essentially [it] covers the same ground the [Plaintiffs], in whose support they wish to file, do." *Voices for Choices*, 339 F.3d at 544. *Accord Maples*, 2013 U.S. Dist. LEXIS at *14 ("[*habeas corpus*] petitioner's counsel have presented comprehensive arguments for the points raised in the amici's proposed briefs. The amici will not be prejudiced if the court only considers the parties' briefs in this case").

Even other Plaintiffs recognize that "the proposed *amicus curiae* brief adds nothing of substance to the arguments already briefed by the Appellants."[11] Accordingly, Movants' Motion should be denied.

Moreover, the Court already received two separate briefs from Plaintiffs totaling 37,112 words.[12] Movants have not and cannot make any meaningful argument that their Proposed Brief will add anything that has not been addressed in those two already lengthy briefs. Indeed, "[i]n an era of heavy judicial caseloads and public impatience with the delays and expense of litigations, [courts] should be

[11] Appellants Doe 378 and Doe 840's Response in Opposition to Motion to file Amicus Curiae Brief (filed June 8, 2020) ("Wolf Plaintiffs' Response"), at 1.

[12] Order Granting Joint Motion and Setting Consolidated Briefing Schedule and Increasing Word Limits, at 9 (Mar. 6, 2020). The Wolf Plaintiffs likewise recognize that Movants' Proposed Brief simply rehashes arguments made by both the Wolf Plaintiffs and the non-Wolf Plaintiffs in their respective Opening Briefs. (*See* Wolf Plaintiffs' Response, at 1 ("Moreover, the proposed amicus curiae brief adds nothing of substance to the arguments already briefed by the Appellants.")).

assiduous to bar the gates to amicus curiae briefs that fail to present convincing reasons why the parties' briefs do not give [a court] all the help [the court] need[s] for deciding the appeal." *Ryan*, 125 F.3d at 1064.

Because the Proposed Brief adds nothing of substantive value to this case, but simply rehashes Plaintiffs' arguments, the third ground for allowing a proposed *amicus* brief is not satisfied and the Court should deny the Motion.

CONCLUSION

"The term '*amicus curiae*' means friend of the court, not friend of a party." *Ryan*, 125 F.3d at 1063. By its very terms, the Proposed Brief purports to benefit the Court's analysis with respect to only two of the 19 Plaintiffs involved in this appeal. Movants are quite clearly not friends of the Court, but friends of EarthRights International, Cohen Millstein, Schonbrun Seplow Harris Hoffman & Zeldes LLP, and the two Plaintiffs those firms represent.

Further, as discussed above, Movants' Proposed Brief adds nothing of value to this litigation that is not already addressed in Plaintiffs' Opening Brief. Thus, Movants do not seek to aid the Court in its determination of the issues in this appeal—they seek only to enlarge Plaintiffs' Opening Brief beyond its already enlarged 26,000-word limit. Indeed, as discussed above, the Court already granted Plaintiffs twice (26,000) the normal number (13,000) of words for their principal brief and, according to their Fed. R. App. 32(g)(1) certification, Plaintiffs used

24,504 of them. Because "*amicus* briefs [like the Proposed Brief here] are often used as a means of evading the page limitations on a party's brief," *Glassroth v. Moore*, 347 F.3d 916, 919 (11th Cir. 2003) (citing *Voices for Choices*, 339 F.3d at 544), the Court should not permit Plaintiffs to make an end-run around the existing word limitations through the Proposed Brief. There is no good reason—and Movants have provided none—that their input is needed to aid the Court in deciding the straightforward issues under the Federal Rules of Evidence that are presented in this appeal.

Where, as here, there is no evidence that Plaintiffs are poorly represented, the proposed amici fail to identify any case outside of this one in which they have an interest, and their proposed brief "contains no information or arguments that [Plaintiffs] did not already provide to the Court," a motion for leave to file an *amicus* brief should be denied. *Halo Wireless, Inc. v. Alenco Comms. Inc.*, 684 F.3d 581, 596 (5th Cir. 2012). Accordingly, the Court should deny the Motion.

Dated: June 15, 2020

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

Pursuant to Fed. R. App. P. 32(g)(1), I certify that this document complies with the type-volume limit as set forth by the Court because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,142 words according to a word count using Microsoft Word, the word-processing software used to prepare the document.

Dated: June 15, 2020

/s/ Michael L. Cioffi
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system on June 15, 2020 which will automatically generate and serve by e-mail a Notice of Docket Activity on Attorney Filers under Fed. R. App. P. 25(c)(2).

/s/ Michael L. Cioffi
Michael L. Cioffi