IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 14-2006

GREGORY THOMAS BERRY; SUMMER DARBONNE, one behalf of herself and all others similarly situated; RICKEY MILLEN, on behalf of himself and all other similarly situated; SHAMOON SAEED, on behalf of himself and all other similarly situated; ARTHUR B. HERNANDEZ, on behalf of himself and all others similarly situated; ERIKA A. GODFREY, on behalf of herself and all others similarly situated; TIMOTHY OTTEN, on behalf of himself and all others similarly situated,

Plaintiffs-Appellees

and

LEXISNEXIS RISK AND INFORMATION ANALYTICS GROUP, INC.; SEISINT, INC; REED ELSEVIER, INC.

Defendants-Appellees

v.

ADAM E. SCHULMAN

Party-in-Interest-Appellant

On Appeal from the United States District Court
For the Eastern District of Virginia, No. 3:11-cv-00754-JRS

Petition for Panel Rehearing and Rehearing *En Banc* of Appellant Adam E. Schulman

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Statement of Purpose

Panel rehearing or rehearing *en banc* is appropriate under Fed. R. App. P. 40 or Fed. R. App. P. 35 because the panel's interpretation of Fed. R. Civ. P. 23(b)(2) is "in conflict with a decision of the United States Supreme Court, this Court or another court of appeals and the conflict is not addressed in the opinion." 4th Cir. R. 40(b)(iii); *see also* Fed. R. App. P. 35(b)(1)(A)-(B). *Compare Berry v. Schulman.*, No. 14-2006 (4th Cir. Dec. 4, 2015) ("Slip Op.") at 21-23 *with Crawford v. Equifax Payment Servs.*, 201 F.3d 877, 882 (7th Cir. 2000); *Hecht v. United Collection Bureau, Inc.*, 691 F.3d 218, 223-24 (2d Cir. 2012); *and Wal-Mart Stores Inc. v. Dukes*, 131 S. Ct. 2541, 2560 (2011). Moreover, in attempting to reconcile its decision with those of the Fifth and Eleventh Circuits by differentiating between settlement and litigation classes, the panel inadvertently created a conflict with several more decisions. *Compare* Slip Op. 21 *with Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620-21 & n.16 (1997); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 857-59 (1999); *In re Telectronics Pacing Sys. Inc.*, 221 F.3d 870, 880 (6th Cir. 2000).

The split arises out of a simple legal question: is an injunctive class Rule 23(b)(2) certification appropriate when the sole statute at issue in the litigation, the Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.* ("FCRA")), does not permit private parties to seek injunctive relief? The panel decision answers "yes, as long as the settlement agreement itself contemplates only receiving injunctive relief." Slip Op. 22-23. As the panel decision notes, that holding requires distinguishing decisions from the Fifth and Eleventh Circuits. Slip Op. 21 (citing *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 977 n.39 (5th Cir. 2000); *Christ v. Beneficial Corp.*, 547 F.3d 1292, 1298 (11th

Cir. 2008)). Attempting to sidestep the conflict, the panel declares that settlement-only certifications are not subject to the same scrutiny as contested litigation certifications. *Id.* This reasoning, however, does not reconcile the decision with additional contrary authorities out of the Second and Seventh Circuit that forbid (b)(2) certifications in equivalent situations in the settlement-only context. *See Crawford*; *Hecht*. Furthermore, the reasoning creates a fissure with Supreme Court jurisprudence, by declining to recognize that the prerequisites of rule 23(a) and (b) are "designed to protect absentees by blocking unwarranted or overbroad class definitions" and "demand undiluted, even heightened, attention in the settlement context." *Amchem*, 521 U.S. at 620; *accord Ortiz*, 527 U.S. at 858-59 (refusing to allow the interest in settlement to "swallow the preceding protective requirements of Rule 23"). The panel's rule of decision—"to assess the propriety of any monetary remedy" "look to the Agreement itself, and to the 'final relief' it contemplates" (Slip. Op. 22)—is contrary to *Amchem* and *Ortiz*. On an inter-circuit level, it is incompatible with the Sixth Circuit's pronouncement that "bootstrapping…a Rule 23(b)(3) class into a [mandatory] class is impermissible and highlights the problem with defining and certifying class actions by reference to a proposed settlement." *In re Telectronics Pacing Sys. Inc.*, 221 F.3d 870, 880 (6th Cir. 2000) ((b)(1)(B) settlement).

Rehearing *en banc* is also warranted because the proper interpretation of Rule 23(b)(2) is a question of exceptional importance, not merely for the 28,000 appellants in this case who are now bound to an unfair agreement over their objection, nor merely for the silent 200 million members of the class who are bound to the settling

parties' conception of the FCRA for the next five years. As a long line decisions hold, the right to opt out is an integral aspect of the Due Process protections owed absent class members when their claims are being compromised as part of a class action. The panel's decision to downplay that right by allowing the settling parties to control the scope of the opt-out right is a serious legal error. It invites unscrupulous attorneys to forum-shop into Fourth Circuit courts with national class actions to engage in the increasingly-common phenomenon of misusing mandatory (b)(2) settlement certifications to the benefit of the settling parties and to the detriment of absent class members across the country. *See, e.g.*, *In re Dry Max Pampers Litig.*, 724 F.3d 713 (6th Cir. 2013); *Richardson v. L'Oreal U.S.A., Inc.*, 991 F. Supp. 2d 181 (D.D.C. 2013).

Panel rehearing is warranted for one further reason. The panel appears to have misread the Second Circuit's decision in *Hecht*, as it cites the decision in support of the proposition that a (b)(2) certification may be problematic where the settlement obtains "substantial monetary damages" and the complaint contains no request for injunctive relief. Slip Op. 22-23. To the contrary, the settlement discussed in *Hecht* afforded class members no monetary damages, only prospective injunctive relief and a *cy pres* payment to third parties. 691 F.3d at 221 (describing the relief). There is no daylight between *Hecht* and this case.

Background

In November 2011, plaintiffs sued LexisNexis, alleging that its sale of Accurint data reports violated the FCRA and seeking solely monetary damages on behalf of

three classes of consumers. OB 4-6.[1] Before a class certification motion (or any other contested motion) was filed, plaintiffs and defendants entered into two proposed settlements. OB 7. They proposed a (b)(3) settlement on behalf of 31,000 individuals who had either requested their file from Lexis or had initiated or submitted a dispute to Lexis about an Accurint report. These individuals and class counsel would split a $13.5 million common fund.

The parties also proposed a non-opt-out (b)(2) settlement on behalf of all 200 million individuals about whom information resided in the Accurint database. About half of these 200 million individuals were added for the purpose of settlement only, as they were not covered by the allegations of the complaint. As part of the settlement, Lexis agreed to establish two suites of separate products: "Collections Decisioning" and "Contact & Locate." OB 8. "Collections Decisioning" would be subject to FCRA requirements. "Contact & Locate" would not be. Plaintiffs agreed on behalf of all absent class members to immunize Lexis from FCRA liability relating to sale of the not-yet-developed "Contact & Locate" reports until the settlement's sunset date (June 30, 2020). Class members also released any right to seek "willful noncompliance" remedies and any right to seek actual damages on a class action basis.[2] Class counsel was permitted to seek, with the support of Lexis, $5.5 million in fees and costs

[1] "OB" refers to the Opening Brief and "A" refers to the Appendix.

[2] "Willful Noncompliance Remedies" encompasses monetary claims for statutory damages claims under 15 U.S.C. § 1681n(a)(1), punitive damages under § 1681n(a)(2), attorneys' fees under § 1681n(a)(3), and every form of relief other than actual damages under state statutes. A110.

relating to the (b)(2) settlement in addition to roughly $4 million in fees and costs from the (b)(3) common fund. A128, 140-41. Each of the seven named representatives was entitled to seek service awards of $5,000 without opposition from Lexis. A141.

Although no individual notice was sent to (b)(2) class members, more than 27,000 individuals (most as part of two large objector groups) objected to the (b)(2) settlement. OB 9. Schulman, objecting *pro se* through the non-profit Center for Class Action Fairness, maintained that the proposed class certification violated Rules 23(b)(2) and 23(a)(4) and the Due Process rights of absent class members, and that the settlement was unfair under Rule 23(e)(2) for various reasons. A655-706. *Inter alia*, he described how (b)(2) certification was necessarily improper because the only claim pled in this case arose under the FCRA, which does not permit injunctive relief. A673-677.

After a fairness hearing, the district court overruled all objections, certified the class, granted final approval to the settlement, and awarding attorneys' fees and service awards in the full amount requested by plaintiffs. A2859-2884. Schulman and the nearly 28,000 other objectors appealed. *E.g,* A2898.

The panel affirmed on December 4, 2015. Relevant here, it agreed with the district court that "this is a paradigmatic Rule 23(b)(2) case" because the "meaningful, valuable injunctive relief afforded by the Agreement is indivisible benefitting all members of the (b)(2) Class at once." Slip Op. 18 (internal quotation marks omitted). Although the settlement's release of "Willful Noncompliance Remedies" encompasses

only monetary claims (because injunctive relief is not authorized under the FCRA), the panel found the class suitable for a (b)(2) certification because the settlement preserved actual damages claims (provided that those claims are brought in an individual capacity without invoking the class action device). Slip Op. 19-20. Proceeding then to assume that the FCRA does not provide a private right of action for injunctive relief, and recognizing that inter-circuit precedent precludes certification of a (b)(2) class where injunctive relief is unavailable under a statute, the panel faulted objectors for "failing to acknowledge the critical role of the settlement agreement." Slip Op. 21. A (b)(2) settlement certification could lie, the panel decided, as long as the settlement terms themselves grant the class non-illusory, final injunctive relief. Slip Op. 22. This is so, the panel concluded, even if the adversarial complaint in the litigation seeks exclusively money damages, because the end receipt of injunctive relief allays any "concerns that it is the money and not the injunction that is driving the case." Slip Op. 23.

Argument

I. By holding that injunctive relief was appropriate with respect to the class as a whole, notwithstanding the FCRA's prohibition on private parties seeking injunctive relief, the panel created a split with several other circuits.

To the Fifth and Eleventh Circuits, Schulman's proposed rule is so self-evident that they preface that rule with "of course": "Of course, the unavailability of injunctive relief under a statute would automatically make (b)(2) certification an abuse of discretion." *Bolin v. Sears Roebuck & Co.*, 231 F.3d 970, 977 n.39 (5th Cir. 2000);

accord Christ v. Beneficial Corp., 547 F.3d 1292, 1298 (11th Cir. 2008) (quoting *Bolin*). Indeed, the principle that (b)(2) is improper where the class possesses no injunctive claims follows *a fortiori* from the Supreme Court's decision in *Dukes*. *Dukes*, 131 S. Ct. 2541. There, Justice Scalia writing for a unanimous Court on the (b)(2) issue, explained that

> even though the validity of a (b)(2) class depends on whether 'final injunctive relief or corresponding declaratory relief is appropriate respecting the class *as a whole*,' about half the members of the class approved by the Ninth Circuit have no claim for injunctive or declaratory relief at all. Of course, the alternative (and logical) solution of excising plaintiffs from the class as they leave their employment may have struck the Court of Appeals as wasteful of the District Court's time. *Id.* at 2560 (quoting Rule 23(b)(2) and adding emphasis).

If (b)(2) certification is untenable where half the members of the class lack an injunctive claim, certainly it is untenable where **all** the members of the class lack an injunctive claim. The panel does not address the *Dukes* decision, but if it had presumably it would say the same thing that it said about *Bolin* and *Christ*—that those cases involved a certification contested by the defendant, while this case does not. Slip Op. 21. But that is not the extent of the circuit authority on the issue. The Second and Seventh Circuits have echoed the reasoning of *Bolin* and *Christ*, and have done so in the settlement-only certification context—that is, where certification was unopposed by the defendant.

In *Crawford v. Equifax Payment Servs.*, the parties attempted a mandatory (b)(2) settlement certification of claims brought under 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act ("FDCPA"). 201 F.3d 877 (7th Cir. 2001). The FDCPA is a

statute with language that parallels that of the neighboring FCRA, and like the FCRA, it does not authorize private plaintiffs to seek injunctive relief. *Bolin*, 231 F.3d at 977 n.39; *Washington v. CSC Credit Servs.*, 199 F.3d 263, 268 n.4 (5th Cir. 2000). Nonetheless, the parties in *Crawford* attempted a mandatory (b)(2) certification on the ground that the settlement contemplated no monetary relief for class members. Indeed, just like this settlement, it enjoined the defendant from engaging in conduct that violated the FDCPA; it provided for a $500 incentive award to the named plaintiff, $5,500 to a non-class member law school clinic, and $78,000 in attorneys' fees to class counsel. 201 F.3d at 880. In fact, the release in *Crawford* was even more solicitious of class members' monetary damages claims than in this case; unlike here, it preserved absent class members' right to seek statutory damages; it only prevented the use of the class action device. *Id.*.

The objector-appellants in *Crawford* complained that this certification deprived them of their rights to personal notice and to opt out of the class. The Seventh Circuit agreed: "*Ortiz*…show[s] that the class members ordinarily are entitled to personal notice and an opportunity to opt out of representative actions for money dagmages—which the *Crawford* case is, even though most of the money went to Crawford's lawyer…Rule 23 itself limits no-opt-out classes to the situations described in Rule 23(b)(1) and (2), which *Crawford* does not meet: all private actions under the Fair Debt Collection Practices Act are for damages." 201 F.3d at 881-82.

More recently, and post *Dukes*, the Second Circuit confronted the same question in *Hecht v. United Collection Bureau*. 691 F.3d 218 (2d Cir. 2012). There, the

court assessed the validity of a (b)(2) settlement certification of FDCPA claims. As in *Crawford*, the settlement provided only for named representative payments, class counsel's fees, and a small *cy pres* donation to a non-class member charity. 691 F.3d at 221. Absent class members were left with a time-limited injunction requiring the defendant to use its best efforts to ensure that its debt-collection agents would identify the company and accurately state the purpose of the communication when calling individuals in the future. *Id.* Even though the settlement provided class members solely with injunctive relief, the Second Circuit held that (b)(2) certification was improper. *Id.* at 223-24. To determine this, the Second Circuit observed that the "complaint, Stipulation of Settlement, and Settlement Order thus defined the…class to ensure that every member would be entitled to damages, but not that every member would have standing to seek injunctive relief." *Id.* at 224. The dispositive reason that part of the class lacked standing was because they faced no prospect of future harm. *Id.* Still, the Second Circuit only reached the issue of standing after "[a]ssuming that the FDCPA permits injunctive relief" contrary to "every federal appeals court to have considered the question." *Id.* at 223 & n.1. The reason for the Second Circuit's assumption is apparent: only if the FDCPA permits injunctive relief could a (b)(2) settlement certification even get off the ground.

The panel opinion never mentions *Crawford*. The panel does attempt to distinguish *Hecht* in a single citation (Slip. Op. 23), but it appears that the panel misconstrued *Hecht*, believing that *Hecht* supported only the narrower proposition that there are (b)(2) concerns where the complaint alleges injunctive relief and the

settlement attains monetary damages. But *Hecht* is not an instance of a settlement that attained "substantial monetary damages"; rather, it provided absent class members no damages, just like the settlement at bar. *Compare* Slip Op. 22-23 *with* 691 F.3d at 221.[3]

II. The panel departs from Supreme Court and inter-circuit precedent by allowing the interest in settlement to override Rule 23's prerequisites.

The panel acknowledged that (b)(2) certification would be inappropriate if the operative statute did not allow for injunctive relief and the defendant were opposing certification. Slip Op. 21. But, the panel said, because Lexis was willing to stipulate to substantial injunctive relief at settlement, a (b)(2) certification became appropriate. *Id.* This holding contravenes the central tenets of the last two opinions that the Supreme Court has issued on class action settlements. *Amchem*, 521 U.S. 591, and *Ortiz*, 527 U.S. 815. It also contravenes the holdings of several circuits that adhere to the *Amchem* and *Ortiz* decisions.

The *Amchem* and *Ortiz* decisions both arose out of the mass of asbestos cases burdening and overloading the federal courts in the early-to-mid 1990s. Endeavoring to reach a solution that would bring defendants global peace, the parties in *Amchem* proposed a settlement-class (b)(3) certification. The district court certified the class based on class members' common interest in interest "in receiving prompt and fair

[3] The panel's misconstruction of *Hecht* was perhaps based on *Hecht's* statement that "damages [were] the only remedy awarded that clearly applied to every class member." 691 F.3d at 224. The Second Circuit meant "sought," not "awarded" because, again, the settlement awarded no monetary damages to absent class members. 691 F.3d at 221.

compensation for their claims" (i.e. an interest in settlement). 521 U.S. at 607. The Third Circuit reversed certification, holding that the district court had erred in lowering the bar for settlement-only certifications when in reality "each of these [Rule 23(a) and (b)] requirements must be satisfied without taking into account the settlement, and as if the action were going to be litigated." *Georgine v. Amchem Prods.*, 83 F.3d 610, 626 (3d Cir. 1996). The Supreme Court granted certiorari to resolve the division about "the extent to which a proffered settlement affects court surveillance under Rule 23's certification criteria." 521 U.S. at 618 (citing the Fourth Circuit's decision in *In re A. H. Robins Co.*, 880 F.2d 709 (1989) as part of the split). *Amchem*'s answer was unequivocal: aside from trial manageability issues under Rule 23(b)(3)(D), the "other specifications of the rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context." 521 U.S. at 620. Rule 23(e), which subjects class action settlements to district-court approval, "was designed to function as an additional requirement, not a superseding direction, for the 'class action' to which Rule 23(e) refers is one qualified for certification under Rule 23(a) and (b)." *Id.* at 621. And just in case Justice Ginsburg's message was not yet clear: "The safeguards provided by the Rule 23(a) and (b) class-qualifying criteria, we emphasize, are not impractical impediments—checks shorn of utility—in the settlement class context." *Id.*

Amchem recognizes a truth that the panel did not. "[T]he requirements for certification are not the defendant's to waive; they are intended to protect absent class

members." Alexandra D. Lahav, *Symmetry and Class Action Litigation*, 60 UCLA L. REV. 1494, 1506 (2013). "Scholars and judges have been especially concerned about the misalignment of interests between class counsel and class members in the settlement context. A practice of allowing the defendant to waive Rule 23 requirements only when its settlement terms are met will likely exacerbate these problems." *Id.* (footnotes omitted). There is all the more potential for mischief in (b)(2) actions because the value of injunctive relief "is… easily manipulable by overreaching lawyers." *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003).

Following *Amchem*, *Ortiz* confronted a mandatory (b)(1)(B) limited-fund settlement-only certification. Before reaching the Supreme Court, the Fifth Circuit had ratified the certification, distinguishing *Amchem* as only applying to (b)(3) settlements. 527 U.S. at 830. Judge Smith dissented, arguing that a (b)(1)(B) certification was inapposite "because the only limited fund in the case was a creature of the settlement itself." 527 U.S. at 830. *Ortiz* reversed, instructing that *Amchem's* dictates are not limited to the (b)(3) context. "The inherent tension between representative suits and the day-in-court ideal is only magnified if applied to damages claims gathered in a mandatory class." *Id.* at 846. "When a district court, as here, certifies for class action settlement only, the moment of certification requires "heightened attention,' to the justifications for binding the class members. *Id.* at 848-49 (quoting *Amchem*). "[A] fairness hearing under Rule 23(e) is no substitute for rigorous adherence to those provisions of the Rule 'designed to protect absentees." *Id.* at 849 (quoting *Amchem*).

As in *Amchem* and *Ortiz*, "the proponents of the settlement [here] are trying to rewrite Rule 23; each ignores the fact that Rule 23 requires protections under subdivisions (a) and (b) against inequity and potential inequity at the pre-certification stage, quite independently of the required determination at postcertification fairness review under subdivision (e) that any settlement is fair in an overriding sense." *Ortiz*, 527 F.3d at 858-59. Yet the panel allowed the settling parties to rewrite Rule 23 by committing the error that *Ortiz* condemned: assessing the propriety of class certification "by treating the settlement agreement as dispositive." *Ortiz*, 527 F.3d at 864.

By ignoring *Amchem* and *Ortiz*, the panel has caused a rift with too many circuit decisions to list, all of which subject settlement-only certifications to searching, undiluted, even heightened, scrutiny. *See, e.g.*, *Pampers*, 724 F.3d at 721-22; *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 380 (3d Cir. 2013); *In re Literary Works in Elec. Databases*, 654 F.3d 242, 249 (2d Cir. 2011); *see also Gunnells v. Healthplan Servs.*, 348 F.3d 417, 451 (4th Cir. 2003) (Niemeyer, J., concurring in part and dissenting in part).

At the time of settlement, defendants' and named plaintiffs' interests will converge on certifying the class as easily as possible, without the (b)(3) annoyances of notice costs and opt-out rights, and without the (b)(3) hurdles of predominance and superiority. Thus, it is imperative that the law be clear that "bootstrapping of a Rule 23(b)(3) class into a [mandatory] class is impermissible and highlights the problem with defining and certifying class actions by reference to a proposed settlement." *In re Telectronics Pacing Sys. Inc.*, 221 F.3d 870, 880 (6th Cir. 2000); *accord Crawford*, 201 F.3d at

881 ("Crawford's pleadings sought certification under Rule 23(b)(3), and the switch to Rule 23(b)(2) was a last-minute change."). Ultimately, the panel lands in an odd place where they approve the *Bolin* decision, which evinced a concern that "plaintiffs may attempt to shoehorn damages actions into the Rule 23(b)(2) framework,"[4] but then simultaneously eschew concern for a situation where both the plaintiffs and the defendants jointly attempt to shoehorn a damages action into the (b)(2) framework.

Let's assume *arguendo* the panel was right that the injunctive terms of the settlement are a good deal for class members, and the settlement was not a product of class counsel's interest in their fee (Slip Op. 30), and further that the statutory damages claims released in the settlement are not very valuable (Slip Op. 9, 32). The very point of *Amchem* and *Ortiz* is that those 23(e) fairness judgments cannot determine the 23(a) and (b) certification questions. *See Amchem,* 521 U.S. at 621 ("the standards set for the protection of absent class members serve to inhibit appraisals of the chancellor's foot kind—class certifications dependent upon the court's gestalt judgment or overarching impression of the settlement's fairness"); *Ortiz*, 527 U.S. at 863-64 ("[E]ven if we could be certain that this evaluation were true, this is to reargue *Amchem*: the settlement's fairness…does not dispense with the requirements of Rule 23(a) and (b).").

Furthermore, the panel highlights the fact that parties can settle for injunctive relief even though that relief would be unavailable through litigation on the merits. Slip. Op. 20 (citing *Local Number 93 v. City of Cleveland*, 478 U.S. 501 (1986), and

[4] 231 F.3d at 976.

Sullivan v. DB Invs., Inc., 667 F.3d 273 (3d Cir. 2011) (*en banc*)). True, but irrelevant. That parties can settle for things that the substantive law does not authorize has nothing to do with whether the class's claims can be certified and simultaneously extinguished in a way that complies with (b)(2). *See* Reply Br. 11.

At base, the panel opinion expresses an overriding preference for settlement, a preference that cannot be squared with either *Amchem* or *Ortiz*. Lost in the shuffle is the fact that "[t]he public interest in having rules of procedure obeyed is at least as important as the public interest in encouraging settlement of disputes." *Keller v. Mobil Corp.*, 55 F.3d 94, 98 (2d Cir. 1995). "While a 'welcome byproduct' of deciding cases or controversies on a class-wide basis, the goal of global peace does not trump Article III or federal law." *In re Deepwater Horizon*, 732 F.3d 326, 343 (5th Cir. 2013).

Rehearing is necessary to clarify that the Rule 23 prerequisites exist independently of any proposed settlement and serve to safeguard the rights of vulnerable absent class members. Rehearing is necessary to reaffirm the principle that judges should subject settlement-only certifications to "undiluted, even heightened" scrutiny.

Conclusion

This Court should grant rehearing *en banc* or panel rehearing.

Dated: December 18, 2015

Respectfully submitted,

/s/ Adam E. Schulman

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Proof of Service

I hereby certify that on December 18, 2015 I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system, which will provide notification of such filing to all registered ECF filers.

Dated: December 18, 2015

/s/ Adam E. Schulman
Adam E. Schulman