**No. 129227**

**IN THE SUPREME COURT OF ILLINOIS**

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| Project44, Inc.,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>FourKites, Inc.,<br><br>Defendant-Appellant. | On Appeal from the Appellate Court of Illinois, First Judicial District<br><br>No. 1-21-0575<br><br>Circuit Court of Cook County, Illinois, County Department, Law Division<br><br>Case No. 2020-L-4183<br><br>The Honorable James E. Snyder, Judge Presiding |

# REPLY BRIEF IN SUPPORT OF DEFENDANT-APPELLANT FOURKITES, INC.

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Oral Argument Requested

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## INTRODUCTION

The question presented to this Court for review is who qualifies as a third party for purposes of publication when a defamation claim is brought by a corporate plaintiff (a "Corporate Defamation Claim"). Defendant argues for the application of a nuanced and thoughtful rule that accounts for the impact the corporate form has on the analysis and preserves the critical gatekeeping function performed by the publication requirement. Plaintiff seeks instead to employ the blunt instrument of a bright line rule that would eliminate the publication requirement altogether.

Plaintiff's Response Brief (the "Response") ignores the impact of the corporate form on the publication analysis by asserting that anyone and everyone, regardless of role, is a third party for purposes of publication, and argues that this Court should utilize privilege in place of publication. Plaintiff's position ignores firmly established black letter law that without publication to a third-party there can be no loss of reputation, and therefore no basis for a defamation claim. *See* Restatement (Second) of Torts (the "Restatement") § 577, Comment *a* (1977). Applying a blanket rule like the one Plaintiff seeks would ignore the harm against which the tort is designed to protect and allow such claims to proceed even where there is no meaningful risk of reputational harm, expanding the tort of defamation beyond its only intended purpose – protecting a party's reputation with others.

Finally, it must be made clear from the outset that although Plaintiff's Response disingenuously discusses the underlying allegations of its Complaint as though Defendant has admitted involvement in the conduct at issue, that is not the case. Defendant moved to dismiss the Complaint because, as explained throughout its filings in this matter, this case should stop at the threshold due to a fundamental lack of reputational harm.

## ARGUMENT

### I. The Publication Requirement Must Be Preserved

#### A. Plaintiff asks this Court to create a rule that eliminates the publication requirement in Corporate Defamation Claims entirely.

Neither party takes issue with the underlying principle that a statement cannot be defamatory if it is made exclusively to the subject of the statement because in that instance there is no reputational harm. Nevertheless, Plaintiff's Response advocates for a rule that is unconcerned with whether reputational harm actually occurred. Plaintiff's position would jettison the publication requirement entirely, and thereby eliminate any initial consideration by a trial court as to whether the facts presented allow for reputational harm. In so doing, Plaintiff asks this Court to abandon reason and ignore whether the fundamental wrong the tort of defamation was designed to protect against – reputational harm – has even occurred.

Plaintiff asserts that the controlling principle in Corporate Defamation Claims should be "deferring to finding communications published," and then skipping directly to whether a conditional privilege is applicable. (Response, p. 13.) If this "principle" were adopted, its plain impact would be to eliminate the publication requirement entirely in Corporate Defamation Claims, and allow claims to proceed even in a context where reputational harm did not occur.

Such a rule would ignore the entire purpose of the tort. Defamation does not exist to protect against hurtful speech; it serves only to protect against reputational harm. *See* Restatement § 577, Comment *b* ("The law of defamation primarily protects only the interest in reputation."). Publication to a third party is what creates the possibility of reputational harm. *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, ¶ 24,

961 N.E.2d 380, 391 (a statement is defamatory only if it harms an individual's reputation by lowering the individual in the eyes of his community or deterring the community from associating with him). Consequently, Plaintiff's proposal removes the cornerstone of defamation law. (Appx. at 567, ¶ 2.)

Plaintiff argues that applying the publication rule in Corporate Defamation Claims would produce "arbitrary outcome[s]" depending on "who received the defamatory communication." (Plaintiff Response Brief, p. 9.) In fact, there is nothing arbitrary about it. Despite Plaintiff's unsupported assertions to the contrary, Defendant is not seeking a "blanket" rule under which any statement about a corporation made to its employees is deemed unpublished. Instead, Defendant seeks a narrow ruling tailored to the facts of the case at hand: statements about a company are not published when such statements are made to the human embodiment of the company, such as to members of its Board of Directors or C-Suite leadership. This rule would produce predictable results that would be anything but arbitrary while still preserving the important function performed by the publication requirement.

The need for a nuanced rule is demonstrated by Plaintiff's own allegations in the underlying Complaint. As Defendant noted in its initial brief to this Court ("Opening Brief"), the proof is in the pudding as it relates to the issue of reputational harm in this case. Plaintiff alleged that it was damaged in the community based on "information and belief". (Appx. at 129, ¶54.) Despite the fact that more than eleven months had passed between when the Emails[1] were sent and when Plaintiff filed its complaint, it alleged no facts

[1] The content and context of the Emails are described in the Statement of Facts of Defendant's Opening Brief, pp. 2 – 3.

supporting actual reputational harm. Defendant argued in its Opening Brief that this is not surprising given the role played by those to whom the Emails were directed, and that these points underscore precisely why the publication requirement must remain as a gatekeeper in Corporate Defamation Claims. Plaintiff offered no challenge to this plain truth in its Response. That silence is deafening, and demonstrates the reasonableness of, and the need for, the rule Defendant proposes.

**B. Eliminating the publication requirement would allow claims where no reputational harm occurred.**

Plaintiff agrees that a company can only act through its agents, directors, and officers. (Response, p. 15). It then attempts to distinguish the cases Defendant cites in support of this proposition by asserting that "none of these cases address publication in the context of a defamation claim." (Response, p. 15.) This is a distinction without a difference that ignores the purpose for why the cases were cited: companies act through the people who run them. If the law recognizes that an "artificial being" like a corporation can have concern about its reputation, as the Appellate Court held, then it must equally consider "who is the company" in order to act on those concerns. A communication to whomever is ultimately responsible for controlling the entity should be viewed as a communication to the entity itself. Otherwise, the scope of the tort balloons to encompass any statements that upset a legal entity, regardless of whether the entity's reputation has been damaged it the eyes of the community.

Plaintiff's bright line rule takes no consideration of the role played by the recipient of the allegedly defamatory statements, and is not the correct result because it would render meaningless the fundamental consideration at the core of a defamation claim – whether reputational harm occurred. That is the crux of the question presented to this Court –

whether communications to any corporate representative, regardless of title or responsibility, will result in reputational harm to the corporation. As discussed below, Plaintiff brushes past the issue of reputational harm in favor of privilege, and in so doing ignores a material flaw in its position: it is nonsensical to presume reputational harm follows any comment made to a human being about a legal entity regardless of the relationship between the two. This is made clear by the hypotheticals presented in the Opening Brief, none of which Plaintiff meaningfully addresses in its Response.

In its Opening Brief, Defendant argued that under the Appellate Court's holding, if this case involved a single-member limited liability company and the Emails were sent to the lone member of that LLC, a publication would still be deemed to have occurred even though there could be no reputational harm. Plaintiff's Response does not challenge this conclusion in any meaningful way. The rule Plaintiff seeks cannot be correct because it fails to account for such circumstances or give any meaningful consideration to the relationship between people and the entities they represent.

Instead, it argues that the issue, as illustrated by the puppeteer and single-member LLC hypotheticals presented on Pages 8-9 of Defendant's Opening Brief, is dispensed through the application of "existing qualified privilege law." (Response, p. 23-24.) In fact, such application does not address the concerns raised by those hypotheticals because it flatly ignores the critical underlying issue of the statement's impact on the entity's standing in its community. Privilege is no solution because it does not evaluate whether reputational harm has occurred. Rather, it assumes that such harm did occur and, as a result, Plaintiff's rule would allow defamation claims to proceed even in instances where black letter law

would otherwise prohibit them simply because the plaintiff is an entity rather than an individual.

This conclusion is crystalized further by the service provider hypothetical set forth in Defendant's Opening Brief, which Plaintiff similarly failed to address in its Response. (Opening Brief, p. 11.) In that hypothetical, Defendant asked the Court to consider how the Plaintiff's proposed rule would apply to a case involving two service providers: one who is doing business as an individual contractor, and another as the sole member of an LLC. Under Plaintiff's proposed rule, statements made to the individual contractor about his business practices would not be published, but the same statements made to his competitor working through a single-member LLC would be. As this hypothetical makes plain, Plaintiff's proposed rule would produce arbitrary results arising from the failure to meaningfully consider whether the predicate to the tort – reputational harm – actually occurred. In this context, Plaintiff's proposed rule makes little sense.

Rather than address, much less rebut, Defendant's hypotheticals, Plaintiff offered one of its own that further illustrates Defendant's point. (Response, p. 21.) At the outset, Plaintiff asserts that Defendant's proposal would treat actors who make similar statements differently[2]. That is, of course, precisely how the publication analysis works. The exact same statement could be defamatory in one instance and not in another depending on whether it was published to a third-party or directed only to the target of the statement. A statement made only to the target of the statement, no matter how incendiary, is not defamatory as a matter of law.

[2] The hypothetical actually posits "similar defamatory statements," but that presumes that the statements were published – a chronic problem with Plaintiff's argument in this case.

In the first scenario presented by Plaintiff's hypothetical, an employee falsely asserts that a colleague embezzled from the employer. In the second, an outside third party makes "false embezzlement claims about a competitor" to the competitor's employees. This hypothetical compares two incongruent factual scenarios and fails to provide sufficient facts to render it instructive. To serve as a meaningful comparison, Plaintiff would need to identify to whom these statements were made. If the embezzlement claim in the first scenario was directed only to the employee about whom the claim is being made, it was never published and cannot be defamatory. Similarly, under Defendant's proposal, if the statement in the second scenario was made to the competitor's CEO, it was not published and therefore could not be defamatory because a statement to the CEO about the company does not operate to lower the company's reputation in the community. Plaintiff takes issue with this result because it claims the outcome hinges on where the recipient stands "at some unspecified height on the proverbial corporate ladder." (Response, p. 22). That critique blatantly ignores the standard Defendant has presented throughout this litigation: statements about a company are not published when such statements are made to the human embodiment of the company, such as to members of its Board of Directors or C-Suite leadership.

Similarly, Plaintiff's assertion that Defendant's rule would allow it to "hold a press conference and defame its corporate competitors, and that those companies are without redress if only highly statured employees resign" misstates the issue badly. (Response, p. 22.) In the case of a press conference, there clearly would be publication because the statements would be made to a distinct third party – the press.

### C. This Court need only decide the case before it.

In its Opening Brief, Defendant acknowledged that "while there may be situations where the position of the employee to whom the statement was made require that it be deemed a publication, this is not that case." (Opening Brief, p. 14). The Emails in this case were sent to Plaintiff's Chief Revenue Officer and two members of its Board of Directors. Plaintiff tries to muddy these facts by asserting that "other than titles" no evidence has been presented to support Defendant's position. What more is needed? Again, some different case may present a close question on this point, but this case does not. As Defendant has repeatedly noted during this litigation, if members of a company's C-Suite and Board of Directors are not the company, then no one is.

Plaintiff's focus on *Capagrasso* is interesting in that it ignores the breadth of the rule Plaintiff is seeking. Plaintiff argues that *Capagrasso* represents a "measured approach" where the issue of publication is determined after development of a factual record. (Response, p. 20.) While that position ignores the fact that Plaintiff is seeking a rule where the publication requirement is eliminated entirely, it is consistent Defendant's acknowledgement that some case may present a closer call than that which is presented here.

In *Capograsso*, the allegedly defamatory statements came in the form of complaints about a building landlord made to the building concierge by a tenant. *30 River Ct. E. Urb. Renewal Co. v. Capograsso*, 383 N.J. Super. 470, 472, 892 A.2d 711, 713 (App. Div. 2006). In finding that there was no publication, the court held that "because the [concierge] is merely a stand-in or conduit for the landlord, the [concierge] is not a 'third party' for defamation purposes. Communications to the [concierge] are in effect communications to the landlord and are not 'published' to a third party." *Id.* at 480, 892 A.2d at 717.

While it is true that the *Capograsso* court did not reach its conclusion until after a factual record had been developed, and doing so would certainly be preferrable to the bright line rule proposed by Plaintiff, that step is not necessary here. A record may understandably need to be developed in order to determine whether a concierge qualifies as a third party for publication purposes, but no such record is necessary here given the roles played by those who received the Emails. Again, if a member of a corporation's C-Suite or Board is deemed to be a separate third party from the corporation for purposes of the publication analysis, then there simply is no longer a publication requirement in Corporate Defamation Claims.

Plaintiff argues that Defendant is "unwilling" to identify where on the corporate ladder to draw the line as though that is somehow determinative. (Response, p. 19). However, neither Defendant nor this Court needs to identify where the line should be drawn, just that one should be drawn. Once that fundamental premise is acknowledged, the outcome of the case actually before this Court naturally flows from there. This Court need not create a bright line rule identifying at which point publication occurs in each instance; to resolve this case and preserve the critical role played by the publication requirement, it need only recognize that it is somewhere below a company's executive leadership.

The issue before this Court is not whether *all* employees of a company constitute third parties for purposes of publication; it is simply whether the few members of Plaintiff's executive leadership team who received the Emails are third parties. The question may become more difficult to answer the farther down the corporate ladder one goes, but at the highest levels of a corporation, the officers and board of directors effectively are the company. By holding that all corporate representatives are third parties – including even

a corporation's CEO or Chairman of the Board – Plaintiff's position would erode the foundation of the tort and create an entirely different standard for corporate plaintiffs.

If the publication requirement is going to be retained in Corporate Defamation Claims, someone must be the Company. Defendant has set forth a clear, workable and uncontroversial standard – members of a company's executive leadership and Board of Directors are the Company. True, Defendant's proposal does not resolve each possible permutation of the issue that might arise, but it need not. It is enough to recognize that, in the case of a company, the publication requirement encompasses those who serve as the human embodiment of the company, whether as the sole member of an LLC or the executive leadership of a corporate entity. In either instance, statements limited to these recipients cannot be held to impact the entity's standing within its community. Without resulting reputational harm, there is no cognizable claim of defamation.

## II. Despite Plaintiff's Deep Desire to the Contrary, this is Not an Intracompany Communication Case.

Despite acknowledging that this is a case of first impression in Illinois regarding a novel issue in relation to which there is a "dearth" of case law, Plaintiff focuses most of its Response on case law that addresses an entirely different issue – the Intracompany Communication Doctrine. This is not an Intracompany Communication case, and the cases Plaintiff cites do not address, let alone resolve, the question presented here – who serves as the company for purposes of publication?

This is not, as Plaintiff repeatedly claims, a case about a corporation "talking to itself." It is a case about someone talking to a corporation about itself, and that is a material distinction. Plaintiff's argument relies on cases involving individual plaintiffs that shed no

light on the central issue before the Court – who constitutes a "third party" in defamation cases where the plaintiff is an entity rather than a person.

Plaintiff likes the sound bites from these cases, but ignores their context and reasoning. However, Plaintiff tacitly admits that *Popko* and other intracompany communication cases are irrelevant by recognizing that, "admittedly, prior Illinois caselaw addressed these circumstances only in instances where a company was a *defendant* in a defamation action." (Response, p. 14.) It then inexplicably asserts that Defendant has "advanced no colorable argument" as to why those cases do not apply when the plaintiff is a company. That, of course, is not true. Plaintiff may not agree with the arguments presented, but Defendant has repeatedly explained precisely *why* those cases are inapplicable, at least in instances where the statements at issue were made to corporate leadership – there has been no publication.

**A. Intracompany communication cases are not instructive.**

*Popko* concerned whether a supervisor's comments to another supervisor in the workplace about a subordinate can amount to publication. *Popko v. Continental Casualty Company*, 355 Ill.App.3d 257, 259, 823 N.E.2d 184, 186 (1st Dist. 2005). *Missner* is about whether comments between a client and his attorney regarding a third person were published. *Missner v. Clifford*, 393 Ill.App.3d 751, 763, 914 N.E.2d 540, 551 (1st Dist. 2009). *Simpson* was brought by an individual whose defamation claim was based on allegations that the defendants told Simpson's co-workers she had sexually harassed co-workers and was fired for sexual harassment. *Simpson v. Mars, Inc.*, 929 P.2d 966, 967 (Nev. 1997). In *Jones*, the plaintiff was an individual and the allegedly defamatory statements were shared with other employees, which is what constituted the publication. *Jones v. Britt Airways, Inc.*, 622 F.Supp. 389, 391 (N.D. Ill. 1985).

Each of these cases concerns comments about an individual published to a third party. That is not this case. This case involves a materially different issue – statements made about a legal entity made only to the company itself. None of these cases addresses the issue of publication in that context. As a result, they are largely irrelevant.

Plaintiff also leans on *Teichner v. Bellan*, 7 A.D.2d 247, 181 N.Y.S.2d 842 (4th Dept. 1959), the underlying authority on which the court in *Sleepy's*, *infra*, based its opinion. The issue in *Teichner*, however, was the same as in *Popko*, *Missner*, *Mars*, and *Jones*, and therefore not helpful to the analysis of the issue here. Specifically, the comments at issue in *Teichner* were not made to the legal equivalent of the corporation. Rather, they were made to a third-party debt collection company that had been hired by the plaintiff corporation to recover a debt from the defendant on the plaintiff's behalf. *Teichner*, 7 A.D.2d at 248, 181 N.Y.S.2d at 844. As a result, *Teichner* is in no way instructive in this matter because the agent was an unaffiliated, separate legal entity from the principal. *Id.* at 249, 845.

Ultimately, none of the cases on which Plaintiff relies so heavily addressed whether comments about a company made to an officer of the company constituted a publication. Comments about an individual present an entirely different situation from the case at bar because in that instance there is no question that the comments were made to someone other than the party who was allegedly defamed.

**B. The logic of *Fausett* is compelling and should be applied here.**

The acknowledgment that this is not an intracompany communication case brings the focus back to the limited authority in which the issue was truly considered – *Fausett*. Nothing in Plaintiff's Response undercuts the logic of *Fausett*, the only opinion to meaningfully consider this issue. There, the alleged defamation related to actions of the

plaintiff corporation's management and was communicated to two of its chief principals. The *Fausett* opinion correctly recognized that the "differences between natural and artificial persons" must play a role in the application of the principles of defamation between individuals and corporations. *Fausett v. American Resources Management Corp.*, 542 F.Supp. 1234, 1241 (D. Utah June 30, 1982). In holding that there was no publication, the court reasoned:

> The law of defamation protects against the impugning of one's reputation or causing his alienation from his peers. There simply exists no potential for [plaintiff]'s reputation to be reduced or for [plaintiff] to be alienated from its managers, customers, shareholders, institutional lenders, etc., when the defamatory statements are made to its management. In essence the management is the corporation for purposes of communication. *Id.*

In reaching that conclusion, the *Fausett* court considered both Comment *e* to § 577 of the Restatement, on which the Plaintiff focuses, and § 113 of Prosser's treatise on defamation. It did not, as Plaintiff contends, reject Prosser or Comment *e*; rather it found them to be inapplicable. Specifically, it recognized that the authorities underpinning these provisions were intercorporate communication cases, and were therefore not instructive on the ultimate issue.

Plaintiff argues that the Second Circuit's opinion in *Sleepy's LLC v. Select Comfort Wholesale Corp.*, 909 F.3d 519 (2d Cir. 2018), "confirms" that the publication requirement is satisfied in all Corporate Defamation Cases "regardless of the agents' position" with the plaintiff corporation. As explained in Defendant's Opening Brief, that is a misreading of *Sleepy's*, which did not involve statements made to a company's executive leadership, unlike *Fausett*, which involved two of the company's principles. Additionally, *Sleepy's* was evaluating New York law based on *Teichner*, an intracompany communication case,

which as the *Fausett* court recognized in explaining why Comment *e* was not instructive, presents an entirely different issue.

For all the reasons detailed above, the publication requirement must be retained and applied in a meaningful way to prevent defamation being used to seek damages where no actual reputational harm occurred. The logic employed by the *Fausett* court and the rule proposed by Defendant strikes the proper balance to allow the publication requirement to play its part and ensure that Corporate Defamation Claims still require the possibility of reputational harm.

## III. Privilege Cannot Replace Publication

Plaintiff contends that the harm done by eliminating the publication requirement in Corporate Defamation Claims can be wiped away through the application of privilege. That is wrong because publication and privilege do different work in the context of defamation claims. The publication requirement focuses on whether the underlying harm against which the tort is intended to protect – damage to one's reputation – is even in play. Privilege acknowledges that the statements were defamatory, but excuses them based on some need that outweighs the plaintiff's interest in its reputation. Only after the publication requirement determines whether reputational harm occurred as a threshold issue does privilege step in to evaluate whether there is some more important counter-balance justifying the speech at issue. Replacing one with the other is not a viable solution because there is no point in addressing the latter if the former is absent.

More critical, however, is that utilizing privilege to do the work of publication simply fails. Imagine again the single-member LLC, the sole member of which receives defamatory statements regarding the Company's business practices. Depending on context, those statements may not be subject to any applicable privilege. Under Plaintiff's

proposal, the case would nevertheless proceed despite the fact that there is no underlying reputational harm to support the claim in the first place.

The Plaintiff's reliance on *Dent v. Constellation NewEnergy, Inc.*, 2022 IL 126795 is not meaningful for similar reasons. While it is true that a plaintiff could plead facts that would establish the application of a privilege as a matter of law for purposes of a motion to dismiss, careful drafting may avoid that issue and mute the effectiveness of the option. More fundamentally, however, it fails to address the underlying issue. Comments about a company made to its executive leadership may not be subject to an applicable privilege, but that does not mean the claim should survive if there is no underlying basis for reputational harm due to a lack of publication.

As Comment *b* of the Restatement makes plain, the tort of defamation cannot be stretched beyond its limits even if it is alleged that the conduct was intended to cause harm. Imagine the CFO of a company calls the CFO of its rival and says, "your company is boosting its revenue projections through the submission of fraudulent invoices." No clear privilege is implicated, but that is not the relevant issue because it puts the cart before the horse. The primary consideration is whether this set of facts creates the possibility of reputational harm to the rival company. Pretending like it does is fatuous. The rival CFO might very well wish to strike back with some sort of litigation, but the tort of defamation should not be stretched to become a recourse for hurt feelings or general anger when no actual reputational harm occurred.

As Defendant highlighted in its Opening Brief, the need for such a framework is even more acute in this case because the underlying claims are for defamation *per se*, meaning reputational harm is presumed and there is no need to plead or prove actual

damage. *Bryson v. News Am. Publications, Inc.*, 174 Ill.2d 77, 87, 672 N.E.2d 1207, 1214 (1996). As a result, the publication analysis in Corporate Defamation Claims is critical – the presumption of harm is a given in *per se* claims, but that presumption makes no sense absent the guardrails of the publication requirement. This absurdity would be compounded under the Plaintiff's rule, which also presumes publication. As a result, because publication *and* damages would be presumed in Corporate Defamation Claims, the tort would be knocked entirely off its moorings. Defendants in such cases would be required to bear the burden of proving the application of an existing privilege in order to avoid presumed damages for reputational harm that *never* occurred.

Without a publication requirement to check whether reputational harm occurred in reality rather than merely in theory, defendants in such cases will be pressed to settle, and corporations can bludgeon their detractors into submission or, more likely, silence them entirely. The potential application of a privilege does not resolve this issue. The Court should avoid this result, and instead hold that statements made to the executive leadership of a corporation constitute statements to the corporation itself, and therefore have not been published for purposes of defamation.

## CONCLUSION

The tort of defamation serves a single purpose – protecting against reputational harm. Plaintiff suggests a rule that ignores this purpose entirely. Instead, it suggests that publication be presumed and argues that unjust results will be checked through the application of privilege. That is simply not the case. This Court should issue a holding that keeps the primary purpose of the tort front and center – protecting against reputational harm – rather than jettisoning it entirely. Defendant has proposed a reasonable, workable

solution that achieves this end. Judge Snyder was able to navigate the analysis, and other courts surely can as well.

For these reasons, this Court should reverse the Appellate Court's Decision, and affirm the Circuit Court's order dismissing the Complaint with prejudice.

Date: June 21, 2023

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Brief and Supplemental Appendix of Defendant-Appellant FourKites, Inc. was electronically filed with the Clerk of the Court using the Odyssey File & Serve System on June 21, 2023 which will send notification of such filings to all attorneys of record, and further certifies that the undersigned will serve a copy of this Brief and Supplemental Appendix of Defendant-Appellant FourKites, Inc. on June 21, 2023, to the following via email:

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Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

*/s/ Scott M. Gilbert*

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**CERTIFICATE OF COMPLIANCE IN ACCORDANCE WITH ILLINOIS SUPREME COURT RULE 341(C)**

The undersigned hereby certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages or words.

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