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November 2, 2020

**Via CM/ECF**

Ms. Molly C. Dwyer, Clerk of Court  
United States Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

**Re: *John Doe, et. al. v. CVS Pharmacy, Inc., et al.*, No. 19-15074  
Joint Supplemental Letter Brief by the Employer Appellees**

Dear Ms. Dwyer,

On October 20, 2020, the Court ordered the parties to file supplemental letter briefing regarding how—if at all—the Court’s opinion in *Schmitt v. Kaiser Foundation Health Plan*, No. 18-35836, affects the disposition of the above-referenced appeal. In accordance with that order, Defendants-Appellees National Railroad Passenger Corporation d/b/a Amtrak (“Amtrak”), Lowe’s Companies, Inc. (“Lowe’s”), and Warner Media, LLC, successor in interest to Time Warner Inc. (“Warner”) (collectively, the “Employer Appellees”), submit this letter brief.



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The decision in the *Schmitt* case does not affect the disposition of the appeal as to the Employer Appellees. The only claims Plaintiffs-Appellants brought against the Employer Appellees were three counts asserted under the Employee Retirement Income Security Act of 1974 (“ERISA”) and one count for declaratory judgment that was premised on the ERISA claims. The district court properly dismissed, with prejudice, all of the claims against the Employer Appellees. Appellants do not appeal the district court’s decision on three of the counts, thereby abandoning them. The only count on appeal against the Employer Appellees is a claim under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), for benefits allegedly due to Appellants under the Employer Appellees’ respective self-funded ERISA benefit plans.

The *Schmitt* case, by contrast, solely concerns a disability discrimination claim under the Patient Protection and Affordable Care Act (“ACA”). It does not involve any ERISA claims. Appellants have not asserted an ACA claim against any of the Employer Appellees; the only ACA claim in this litigation is alleged against the CVS Appellees. Because the *Schmitt* case does not have any bearing on ERISA claims such

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as the one against the Employer Appellees in this appeal, the *Schmitt* case does not affect the disposition of this appeal as to the Employer Appellees.

Counsel for co-Appellees Amtrak and Lowe's have reviewed this letter brief and authorized the undersigned to file it jointly on their behalf.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael H. Bernstein", with a long horizontal flourish extending to the right.

Michael H. Bernstein

Counsel for Appellee Warner Media, LLC,  
successor in interest to Time Warner Inc.