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November 28, 2016

Honorable Blake Hawthorne
Clerk of the Court
Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

RE: *Amicus curiae* letter brief of Outreach Strategists, LLC in support of Petitioner Parallel Networks, LLC - No. 16-0080, *Parallel Networks, LLC v Jenner & Block, LLP*

Dear Mr. Hawthorne:

Outreach Strategists, LLC submits this *amicus curiae* letter brief pursuant to Texas Rule of Appellate Procedure 11 in support of Petitioner Parallel Network's motion for rehearing and petition for review. This *amicus curiae* letter brief is being submitted in conjunction with the *amicus curiae* letter briefs previously submitted to this Court in support of Petitioner Parallel Networks by Classic Industries, LP and US Inventor, LLC. Please distribute copies of this brief to the Justices, in accordance with the Court's customary practice. No fee was paid for preparing or submitting this *amicus curiae* letter brief.

Outreach Strategists, LLC (Outreach)(www.outreachstrategists.com) is a Houston-based full-service communications and public affairs firm offering clients a wide array of services, including, candidate and issue campaign management, marketing and multi-media production, polling and research and political consulting. Outreach's clients are located throughout Texas and are among this state's most prominent political, commercial and community leaders in vitally important industries, such as, aerospace, energy, healthcare and transportation. Outreach's roster of campaign veterans have worked on campaign management and communications for candidate and issue

campaigns, including, state-wide, municipal and local elections, PAC campaigns, bond elections and charter amendments.

Outreach is submitting this *amicus curiae* letter brief because the important legal issues implicated by this case urgently require this Court's review. If the decision of the Dallas Court of Appeals is not reversed, Texas residents and businesses will continue to be at risk from unethical out-of-state attorneys who will be able to utilize arbitration under the Federal Arbitration Act (FAA) to pursue and collect unconscionable fees against Texas residents and businesses which are unquestionably forbidden by this Court's precedent and by this state's ethics rules governing attorney conduct.

The facts of this dispute can be summarized as follows: In June 2006, Dallas-based Parallel Networks retained the Chicago-based law firm Jenner & Block to represent it in two patent infringement cases pursuant to a contingency fee agreement. The contingency fee agreement requires disputes to be decided under the FAA and contains a Texas choice of law provision.

After 18 months of representing Parallel Networks, Jenner & Block lost one of the cases on summary judgment. In January 2009 (four weeks after losing summary judgment), Jenner & Block notified Parallel Networks that it was terminating the contingency fee agreement and that it would not handle the appeal of the adverse summary judgment order (notwithstanding that the contingency fee agreement required Jenner & Block to handle this appeal). Parallel Networks retained substitute counsel which undid Jenner & Block's summary judgment loss and the cases eventually settled.

Nearly three years after Jenner & Block terminated the contingency fee agreement with Parallel Networks, it filed a demand for arbitration against its former client. Apparently, the so-called contingency fee agreement was a misnomer because Jenner & Block asked the arbitrator to award it \$10.2 million in *hourly fees*¹ predicated on Jenner & Block's belief that it could lose

¹ Jenner & Block claimed that it had expended more than 24,000 billable hours and incurred \$10.2 million in hourly fees in the 18 months that it represented Parallel Networks. That would mean that Jenner & Block was billing more than \$550,000 per month or approximately 44 hours per day (including Saturdays and Sundays) in attorney

the case on summary judgment, abandon its client and then unilaterally convert the so-called contingency fee agreement to an hourly fee agreement (depending upon which course of action – contingency or hourly – made more economic sense to Jenner & Block).

In response to a motion for summary judgment filed by Parallel Networks in the arbitration, Jenner & Block abandoned its pursuit of hourly fees and asked the arbitrator to award it contingency fees – on a case it lost. The arbitrator awarded Jenner & Block nearly \$3.5 million in contingency fees in two cases where the only substantive result that Jenner & Block achieved was a take nothing judgment against Parallel Networks in one of the cases.²

The various legal issues implicated by this case have been extensively briefed by Parallel Networks and need not be repeated here. However, it should be noted that this case offers the Court a an opportunity to address at least these exceptionally important legal questions:

- Whether this Court’s ability to review and remedy violations of important Texas public policies governing attorney-client fee agreements between out-of-state lawyers and Texas residents or businesses has been pre-empted and immunized by the FAA;
- Whether this Court’s constitutionally sanctioned authority to regulate the legal profession in Texas (and, more particularly, out-of-state lawyers) has been supplanted by the FAA and by private arbitrators;
- Whether out-of-state lawyers appearing in an arbitration in Texas are subject to the regulatory oversight of this Court and the State Bar of Texas;
- Whether the “just cause” standard for an attorney in Texas to withdraw from a contingency fee case and still retain a right of payment is

time for the entire duration of its representation of Parallel Networks. With such lofty billings and the several dozen hours per day of attorney time expended, it is unfortunate that the only result that Jenner & Block could obtain for Parallel Networks was a summary judgment loss.

² The arbitration award also includes attorney’s fees and pre and post-judgment interest so the resultant harm that Jenner & Block has caused to its former client totals more than \$5 million (not including the legal fees and expenses that Parallel Networks has expended in defending against Jenner & Block’s claims).

satisfied by an attorney's subjective concerns about a client's possible future conduct; and

- Whether attorney client fee agreements governed by Texas law (but which utilize arbitration under the FAA) between out-of-state lawyers and Texas residents or business are required to conform to and comply with the requirements and proscriptions of the Texas Disciplinary Rules of Professional Conduct.

Notwithstanding the importance of these legal issues, neither the Dallas District Court nor the Dallas Court of Appeals engaged in any substantive review whatsoever of the merits of the legal arguments raised by Parallel Networks. The Dallas Court of Appeal's rationale for abdicating its responsibility to engage in a public policy review of the arbitration award can be found in a single sentence of the opinion which effectively cedes to the FAA and to private arbitrators the authority of Texas courts to police violations of Texas public policy and to regulate the conduct of out-of-state lawyers who enter into fee agreements with Texas businesses:

"Hall Street forecloses our review of non-statutory grounds. [*Ancor*, 294 S.W.3d at 827](#). If we were to overturn the arbitration award as unconscionable and violative of public policy, we would be substituting our judgment merely because we would have reached a different decision."³

If this Court declines to weigh in on the legal issues noted above, Jenner & Block will have successfully abrogated decades of Texas jurisprudence and Texas ethical rules promulgated to protect Texans from over-reaching and unethical attorneys by using the FAA and arbitration to avoid any substantive review of these vitally important legal issues. The people of Texas deserve

³ *Parallel Networks, LLC v. Jenner & Block, LLP*, No. 05-13-00748-CV (Tex. App. Oct. 9, 2015). The holding by the Dallas Court of Appeals that a Texas court has to defer to an arbitrator even when violations of Texas public policy are implicated by the underlying attorney-client fee agreement is difficult to reconcile with this Court's statement that "whether a contract, including a fee agreement between attorney and client, is contrary to public policy and unconscionable at the time it is formed is a question of law." *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557,559 (Tex. 2006).

more from their elected judges than blind deference to arbitrators who issue arbitration awards that impertinently disregard important precedent from this Court and that brazenly violate this state's attorney ethical rules designed to protect Texans from egregious attorney behavior. This Court is the last line of defense for Texas residents and businesses against unethical out-of-state lawyers and review of the decision of the Dallas Court of Appeal is plainly warranted here.

Outreach respectfully requests that Parallel Network's motion for rehearing and petition for review be granted so that this Court can engage in the necessary substantive review which, so far, has not been undertaken by any Texas court, and which is so urgently needed due to the vitally important legal issues raised by this case.

Respectfully submitted,

OUTREACH STRATEGISTS, LLC

A handwritten signature in black ink, appearing to read 'Mustafa Tameez', is written over a horizontal line.

Mustafa Tameez
Managing Director

Certificate of Compliance and Certificate of Service

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2)(D), I certify that this brief contains 1,542 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

I certify that this document was produced using Microsoft Word 2010 and complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it uses 14-point Cambria proportionally spaced font for the text and 12-point Cambria proportionally spaced font for footnotes.

I certify that on November 21, 2016 a true and correct copy of this brief was served through the court-approved electronic filing and service system on all counsel of record in this case.

James L. Etheridge
State Bar No. 24059147
Attorney for *Amicus Curiae*, Outreach Strategists, LLC