No. 15-55510

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: CHARLES F. GUGLIUZZA II, Debtor;

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

CHARLES F. GUGLIUZZA II,
Defendant-Appellant,

On Appeal From the United States District Court
for the Central District of California
No. 8:14-bk-22893-CJC (Hon. Cormac J. Carney, D.J.)

BRIEF OF THE FEDERAL TRADE COMMISSION

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INTRODUCTION

The fraud exception of the Bankruptcy Code forbids discharge of a debt that results from "false pretenses, false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A). Charles Gugliuzza owes an $18 million debt to the FTC that arose from a judgment in an FTC enforcement action against him for defrauding half a million consumers through a deceptive marketing scheme over a two-year period.

The district court held that under the principles of collateral estoppel, the

Applicable statutes are contained in an Addendum at the end of this Brief.

Consumers who clicked an ad to learn more about this offer were directed to a "landing page" on the OnlineSupplier website. This page did not mention a membership program or a monthly fee. Instead, it presented a sales pitch to induce consumers to order the "free" kit. Consumers who clicked a prominent button labeled "Ship My Kit!" were directed to a "billing page" with a form for submitting their mailing addresses and credit card information, ostensibly to pay a nominal fee (ranging from $1.95 to $7.95) for shipping and handling of the kit. *Id.* at 1064-65. After submitting the form, consumers were directed to a page offering additional products and services, and from there, to a final page confirming the transaction. *Id.* at 1057-58.

In fact, consumers who supplied their billing information were not only charged the initial fee, but also were enrolled in a "membership" program with automatic billing each month. The web pages concealed these recurring charges. The information provided about them was unclear and incomplete and displayed near the bottom of the pages in a tiny, difficult-to-read font. *Id.*

Ultimately, over 500,000 consumers clicked the button to order the kit. *Id.* at 1054. Thousands of them later complained to Commerce Planet that they neither knew about nor agreed to an automatic billing program; they demanded that the company refund the unauthorized charges. Numerous consumers asked their credit card issuers to reverse these charges, and thousands submitted complaints to Better Business Bureaus and state and federal consumer protection agencies. *Id.* at 1059, 1073-74. Gugliuzza knew of these consumer complaints and the high rates of credit card charge reversals, but he personally rejected any effort to provide clearer disclosures, which would have reduced consumer sign-ups. *Id.* at 1072-76, 1082. For example, he vetoed a proposal to send post-transaction emails to consumers because he believed they would have led to greater cancelations. *Id.* at 1082.

B. The $18.2 Million Judgment Against Gugliuzza

In 2009, the FTC sued Gugliuzza, Commerce Planet, and two other officers of the company for engaging in deceptive and unfair practices, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Gugliuzza's co-defendants settled by agreeing to the entry of stipulated injunctions and payment of monetary judgments. Gugliuzza chose to litigate. 878 F. Supp. 2d at 1062.

At a 16-day bench trial, the district court reviewed more than 300 exhibits and heard testimony from 22 fact and expert witnesses. It found Gugliuzza

creditor on the debtor's statement or conduct"; and (5) "damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Turtle Rock Homeowners Ass'n v. Slyman* (*In re Slyman*), 234 F.3d 1081, 1085 (9th Cir. 2000); *accord Dietz v. Ford* (*In re Deitz*), 760 F.3d 1038, 1050 (9th Cir. 2014).

The bankruptcy court granted the FTC's motion, concluding that the Enforcement Ruling established all of those elements. The bankruptcy court held that the same legal standards that governed the underlying case also govern the fraud exception and that the holdings in the Enforcement Ruling were necessary in

In particular, the district court found that the Enforcement Ruling precluded relitigation in the bankruptcy case on the questions whether: (a) Gugliuzza engaged in "misrepresentation, fraudulent omission or deceptive conduct" (Dist. Ct. Op. 6-7) [ER 6-7]; (b) he knew his statements were false or deceptive (*id.* at 7); (c) consumers "justifiably relied" on them (*id.* at 9-11); and (d) Gugliuzza's misconduct was the "proximate cause" of the consumer losses (*id.* at 11-12). But the district court reasoned that, because Section 5(a) of the FTC Act does not require a showing of intent, the prior litigation had not resolved the question whether Gugliuzza intended to

establishes "actual reliance" when it submits unrebutted evidence of wide dissemination of materially misleading information. The fraud exception requires no more. In a closely analogous decision, *SEC v. Bilzerian* (*In re Bilzerian*), 153 F.3d 1278 (11th Cir. 1998), the court held that an enforcement agency's unrebutted showing of widespread material deception satisfies the fraud exception. Any other outcome would allow fraud perpetrators to avoid the consequences of their misconduct by seeking discharge in bankruptcy, thereby subverting the basic purpose of the fraud exception.

Gugliuzza is wrong that the FTC did not prove "justifiable reliance" in the underlying case because some consumers could have figured out his scam and therefore did not rely on the misinformation on his website. In the underlying case, the FTC proved "reasonable reliance," a higher hurdle than justifiable reliance. Consumer reliance on a misrepresentation is justifiable unless a consumer would recognize immediately that it is false, which was not the case with Gugliuzza's website. A consumer need not conduct an investigation to uncover the falsity.

c. Gugliuzza's claim that the fraud exception requires the FTC to show individualized harm fails for the same reasons as his argument that the FTC must show individualized reliance.

The Court acknowledged that the rules governing finality for purposes of appeal are "different in bankruptcy" than in other civil cases, as illustrated by the differences between the wording in the statute governing bankruptcy appeals

remanded issue. As a result, the parties' rights and obligations will not be resolved until the bankruptcy court completes its new fact-finding proceeding and decides the issue on remand.

Before *Bullard* was decided, this Court typically assessed finality in bankruptcy cases using a multi-factor "flexible" finality standard. *See*, *e.g.*, *DeMarah v. United States* (*In re DeMarah*), 62 F.3d 1248, 1250 (9th Cir. 1995); *Bonner Mall P'ship v. U.S. Bancorp Mortgage Co.* (*In re Bonner Mall P'ship*), 2 F.3d 899, 904 (9th Cir. 1993). In *Sahagun v. Landmark Fence Co., Inc.* (*In re Landmark Fence Co., Inc.*), 801 F.3d 1099 (9th Cir. 2015), the Court acknowledged (but did not resolve) the tension between the flexible finality concept and the Supreme Court's holding in *Bullard*. *Id.* at 1102 n.1. But *Landmark Fence* demonstrates that even under the flexible finality approach, the order in this case is not final. The Court held that its "flexible approach is stretched beyond its breaking point by this appeal from a district court order that includes a remand to the bankruptcy court with explicit instructions to engage in 'further fact-finding.'" *Id*. at 1101. Such an order is "not final for purposes of appeal." *Id*. That is precisely the posture of this case. *See also Vylene Enters., Inc. v. Naugles, Inc.,* (*In re Vylene Enters., Inc.*

Moreover, even if *Bullard* and *Landmark Fence* had never been decided, the district court's order still would not be final under the "flexible finality" factors often used in past cases: (1) the need to avoid piecemeal litigation; (2) judicial efficiency; (3) the systemic interest in preserving the bankruptcy court's role as the finder of fact; and (4) whether delaying review would cause either party irreparable harm. *See Stanley v. Crossland* (*In re Lakeshore Village Resort*), 81 F.3d 103, 106 (9th Cir. 1996). Taking up the merits of this dispute now would create a risk of piecemeal litigation and judicial inefficiency. If the Court were to determine the merits of the pending appeal, one of the parties likely would take yet another appeal from a future final judgment conclusively determining the status of Gugliuzza's debt. A single appeal that presents all issues in the case would prevent multiple "climb[s] up the appellate ladder," which is "precisely the reason for a rule of finality." *Bullard*, 135 S. Ct. at 1693. And Gugliuzza has no genuine claim that a decision in this case is necessary to avoid irreparable harm.[2]

[2] In his one-paragraph Statement of Jurisdiction, Gugliuzza relies on the Ninth Circuit's pre-*Bullard* decision in *Price v. Lehtinen* ([illegible] *the* [illegible]

II. THE ENFORCEMENT RULING RESOLVED THE ISSUES OF DECEPTION, RELIANCE, AND HARM UNDER STANDARDS IDENTICAL TO THOSE OF THE FRAUD EXCEPTION.

When a bankruptcy court determines whether a debt established in a prior judgment was obtained by "false pretenses, a false representation, or actual fraud," 11 U.S.C. § 523(a)(2)(A), it should "give collateral estoppel effect to those elements of the claim" that (1) "are identical to the elements required for discharge," (2) were "actually litigated and determined in the prior action," and (3) were "a critical and necessary part of the judgment in the earlier action." *Grogan v. Garner*, 498 U.S. 279, 284 (1991); *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992). The district court correctly determined that collateral estoppel precludes Gugliuzza from relitigating the three elements of the fraud exception he now challenges. Dist. Ct. Op. 6-7, 9-12 [ER 6-7, 9-12].

A. Gugliuzza Cannot Relitigate Whether He Engaged in Deception.

The Enforcement Ruling found that the evidence "abundantly establishe[d]" that Gugliuzza was responsible for deceptively marketing what he touted as a "free" online kit affiliated with eBay, when in fact he charged consumers a monthly fee and the kit had no such affiliation. 878 F. Supp. 2d at 1064-1068, 1079-1082. Gugliuzza contends that he may relitigate whether he made misrepresentations and engaged in deceptive conduct because in the underlying case the district court held only that his website created a false "net impression"

whereas the fraud exception requires proof of an "affirmatively false representation." Br. 24. He also claims that "there is no argument here that [he] made a false representation or material omission." Br. 25. Gugliuzza is wrong on the law and the facts.

1. The Deception Standard of the FTC Act is Identical to the First Element of the Fraud Exception.

To satisfy the first element of the fraud discharge exception, a creditor must demonstrate "misrepresentation, fraudulent omission or deceptive conduct by the debtor." *Slyman*, 234 F.3d at 1085; *Dietz*, 760 F.3d at 1050. To prove deception under the FTC Act, the FTC must show that a defendant engaged in a "representation, omission, or practice" that is "likely to mislead consumers acting reasonably under the circumstances," and is "material." *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (quoting *Cliffdale Assocs.*, 103 F.T.C. 110, 164-65 (1984)). Those standards are substantively identical. Therefore, as the district court correctly concluded, the Enforcement Ruling's finding that "the marketing of OnlineSupplier was deceptive" also meets the first element of the fraud exception test. Dist. Ct. Op. 6 [ER 6].

Contrary to Gugliuzza's claim, a deceptive "net impression" meets the standard of the fraud exception because it *is* a false representation, even if some aspect of it is literally true. Its overall falsity induces consumers to draw incorrect conclusions just as would a wholly false statement. Deceptive conduct thus fits

comfortably within the fraud exception's requirements of "false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A). Like deception under Section 5 of the FTC Act, a "debtor's silence or concealment of a material fact can create a false impression which constitutes a misrepresentation" under the fraud exception. *Tallant v. Kaufman* (*In re Tallant*), 218 B.R. 58, 66 (9th Cir. BAP 1998); *accord Apte v. Japra* (*In re Apte*), 96 F.3d 1319, 1323-24 (9th Cir. 1996) (a failure to disclose material facts can constitute a false representation) (citing Restatement (Second) of Torts § 551 (1976)). Numerous courts have determined that proof of deception under the FTC Act satisfies the fraud exception.[3]

Gugliuzza argues that his website disclosed, however obscurely, the truth about his product and that the fraud exception is satisfied only by a representation that is false in every respect. He contends that the exception is not satisfied by a statement that is partially true even if, in its totality, it conveys a falsehood. That narrow conception of the fraud exception flatly contradicts the common law principles adopted by this Court and the Supreme Court. *See*, *e.g.*, *Citibank (South Dakota), N.A. v. Eashai* (*In re Eashai*), 87 F.3d 1082, 1089 (9th Cir. 1996); *Field v. Mans*, 516 U.S. 59, 69-70 (1995). The Restatement of Torts, for example,

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[3] *See*, *e.g.*, *FTC v. Abeyta* (*In re Abeyta*), 387 B.R. 846, 854-55 (Bankr. D.N.M. 2008); *FTC v. Porcelli* (*In re Porcelli*), 325 B.R. 868 (Bankr. M.D. Fla. 2005); *FTC v. Lederman* (*In re Lederman*), No. SV 94-22688 AG, 1995 WL 792072, at *5-6 (Bankr. C.D. Cal. June 26, 1995); *FTC v. Austin* (*In re Austin*), 138 B.R. 898, 907-08 (Bankr. N.D. Ill. 1992).

The pre-

104 F.3d 1122 (9th Cir. 1996) (cited at Br. 23, 24, 26, 27, 28, 34), the Court ruled that "deceptive conduct" is tantamount to a "misrepresentation." *Id*. at 1126.[4]

Finally, Gugliuzza's absolute falsity rule would be unmoored not only from

2. Gugliuzza Concealed and Omitted Material Facts.

In any event, Gugliuzza concedes that for purposes of the fraud exception "a false representation may include the concealment or omission of a material fact." Br. 24 (citing *Apte*, 96 F.3d at 1323-24. The Enforcement Ruling conclusively established that he concealed and omitted material facts, and that determination alone satisfies the fraud exception.

In the underlying proceeding, the FTC proved that Gugliuzza went out of his way to ensure that consumers would *not* find out the true nature of his product. He designed the automatic billing enrollment program "not [to] be clear and conspicuous, but rather to mask information" about the true nature of the program. Enforcement Ruling, 878 F. Supp. 2d at 1068. As a result, the district court found, Gugliuzza's website "conceal[ed], obscure[ed], and suppress[ed] the very information [the disclosure] purport[ed] to convey." *Id*. The website promised a "free" trial kit but hid the recurring charge imposed on its victims. The information about those charges was truncated, ambiguous, and, at least initially, shown "in the smallest text size on the page and in blue font against a slightly lighter blue background at the very end of the disclosure." *Id.* at 1067. Even if a consumer located the disclosure, it was "buried with other densely packed information and legalese, making it unlikely that the average consumer [would] wade through the material and understand" the bargain. *Id*. at 1065.

The record thus plainly contradicts Gugliuzza's assertion that "there is no argument here that [he] made a false representation or material omission." Br. 25. That description applies precisely to his conduct, no matter what verbal formulation he might prefer. For purposes of the fraud exception, his extensive attempts to conceal the true nature of his product make him no different from the debtor deemed ineligible for a discharge in *Apte*—a tenant who tried to sublet his premises without revealing to the prospective sublessee that the landlord was in the process of evicting him. *Apte*, 96 F.3d at 1321. .

B. Gugliuzza Cannot Relitigate the Holding in the Enforcement Ruling That Consumers Justifiably Relied on His Deception.

The district court held that the Enforcement Ruling "necessarily concluded that the consumers actually and reasonably relied on Gugliuzza's misleading conduct." Dist. Ct. Op. 9 [ER 9] (citing Enforcement Ruling, 878 F. Supp. 2d at 1089-92). The court thus precluded Gugliuzza from litigating consumers' "justifiable reliance" for purposes of the fraud exception. Dist. Ct. Op. 9 [ER 9]; *see Slyman*, 234 F.3d at 1085. Indeed, justifiable reliance is a "less demanding" standard for the FTC to meet than "reasonable reliance" under the FTC Act. *Field*, 516 U.S. at 61, 70-71. Gugliuzza's challenges to the district court's disposition of that issue are meritless.

1. Proof of Actual Reliance Under the FTC Act Satisfies the Reliance Element of the Fraud Exception.

Gugliuzza claims that the Enforcement Ruling cannot preclude him from litigating reliance because the FTC Act does not require "proof of subjective reliance by each individual consumer," Br. 29 (citing Enforcement Ruling, 878 F. Supp. 2d at 1091), whereas the fraud exception does require such proof. Br. 28. The gist of his argument is that, to invoke the fraud exception, the FTC must provide evidence that every single consumer was individually deceived. That position is untenable.

relied" on a material misrepresentation when it was widely disseminated. *Id*. at 1203, 1206.

Gugliuzza takes the rigid stance that the FTC can prove actual reliance only if it "provides *individualized* proof of reliance . . . by each purchasing customer"—*i.e.*, if brings every single deceived consumer to court to testify about their behavior. Br. 34. Courts have sensibly rejected that obviously impractical approach in favor of the one adopted by this Court in *Figgie* and the Tenth Circuit in *Freecom*. *Figgie* held that "[r]equiring proof of subjective reliance by each individual consumer would thwart effective prosecutions of large consumer redress

rely on when buying or selling securities. *Id*. at 246-47. Defendants can "rebut [this] presumption of reliance by making a "showing that severs the link between the alleged misrepresentation" and the prices paid or received by the plaintiffs. *Id.* at 248.

Gugliuzza wrongly suggests that allowing the FTC to demonstrate consumers' actual reliance using a rebuttable presumption results in a "shift in the burden or persuasion" to the defendant. Not so. The rebuttable presumption used to establish a *prima facie* case of reliance in FTC Act deception cases—as in securities fraud class actions—does not eliminate plaintiffs' burden of demonstrating reliance. As the Supreme Court explained in *Basic,*

proof that specific investors had actually relied on Bilzerian's deceptive statements. *Id.* at 1282-83. The court explained that both common law fraud and securities fraud require proof that the defe

outcome would radically undermine the fraud exception. When it "exclude[d] from the general policy of discharge certain categories of debts such as . . . liabilities for fraud," *Grogan*, 498 U.S. at 287, Congress concluded that "the interest in protecting victims of fraud" and their "interest in recovering full payment" of debts incurred as a result of fraud "outweigh[] the . . . interest in giving perpetrators of fraud a fresh start." *Id*. In large-scale deception cases, Gugliuzza's actual reliance approach would subvert Congress's intent "to prevent a debtor from retaining the benefits of property obtained by fraudulent means and to ensure that the relief intended for honest debtors does not go to dishonest debtors." *Sabban*, 600 F.3d at 1222 (citing *Slyman*, 234 F.3d at 1085); *see also Eashai*, 87 F.3d at 1086 (exception ensures that dishonest debtors do not "benefit from [their] wrongdoing").[6]

Gugliuzza's approach also would thwart the objectives of the FTC Act. As the district court noted, the FTC Act "'serves a public purpose by authorizing the [agency] to seek redress on behalf of injured consumers' and preventing widespread consumer fraud." Dist. Ct. Op. 10 [ER 10] (citing *Figgie Int'l*, 994

[6] Gugliuzza's heavy reliance (Br. 30-31) on *In re Varrasso*, 194 B.R. 537 (Bankr. D. Mass. 1996), is misplaced. To start with, the portion of the opinion relied on by Gugliuzza is dictum because the court first decided that a default judgment could not estop litigation of the merits, which fully resolved the case. And because the matter involved a default judgment, the record of the underlying case (unlike this one) did not necessarily contain overwhelming evidence and a judicial determination of reliance. Most significantly, the matter involved a single fraud victim and thus has no bearing on the large-scale fraud at issue here.

F.2d at 605). Under Gugliuzza's position, FTC Act violators could avoid judgments against them—and thus deny restitution to their victims—by declaring bankruptcy and faulting the FTC for failing to prove individual reliance for every victim, even if the class of victims runs into the tens or (as here) hundreds of thousands. That position "would undermine the FTC Act's purpose of preventing widespread consumer fraud," Dist. Ct. Op. 10 [ER 10], and would place FTC consumer redress judgments at risk of nullification in bankruptcy in nearly any individual defendant's case.

2. The Enforcement Ruling Found "Reasonable Reliance," a More Stringent Standard Than "Justifiable Reliance."

As Gugliuzza acknowledges, the Enforcement Ruling found that his misrepresentations were "of a kind usually relied upon by reasonable prudent people." Br. 32 (citing Dist. Ct. Op. 10 [ER 10]). That determination of "reasonable reliance" under the FTC Act satisfies the less demanding "justifiable reliance" required by the fraud exception. *Field*, 516 U.S. at 61, 70-71, 77; Dist. Ct. Op. 9 [ER 9]. Gugliuzza nonetheless contends there was no showing of reliance at all because some consumers may have learned the truth about his product before they purchased it, and such informed consumers "could not possibly prove . . . justifiable reliance." Br. 33. The argument is untenable.

Under the fraud exception, reliance on a misrepresentation is "justifiable" even if other, accurate information is available unless a consumer "would at once

recognize at first glance" that the statement was false. *Field*, 516 U.S. at 71-72 (citations omitted). Consumers are "entitled to rely upon representations"

C. Gugliuzza Cannot Relitigate Whether His Deceptive Conduct Caused Consumer Harm.

The fraud exception requires a creditor to show damage "proximately caused by its reliance on the debtor's statement or conduct."

required to meet the standards for such damages under section 19 of the FTC Act," which he claims are "more stringent" than those under Section 13 of the Act. By "opt[ing] against seeking damages under Section 19," he asserts, "the FTC should not now be able to claim it actually litigated the damages element of nondischargeability." Br. 38-39.

Gugliuzza did not make this argument below, and he may not raise it for the first time on appeal. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). Moreover, the question whether the FTC was required to proceed under Section 19 is currently before the Court in Gugliuzza's other appeal, *see* n.1, *supra*, and there is no good reason for the Court to take up the issue here.

The argument is baseless in any event. The fifth element of the fraud discharge exception does not turn on the provision of the FTC Act on which a judgment was based. A creditor can satisfy that element by showing "actual loss" or "actual harm as a result of [debtor's] misrepresentation." *Sabban*, 600 F.3d at 1223-24. *Cf. Cohen v. de la Cruz*, 523 U.S. 213, 215 (1998) (fraud exception "prevents the discharge of all liability arising from fraud"); *Sabban*, 600 F.3d at 1222-23 (fraud exception bars discharge of a debt even where the debtor did not receive "a direct or indirect benefit from . . . fraudulent activity"). In the enforcement proceeding, the FTC was required to prove, and did prove, that consumers were harmed by Gugliuzza's actions. The fraud exception requirement

also requires proof of harm resulting from his actions. The matter was actually litigated, and was a necessary part of the court's monetary judgment. The finding of harm therefore satisfies all the criteria for collateral estoppel.

CONCLUSION

For the foregoing reasons, the Court should dismiss this appeal for lack of jurisdiction. If the Court reaches the merits, it should affirm the judgment of the district court.

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STATEMENT OF A RELATED CASE

A related case is pending before this Court that concerns the same underlying transactions and events as the present appeal and raises legal issues related to those in this case. *Federal Trade Commission v. Charles Gugliuzza*, No. 12-57064 (oral argument held Feb. 9, 2015). Case No. 12-57064 is Gugliuzza's appeal of the district court order holding him individually liable for violations of the Federal Trade Commission Act and imposing an $18.2 million judgment. *Commerce Planet, Inc.*, 878 F. Supp. 2d 1048 (C.D. Cal. 2012) ("Enforcement Ruling"). The instant case presents the question of whether Gugliuzza's obligation to satisfy that judgment is a debt that, under 11 U.S.C. § 523(a)(2)(A), cannot be discharged in bankruptcy.

STATUTORY ADDENDUM

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

* * * * *

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

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I certify as follows:

1. This Corrected Version of the Brief of the Federal Trade Commission complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 7,741 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This Corrected Version of the Brief of the Federal Trade Commission complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, using Microsoft Word 2010, in 14-point Times New Roman font.

November 10, 2015

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I certify that I filed the foregoing Corrected Version of the Brief of the Federal Trade Commission with the Court's Appellate CM-ECF System on this date. The CM-ECF system will transmit this document electronically to counsel for all parties in this case.

November 10, 2015 s/David L. Sieradzki

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I, Di L. ... [illegible] ... C ... O

B ... F ... C ... Case No. 15-55510 ... [illegible]

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