

**No. 20-55766**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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FEDERAL TRADE COMMISSION,  
*Plaintiff-Appellee,*

v.

ELEGANT SOLUTIONS, INC., *et al.*,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Central District of California  
No. 8:19-cv-01333  
Hon. James V. Selna

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**OPPOSITION OF THE FEDERAL TRADE COMMISSION  
TO MOTION FOR SUMMARY REVERSAL**

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## INTRODUCTION

Defendants-appellants Mazen Radwan, Rima Radwan, Dean Robbins, and Labiba Radwan a/k/a Labiba Velazquez operated a bogus student loan debt relief service that bilked consumers out of more than \$27 million. The Federal Trade Commission sued them (and the corporate entities through which they operated) and obtained a judgment enjoining their deceptive practices. The judgment also required the defendants to turn their ill-gotten gains over to the FTC, so that the money can be returned to the victims of their scam. Appellants (except Velazquez) sought a stay of that judgment pending appeal, but this Court denied their request (Docket Entry No. 12). Repeating many of the arguments they raised in their stay motion, appellants now move for summary reversal of that judgment, claiming that the district court applied the wrong standard for monetary relief and erroneously excluded evidence that would have reduced the amount of the judgment against them. Mo. 1.

Appellants have not shown that they satisfy any condition for summary reversal under Circuit Rule 3-6. They identify no change in the law since the district court's decision. The Supreme Court decision on which they rely in fact supports the judgment below—as the district court concluded. At the very least, the effect of that decision alone warrants plenary, not truncated, briefing because it arose under a different statute and is not directly applicable here. Nor do appellants point to any

Rule 3-6 “clear error” that would justify dispensing with ordinary briefing and argument. Those failures are fatal to their motion. Finally, the summary judgment decision below is based on a substantial factual record (appellants’ record excerpts alone number fourteen volumes). It is hardly “manifest” that the questions on review “are so insubstantial as not to justify further proceedings.” Cir. R. 3-6(a)(2).

Appellants are also wrong on the merits. The district court neither erred in applying the standard for equitable monetary relief nor abused its discretion in excluding appellants’ late-filed declarations—which anyway would have had no effect on the amount of the judgment.

## **BACKGROUND**

### **A. Appellants’ Student Loan Debt Relief Scam**

As recounted in the district court’s summary judgment decision (ECF\_182) (Op.), appellants operated a telemarketing scheme that preyed on consumers with student loan debt, luring their victims with false promises to lower consumers’ monthly payments to specific amounts by consolidating their loans and enrolling them in repayment plans. Op. 2-3. Appellants also misled consumers into believing that all or most of their payments would be applied to their student loans, and falsely claimed that they would take over the servicing of those loans. *Id.* Appellants charged consumers illegal advance fees for these purported services. *Id.*

In reality, appellants did not obtain the specific lower payments that they promised to consumers, made only sporadic payments on some of the loans, and did not take over the servicing of the loans. Op. 2-3. But because appellants changed the contact information on consumers' loan servicing accounts, consumers often went several months or sometimes years before finding out that their loans were not being repaid as promised. *Id.* In short, appellants utterly failed to obtain the debt relief that they promised to consumers, instead diverting millions of dollars of consumer payments into their own coffers.

Appellants perpetuated their illegal scheme despite three state injunctions against them for similar conduct, by running their operations via continually reincarnated corporate entities that shared owners, assets, employees, and funds. Op. 4-5, 19-20. Rima and Mazen Radwan and Dean Robbins were equal owners of all the corporate entities involved, and each had a substantial operational role in the illegal scheme. *Id.* at 4-6, 20-22. Labiba Radwan (Velazquez) was the director of appellants' operations—responsible for or heavily involved in operational decisions. *Id.* at 6, 21.

The FTC showed below that appellants cheated consumers out of \$27,584,969—which the district court awarded for consumer redress. Op. 23. The FTC arrived at this amount by calculating appellants' "net revenues"—i.e., gross revenues less payments to lenders and consumer refunds—using a combination of



appellants' tax filings, corporate financial statements, and bank records. *Id.* at 23 n.12 (citing Jenkins Decl. (ECF\_135-2 PX 33) ¶4, Table 1). That calculation and its components were “uncontested” below. *Id.* Appellants never submitted an alternative calculus, nor evidence of other legitimate deductions.

## **B. Proceedings in This Case**

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce” and empowers and directs the FTC to prevent such acts or practices. 15 U.S.C. § 45. Additionally, pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, the FTC has promulgated the Telemarketing Sales Rule (TSR), which prohibits deceptive and abusive telemarketing practices and is enforced under the FTC Act. *See* 15 U.S.C. § 6105(b); 16 C.F.R. Part 310.

The FTC sued appellants for engaging in deceptive acts or practices in violation of Section 5 and the TSR. ECF\_1, 63. It brought claims under two separate enforcement provisions of the FTC Act. Section 13(b) authorizes the FTC to sue in district court for a “permanent injunction,” 15 U.S.C. § 53(b), which this Court has long held also empowers courts to award equitable monetary relief, such as restitution or disgorgement. *See FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 598-99 (9th Cir. 2016); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112-13 (9th Cir. 1982). Section 19 of the Act allows the FTC to obtain consumer redress, including “the

refund of money or return of property” or “the payment of damages” from a defendant who has violated a consumer protection rule, including the TSR. 15 U.S.C. § 57b(a)(1), (b).

Upon filing the complaint, the FTC obtained a TRO that provided for appointment of a receiver, an asset freeze, and other relief. ECF\_23. Appellants then stipulated to a preliminary injunction that superseded the TRO. ECF\_52. After discovery, the parties filed cross-motions for summary judgment, and the district court granted the FTC’s motion. ECF\_182. It found no genuine dispute of fact that appellants made material misrepresentations regarding consumers’ enrollment in repayment plans; falsely represented on income-driven repayment applications that consumers were unemployed, and thus had no income; made false representations regarding payments towards consumers’ loans; and falsely represented that they would assume responsibility for servicing consumers’ loans. Op. 15-16. The court also found appellants in violation of the TSR by charging consumers advance fees and failing to hold consumers’ payments in proper trust accounts. *Id.* at 18. It found that the corporate appellants operated as a common enterprise controlled and directed by the individual appellants. *Id.* at 19-22.

Accordingly, the district court entered final judgment for the FTC, including prospective injunctive relief and equitable monetary relief (against all defendants jointly and severally) for \$27,584,969. ECF\_191.

Defendants timely appealed and moved in the district court for a partial stay of the judgment pending appeal, which the court below denied. ECF\_197. Appellants then sought a stay in this Court, which the Court also denied, on August 5, 2020 (Docket Entry No. 12). On September 4, 2020, appellants filed the current motion for summary reversal.

### **STANDARD OF REVIEW**

This Court reviews a district court's grant of summary judgment *de novo*. *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1138 (9th Cir. 2010).

The district court's refusal to consider evidence filed out of time and without a motion for leave of court is reviewed for abuse of discretion. *Fleischer Studios, Inc. v. A.V.E.L.A., Inc.*, 654 F.3d 958, 966 (9th Cir. 2011); *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 845 (9th Cir. 2004).

This Court's standard for summary reversal pursuant to Circuit Rule 3-6 is discussed in detail below.

### **ARGUMENT**

#### **I. THIS APPEAL DOES NOT MEET THE CONDITIONS FOR SUMMARY REVERSAL.**

Circuit Rule 3-6 permits the Court to issue a summary dispositive order if it determines that (1) "clear error or an intervening court decision or recent legislation requires" such summary disposition; or (2) it is "manifest" that the questions

on appeal “are so insubstantial as not to justify further proceedings.” Cir. R. 3-6(a). Appellants have not shown that this appeal satisfies either of those conditions.

Appellants contest neither their liability for violating the FTC Act, nor any of the injunctive terms of the judgment below. Rather, they “move for summary reversal of two issues involving clear error on damages.” Mo. 1. First, they claim that the district court failed to apply the proper standard for equitable restitution under *Liu v. SEC*, 140 S. Ct. 1936 (2020). They argue that *Liu* and a prior Supreme Court decision, *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), changed the standard for awarding and calculating equitable restitution. Mo. 4-6. But the parties briefed the effect of those decisions below, and the district court considered them fully and concluded that neither helped appellants’ position on equitable restitution. Neither case is “intervening” in the sense contemplated by Rule 3-6(a).

Nor have appellants pointed to any “clear error” in the judgment below. As we show in the next section, the district court’s application of *Liu* and *Kokesh* was correct. But even if there were room for disagreement on that point, it does not amount to a “clear error” within the meaning of Circuit Rule 3-6. “Clear error” must mean more than an argument against the lower court’s ruling. Unless a movant can show that an issue is susceptible to only one answer, most cases would be suitable for summary disposition, making plenary briefing irrelevant.

For example, this Court has used summary disposition (typically *affirming* the decision below) where it is readily clear from even the partial record before it that a statutory threshold has not been met—as with reviewing the decisions of the Board of Immigration Appeals that are grounded in the alien petitioner’s lack of the required ten-years’ continuous physical presence in the United States. *See, e.g., Arriaga v. Gonzales*, 247 Fed. Appx. 48 (9th Cir. 2007); *Sandoval v. Gonzales*, 231 Fed. Appx. 742 (9th Cir. 2007). The Court has also summarily affirmed the lower courts’ denial of preliminary injunctions under the deferential abuse of discretion standard. *See, e.g., Isaacs v. University of Southern California*, 218 Fed. Appx. 580 (9th Cir. 2007); *Horn v. Carter*, 209 Fed. Appx. 672 (9th Cir. 2006).

This Court has used summary *reversal*, on the other hand, where a readily identifiable factual error fatally undermined the decision below. In *Rubang v. Gallagher Bassett Serv., Inc.*, No. 18-17263, 2019 WL 2266629 (9th Cir. Apr. 18, 2019), for example, the Court summarily vacated the decision below because the district court’s subject matter (diversity) jurisdiction was lacking on the face of the complaint—which explicitly stated that both plaintiff and defendant were residents of California. Likewise, in *Williams v. Navarro*, No. 18-56332, 2019 WL 1559876 (9th Cir. Mar. 14, 2019), the Court summarily reversed the district court’s decision that had relied on the erroneous date of when the complaint was actually—rather than legally deemed—filed.

Appellants have shown no such errors here. Nor can they. Their disagreement is with the district court’s application of *Kokesh* and *Liu* to the particular facts of this case. Specifically, appellants challenge whether the district court’s calculation of consumer redress complies with *Liu*’s conditions for using “net revenue”—rather than “net profit”—as the measure of equitable restitution in the factual context here. As we show below, the judgment below is consistent with *Liu*, but more to the point, the issue cannot be resolved with only a glance at the record—as can in some cases be done with subject matter jurisdiction on the face of a complaint (*Rubang*), or the use of a clearly incorrect filing date (*Williams*). Here, whether appellants’ “net revenue” or “net profit” should be the measure of equitable restitution under Section 13(b) is an inquiry that cannot be answered without a full review of the entire record of the case—which, as appellants’ 3473-page record excerpts show, is voluminous. Such an inquiry may involve, among other things, examination of whether appellants ran a legitimate business with legitimate expenses or a scheme designed and implemented to deceive consumers.

Moreover, the district court’s judgment award rests on two independent statutory bases: Section 13(b) and Section 19 of the FTC Act. ECF\_191 ¶14. Regardless of how the Court rules on *Liu*, that decision could only affect Section 13(b). The FTC is still entitled to consumer redress under Section 19, including “the re-

fund of money or return of property” or “the payment of damages,” based on appellants’ TSR violations. 15 U.S.C. § 57b(b).

Likewise unsuitable for summary reversal is appellants’ claim of error in the district court’s exclusion of two late-filed declarations that, they argue, show that its calculation of consumer redress did not take into account some \$14 million paid out to lenders and in consumer refunds. Mo. 11. As we show in more detail below, appellants’ math is simply wrong; the district court credited appellants for all the monies they paid to lenders and in refunds. More importantly, it is seriously doubtful that a decision within the sound discretion of the district court—such as declining to consider untimely filed evidence—can ever constitute a *summarily* reversible “clear error” within the meaning of Rule 3-6. “The Supreme Court has held that it is never an abuse of discretion for a district court to exclude untimely evidence when a party fails to submit that evidence pursuant to a motion, as [Federal Rule of Civil Procedure] 6(b) expressly requires.” *Fleischer Studios, Inc. v. A.V.E.L.A., Inc.*, 654 F.3d 958, 966 (9th Cir. 2011) (citing *Lujan v. National Wildlife Federation*, 497 U.S. 871, 895–98 (1990)).

Appellants admit that their proffered declarations were untimely. Mo. 12-15, 19. They also admit that they failed to move for leave of court to file them out of time. *Id.* at 16-17, 19. And while they seek to shift the blame for their failure to their local counsel, and even to the FTC, *id.*, there is no dispute that they filed

those declarations out of time and without a motion to show excusable neglect.

That should end the matter for purposes of this motion: the district court certainly did not commit a clear error that warrants summary reversal in declining to consider appellants' late evidence.

Finally, the questions on appeal—even as framed in appellants' motion for summary disposition—are not “so insubstantial as not to justify further proceedings.” Cir. R. 3-6(a)(2). They involve, at a minimum, the application of a recent Supreme Court decision under the SEC statutes to the entirely different language in Section 13(b) of the FTC Act. That analysis may require scrutiny of a substantial factual record.

Because appellants have not met any of the conditions for summary reversal under Circuit Rule 3-6, their motion should be denied on that ground alone. Appellants, however, also fail to show reversible error on the merits.

## **II. THE DISTRICT COURT APPLIED THE CORRECT STANDARD FOR EQUITABLE MONETARY RELIEF UNDER THE FTC ACT.**

Appellants argue that the Supreme Court's decisions in *Kokesh* and *Liu* changed the law of equitable restitution, Mo. 4-6, and that *Liu* now demands that equitable consumer redress be measured by appellants' profit rather than their revenues, as the district court ruled. But *Liu* also ruled that expenses deductible from revenues must be “legitimate,” 140 S. Ct. at 1950, and appellants do not explain what purportedly legitimate business expenses for their deceptive operations the



district court should have deducted. Instead, they argue that the FTC should have provided, in its Rule 26 initial disclosures, detailed calculations of the “net profit” of each defendant separately, and that the district court therefore erred in accepting the FTC’s evidence on consumer redress. Neither argument withstands scrutiny.

To begin with, *Liu* does not dictate the outcome of this case under circuit precedent. *Liu* interpreted a provision in the securities laws that allows a court to order “equitable relief.” 15 U.S.C. § 78u(d)(5). The FTC Act, by contrast, authorizes a “permanent injunction.” As this Court has held, “equitable relief” serves as “a limitation on the relief available” from a court of equity, whereas “permanent injunction” conveys a broader power “to award complete relief,” including legal remedies. *Commerce Planet*, 815 F.3d at 602. *Liu* did not address that matter, so the interpretation of the FTC Act set forth in *Commerce Planet* remains binding.

Even if the Court were to rule otherwise, however, *Liu* explained that “the Court has carved out an exception” to the net profits principle when—as in this case—“the ‘entire profit of a business or undertaking’ results from the wrongful activity.” *Liu*, 140 S. Ct. at 1945 (quoting *Root v. Ry. Co.*, 105 U.S. 189, 203 (1882)). In such circumstance, the proper measure of redress is the total revenue generated by the wrongful activity. *Id.* at 1951. That is precisely what the FTC showed below and what the district court found: the revenues included in the monetary award below were entirely ill-gotten as a consequence of appellants collect-

ing unlawful advance fees and misrepresenting their student loan debt relief services to consumers. *See* Op. 14-18. Allowing appellants to deduct their business “expenses,” such as their own salaries and overhead, would effectively give them “dividends of profit under another name”—which the Supreme Court has long disallowed. *Rubber Co. v. Goodyear*, 76 U.S. (9 Wall.) 788, 803 (1869). And even if appellants had any legitimate business expenses to credit against their revenues, they failed to meet their burden of proving them. *See FTC v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2009). It was appellants’ burden to offer contrary evidence “if they believed the government’s calculation was wrong.” *SEC v. Yang*, No. 19-55289, 2020 WL 4530630, \*2 (9th Cir. Aug. 6, 2020) (citing *SEC v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010)). Appellants put forward no evidence whatsoever of the business expenses they now claim should have been credited. Op. 23 n.12.

To the extent that appellants are challenging the court’s imposition of joint and several liability against them, *Liu* also makes clear that such collective liability is permissible for “partners engaged in concerted wrongdoing.” *Liu*, 140 S. Ct. at 1949. That perfectly describes appellants here. As discussed above, corporate appellants acted as a common enterprise, with Mazen and Rima Radwan and Dean Robbins joint owners of that enterprise and intimately involved in the management of the scam. *See* Op. 4-6, 19-22. Velazquez was the director of their deceptive op-

eration, and was personally involved in many aspects of the scam, from payment processing to personnel to making decisions regarding the transfer of the victims' funds. *Id.* at 6, 21.

Appellants' Rule 26 arguments (Mo. 7-9) fare no better. They claim that even if the court may ultimately hold defendants "collectively liable"—as it did here—"the FTC must disclose individual net profits before the Court can reach that determination." Mo. 7. The claim elevates form over substance: appellants do not advance any reason why the Rule would require such a disclosure in this case. The purpose of Rule 26's disclosure requirements is to prevent parties from litigating by surprise or ambush at trial. *See Ruiz v. Hamburg-Am. Line*, 478 F.2d 29, 32 (9th Cir. 1973). Appellants have no plausible claim of surprise that the FTC sought to hold them jointly liable for their revenues from the deceptive operation. Because the FTC sought joint liability based on appellants' *collective* net revenues, it had no obligation to disclose *individual* figures—of which appellants were always in possession anyway.

From the very beginning, the FTC alleged in its complaint that the corporate appellants operated as a common enterprise and that the individual appellants, by virtue of having directed, controlled, and participated in the deceptive acts of that common enterprise, were jointly and severally liable. *Complaint* ¶14. It also alleged that, as a measure of consumer redress, appellants "collected a total of more

than \$23 million from consumers” in “illegal advance fees.” *Id.* ¶20; *see also* ECF\_25 PX20 (Goldstein Decl., attached to TRO application) ¶184 (same).

In its Rule 26 initial disclosures, the FTC then informed appellants that “the FTC will be seeking equitable monetary relief, including but not limited to restitution, the refund of monies paid, and/or disgorgement of ill-gotten monies.” Plaintiff’s Initial Disclosures, at 9 (*served* Sept. 3, 2019) (attached hereto as Exhibit A). It also put appellants on notice that “the FTC believes that such equitable monetary relief includes *all monies paid to Defendants by consumers* for debt relief services, less any such payments that Defendants refunded.” *Id.* (emphasis added).<sup>1</sup> Such disclosure of the source of information and methodology of calculating the consumer redress sought by the FTC sufficiently notified appellants of what liability lay ahead for them in this litigation, and thus easily satisfies the Rule 26 requirement of “some analysis” of monetary exposure. *See* Mo. 8 (quoting *Maharaj v. California Bank & Trust*, 288 F.R.D. 458, 463 (E.D. Cal. 2013); *City & Cnty. of San Francisco v. Tutor-Saliba Corp.*, 218 F.R.D. 219, 220 (N.D. Cal. 2003)).

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<sup>1</sup> The FTC also added in that same disclosure: “Computation of the scope of monetary relief will be based principally on information currently in the FTC’s possession, or obtained through discovery, including, but not limited to (1) consumer files, (2) consumer complaints regarding Defendants, (3) bank records from accounts belonging to Defendants, and (4) financial statements provided or to be provided by Defendants, and documents or reports filed by the Receiver.” Plaintiff’s Initial Disclosures, at 9-10.

Moreover, in their Joint Rule 26(f) Report, ECF\_69, the FTC *and appellants themselves* informed the district court that, based on records obtained to date, “the FTC estimates that the consumer injury caused by Defendants’ unlawful conduct, and the amount of equitable monetary relief it will seek, is at least \$23 million dollars,” and that the FTC “may adjust the value of consumer injury as additional information is discovered.” ECF\_69, at 4. After the close of discovery, the FTC’s calculation of consumer redress was adjusted to reflect the amount of the judgment below. *See* ECF\_132-2 (FTC’s Memo in Support of Summary Judgment), at 28; ECF\_135-2 PX 33 (Jenkins Decl.) (showing calculation of FTC consumer redress).

In that same Joint Rule 26(f) Report, the parties also informed the district court that “[t]he FTC is seeking equitable monetary relief and not damages pursuant to an action-at-law.” ECF\_69, at 4. For that very reason, appellants’ citation to *Frontline Med. Assoc., Inc. v. Coventry Health Care*, 263 FR.D. 567 (C.D. Cal. 2009), and *Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175 (9th Cir. 2008), *see* Mo. 8-9, is of no help to them. Both *Frontline*, a breach of contract and interference with economic advantage case, and *Hoffman*, a class action labor dispute, involved at-law damages. Unlike equitable relief based on consumer loss, legal damages pose the risk of recovery for injuries that, without Rule 26 disclosures, would be unknown to the defendant. By contrast, the FTC here sought equitable consumer redress based on appellants’ own net revenues, of which they were fully

aware even before the FTC's Rule 26 detailed disclosure of sources of data, calculus methodology, and reasonable estimates. In light of those disclosures, appellants cannot claim any prejudice from the unnecessary, and thus "harmless," nondisclosure of the individual profits that each may have collected from their unlawful scheme. Fed. R. Civ. P. 37(c)(1). The Court "gives particularly wide latitude to the district court's discretion to issue sanctions under Rule 37(c)(1)." *R & R Sails, Inc. v. Ins. Co. of Pa.*, 673 F.3d 1240, 1245 (9th Cir. 2012).

### **III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING APPELLANTS' LATE-FILED DECLARATIONS.**

Appellants claim that the district court "excluded key evidence demonstrating that the FTC's damages calculation was overstated by over \$14 million." Mo. 11. Specifically, appellants challenge the court's exclusion of the declarations of Rima Radwan and Dean Robbins, the latter of which purportedly included "bank statements that showed over \$14,000,000 paid out to student lenders and for refunds that was not properly credited by the FTC." *Id.* The district court struck the declarations because their filing was (1) untimely and without a showing of excusable neglect, (2) prejudicial to the FTC, and (3) part of a pattern of appellants disregarding court rules and deadlines. ECF\_170. Appellants do not contest any of those findings. *See* Mo. 12-15. Any one of them justified the court's exercise of discretion; the combination of the three makes its decision unassailable.

Specifically, appellants directly admit that the declarations were late and submitted without a motion for leave to file. Mo. 12-13. “[I]t is never an abuse of discretion for a district court to exclude untimely evidence when a party fails to submit that evidence pursuant to a motion.” *Fleischer Studios*, 654 F.3d at 966 (citing *Lujan*, 497 U.S. at 895–98). They also admit that they had repeatedly filed pleadings out of time. Mo. 13-14. And they do not contest that they submitted the Robbins declaration on a Sunday, the day before the FTC’s reply brief was due. Mo. 15. This Court need proceed no further.

At any rate, appellants are mistaken that the Robbins declaration showed that the court’s \$27,584,969 judgment award failed to account for \$14 million in refunds and lender payments. That award reflected appellants’ *net* revenues – i.e., their gross revenues minus any customer refunds or payments to lenders. As detailed in the declaration of FTC investigator Rufus Jenkins (ECF\_135-2 PX 33), in order to calculate that net-revenue amount, the FTC relied on the revenue figures reported in appellants’ own uncontroverted tax returns and profit and loss statements for all years where appellants had prepared such documents. *Id.* ¶3. Revenue figures in those documents did not include consumer refunds and lender payments, so the FTC did not deduct those amounts. *Id.* For the corporate entities or time periods where appellants did not prepare tax records, or where they evidently included refunds or lender payments in reporting their adjusted gross income, the FTC

deducted those amounts from the total. *Id.*; *see also id.* ¶4 & Table 1 (providing details of each category of net revenue). Thus, contrary to appellants’ assertion, the FTC’s calculus (and court’s award) of equitable monetary relief accounted for all the refunds and payments to lenders that were documented in appellants’ own records, including the \$14 million—which appellants purportedly extracted from bank statements, not from the corporate tax returns and profit and loss statements that the FTC used. In other words, appellants were mistakenly comparing apples to oranges.

Notably, aside from making the evidentiary challenges that were correctly overruled by the district court (*see* Op. 10-14), appellants did not put forth any countervailing evidence of their revenues or any other legitimate expenses. Accordingly, the district court rightly found that the FTC’s consumer redress “calculation and its components are uncontested.” Op. 23 n.12. The court’s exclusion of the Robbins declaration, therefore, did not alter the calculation of its judgment award, and appellants can claim no prejudice from that ruling.

### **CONCLUSION**

The motion for summary reversal should be denied.



Respectfully submitted,

ALDEN F. ABBOTT  
*General Counsel*

JOEL MARCUS  
*Deputy General Counsel*

ANDREW SMITH  
*Director*

MICHELLE GRAJALES  
SAMUEL JACOBSON  
*Attorneys*

*Bureau of Consumer Protection*

/s/ Imad Abyad  
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*Attorney*

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September 18, 2020

# **EXHIBIT A**

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15 Attorneys for Plaintiff  
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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 \_\_\_\_\_ ) Case No. **SACV 19-1333JVS(KESx)**  
20 FEDERAL TRADE COMMISSION, )  
21 Plaintiff, ) **PLAINTIFF’S INITIAL**  
22 vs. ) **DISCLOSURES**  
23 )  
24 ELEGANT SOLUTIONS, INC., et al., )  
25 Defendants. )  
26 )  
27 )  
28 \_\_\_\_\_ )

1 Plaintiff, the Federal Trade Commission, (“FTC”), makes the following  
 2 initial disclosures without waiving any privileges, pursuant to Federal Rule of Civil  
 3 Procedure 26(a)(1):  
 4

5 **1. The name and, if known, the address and telephone number of**  
 6 **each individual likely to have discoverable information – along with the**  
 7 **subjects of that information – that the FTC may use to support its claims or**  
 8 **defenses, unless the use would be solely for impeachment – Fed. R. Civ. P.**  
 9 **26(a)(1)(A)(i):**  
 10

11 A. The current and former principals, officers, directors, managers,  
 12 employees, agents, and representatives, of Elegant Solutions, Inc., Trend Capital,  
 13 Ltd., Dark Island Industries, Inc., Heritage Asset Management, Inc., and Tribune  
 14 Management, Inc., each of whom Defendants can more readily identify than  
 15 Plaintiff, and each of whose addresses and telephone numbers Defendants likely  
 16 have, including:  
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Name	Address	Telephone Number
Mazen Radwan	24891 Express Dr. Laguna Hills, CA 92653	Contact through counsel, R. Bare
Rima Radwan	8 Joliet Drive Coto De Caza, CA 92679	Contact through counsel, R. Bare
Dean Robbins	14 Seven Kings Pl. Aliso Viejo, CA 92656	Contact through counsel, R. Bare
Labiba Radwan	24981 Express Dr. Laguna Hills, CA 92653	Contact through counsel, R. Bare
Daisy Lopez	45 Castano Rancho Santa Margarita, CA 92688	(949) 648-0560

1	Kendra Sanchez	26035 Moulton Pkwy Apt. 166 Laguna Hills, CA 92653	(949) 662-7472
2	Jeff Lewis	811 Paularino Ave. Apt N Costa Mesa, CA 92626	unknown
3	Kyle Mixon	23005 Harbor Seal Ct. Wildomar, CA 92595	unknown
4	Julio Coronado	18178 Ballard Avenue Lake Elsinore, CA 92530	unknown
5	Ann Barajas	unknown	unknown
6	Maria Juarez	304 S Rosebay Street Anaheim, CA 92804	(714) 852-7959
7	Christopher Bare	32823 Fairmont Lane Lake Elsinore, CA 92530	(951) 294-4547
8	Susie Liu	33 Costa Brava Irvine, CA 92620	(949) 798-9897
9	Cynthia Robbins	14 Seven Kings Pl. Aliso Viejo, CA 92656	unknown
10	Nader Najem	8 Joliet Drive Coto De Caza, CA 92679	unknown
11	Zakia Radwan	24891 Express Dr. Laguna Hills, CA 92653	unknown

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These individuals are likely to have information relating to the practices at issue in the complaint.

B. Customers of Defendants, each of whom Defendants can more readily identify than Plaintiff, including but not limited to:

Name	Address	Telephone Number
Alison Brockel	2125 Defoors Ferry Road NW, Apt D6 Atlanta, GA 30301	(971) 235-3918
Crystal Somers	10752 Steele Street Northglenn, CO	(720) 434-0774

1	Deborah Sickel	514 Criolla Court Oakdale, CA 95361	(209) 648-1268
2	Erica Bennett	1324 5 <sup>th</sup> Avenue Howard Lake, MN 55349	(661) 341-0514
3	Evan Preston	21 Cardinal Drive Lancaster, KY 40444	(859) 339-3373
4	Greyson Schultz	118 Sherwood Court Vacaville, CA 95687	(510) 367-9004
5	Ilander Horejs	22626 Guardsman Lane Katy, TX 77449	(269) 986-5319
6	Jamie Shelton-Larimore	1842 D Avenue NE Cedar Rapids, IA 52402	(319) 329-1030
7	Jared Cooper	PO Box 567922 Atlanta, 31156	(918) 289-5957
8	Kelly Bishop	1035 Chaplet Court Henderson, NV 89074	(406) 220-3021
9	Laurie Taylor	1014 Holiday Drive Champaign, IL 61821	(217) 202-0485
10	Lisa Bonilla	105 Renee Ln. Winchester, VA 22602	(303) 923-3872
11	Mary Bursey	411 Quiet Oaks Dr. St. Clair, MO 63077	(314) 852-6301
12	Misty Smith	3073 County Rd. 1045 Lampasas, TX 76550	(512) 585-0865
13	Sapphira Clemans	1101 Bay Street, Unit C Eureka, CA 95501	(707) 362-7848
14	Shaun Avant	251 18 <sup>th</sup> Street Richmond, CA 94801	(317) 605-5601
15	Sheri Fleming	8414 Flint Cove San Antonio, TX 78254	(210) 269-9906
16	Tyler Thompson	W5894 County Road D Sheldon, WI 54766	(715) 828-9154
17	Yuliya Sanker	2123 Bisontine Street Friendswood, TX 77546	(724) 877-9858

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C. Those financial institutions and payment processors that have held Defendants' assets or accounts, each of which Defendants can more readily

1 identify than Plaintiff, including but not limited to Bank of the West, Wells Fargo,  
 2 Comerica Bank, Orange County's Credit Union, Wescom Central Credit Union, JP  
 3 Morgan Chase Bank, Florida Capital Bank N.A., AFTS, American Express, Axos  
 4 Bank, Bank of America, Citibank, Electronic Payment Systems, MUFG Union  
 5 Bank, Payment Automation Network, U.S. Bank, CalWest Bank, Computershare  
 6 Trust Company, MGM Resorts International, Wynn Las Vegas, MasterCard, Visa,  
 7 Elavon, Eagle Community Credit Union, Edward Jones & Co., Golden 1 Credit  
 8 Union, First National Bank of Central Texas, EPS Profitstars, Citywide Banks, and  
 9 Business Bank of Texas. These entities are likely to have information on  
 10 Defendants' business practices and/or finances.  
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15 D. All third parties who have provided services to Defendants,  
 16 each of whom Defendants can more readily identify than Plaintiff, including but  
 17 not limited to:  
 18

Name	Address	Telephone Number
Powers Marketing Group LLC	3151 Airway Ave. Ste. I-2 Costa Mesa, CA 92626	(833) 563-1926
Five Marketing Group	20271 Acacia St. Ste. 200 Newport Beach, CA 92660	(888) 350-3845
Seamless Marketing	4425 S. Roanoke Springfield, MO 65810	(949) 290-4648
Bare Telecom	444 W. Ocean Blvd. 8 <sup>th</sup> Floor Long Beach, CA 90802	(877) 834-3890
AFTS	151 South Lander Street Suite C Seattle, WA 98134	(206) 521-5143

1	Payment Automation Network	221 North Central Ave. #916 Medford, OR 97501	(800) 813-3740
2			
3	Electronic Payment Systems	6472 South Quebec Street Centennial, CO 80111	(800) 863-5995
4			
5	Elavon	7300 Chapman Highway Knoxville, TN 37920	(866) 342-5668
6			
7	Regus Management Group	15305 Dallas Parkway Suite 400 Addison, TX 75001	(214) 295-2308
8			
9	ADP	1 ADP Blvd., M.S. 325 Roseland, NJ 07068	(973) 974-5291
10			
11	Paychex	911 Panorama Trail South Rochester, NY 14625	(585) 383-3483
12			
13	Telnyx	311 West Superior Street Suite 504 Chicago, IL 60654	(888) 980-9750
14			
15	Cox Communications	6205-B Peachtree Dunwoody Road Atlanta, GA 30328	(404) 269-0100
16			
17	GoDaddy	14455 North Hayden Rd. Suite 219 Scottsdale, AZ 85260	(480) 624-2506
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19	Domains By Proxy	14455 North Hayden Rd. Suite 219 Scottsdale, AZ 85260	(480) 624-2506
20			
21	The UPS Store 0115	24881 Alicia Pkwy Suite E Laguna Hills, CA 92653	(949) 855-8544
22			
23	The UPS Store 2950	26895 Aliso Creek Rd. Suite B Aliso Viejo, CA 92656	(949) 360-1490

24 E. State and federal law enforcement and regulatory authorities  
25 or contractors who have investigated Defendants' practices, including but not  
26 limited to:  
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Name	Address	Telephone Number
Michael Goldstein	Contact through undersigned plaintiff's counsel	Contact through undersigned plaintiff's counsel
Emilie Saunders	Contact through undersigned plaintiff's counsel	Contact through undersigned plaintiff's counsel
North Carolina Department of Justice	P.O. Box 629 Raleigh, NC 27602	(919) 716-6009
Attorney General of Washington, Consumer Protection Division	800 Fifth Avenue Suite 2000 Seattle, WA 98104-3188	(206) 464-7745
Oregon Department of Justice	1162 Court Street NE Salem, OR 97301-4096	(503) 934-4400

F. Scott Lause, Assistant General Counsel for the Higher Education Loan Authority of the State of Missouri (“MOHELA”), (636) 733-3700 x.3730, provided a declaration in support of the FTC’s Motion for a Temporary Restraining Order regarding student loan repayment and forgiveness programs and evaluating the accuracy of representations made by Defendants.

The FTC identifies these individuals based on its investigation of this matter so far. Discovery in this matter has not yet begun, and that the FTC reserves its right to supplement these disclosures should it learn of other individuals likely to have discoverable information on which it may rely to support its claims.

**2. A copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the FTC has in its possession, custody, or control and may use to support its**

1 **claims or defenses, unless the use would be solely for impeachment – Fed. R.**  
2 **Civ. P. 26(a)(1)(A)(ii).**

3 The FTC may use documents and information it obtains from Defendants in  
4 discovery in this case as well as the following documents currently in its  
5 possession, custody or control, to support its claims, all of which are located in the  
6 FTC’s offices located at 600 Pennsylvania Avenue NW, Washington, DC and 400  
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8  
9 7th Street SW, Washington, DC.

10 A. Documents the FTC has received from consumers, Defendants, or the  
11 Receiver;

12 B. Consumer contracts, agreements, and correspondence with Defendants;

13 C. Recordings and/or transcriptions of calls with Defendants;

14 D. Telemarketing scripts, photographs, and documents obtained from  
15  
16 Defendants’ work premises;

17 E. Consumer complaints regarding Defendants;

18 F. Defendants’ websites and website registration information;

19 G. Defendants’ telephone account information;

20 H. Defendants’ banking records;

21 I. Defendants’ corporate filings;

22 J. Borrower account reviews conducted by MOHELA;

23 K. Recordings of consumers’ calls with MOHELA representatives;

1 L. Recordings of Defendants' calls with MOHELA representatives;

2 M. Income-driven repayment applications, consolidation requests, and other  
3 documents obtained from MOHELA; and  
4

5 N. Consumer complaints regarding Defendants obtained from MOEHLA.

6 **3. A computation of each category of damages claimed by the FTC –**  
7 **who must also make available for inspection and copying as under Rule 34**  
8 **the documents or other evidentiary material, unless privileged or protected**  
9 **from disclosure, on which such computation is based, including materials**  
10 **bearing on the nature and extent of injuries suffered – Fed. R. Civ. P.**  
11 **26(a)(1)(A)(iii)**

12 Pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the FTC will  
13 be seeking equitable monetary relief, including but not limited to restitution, the  
14 refund of monies paid, and/or disgorgement of ill-gotten monies. Based on  
15 information currently available, the FTC believes that such equitable monetary  
16 relief includes all monies paid to Defendants by consumers for debt relief services,  
17 less any such payments that Defendants refunded. Computation of the scope of  
18 monetary relief will be based principally on information currently in the FTC's  
19 possession, or obtained through discovery, including, but not limited to (1)  
20 consumer files, (2) consumer complaints regarding Defendants, (3) bank records  
21 from accounts belonging to Defendants, and (4) financial statements provided or to  
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1 be provided by Defendants, and documents or reports filed by the Receiver. The  
2 FTC maintains, or will maintain, this information in electronic and paper form in  
3 the FTC's offices at 600 Pennsylvania Avenue NW, Washington, DC and 400 7th  
4 Street SW, Washington, DC.  
5

6 **4. Provide for inspection and copying as under Rule 34 any**  
7 **insurance agreement under which an insurance business may be liable to**  
8 **satisfy all or part of a judgment in the action or to indemnify or reimburse for**  
9 **payments made to satisfy the judgment – Fed. R. Civ. P. 26(a)(1)(A)(iv)**  
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12 The FTC is not aware of any insurance agreement under which an insurance  
13 business may be liable to satisfy all or part of a possible judgment in this action or  
14 to indemnify or reimburse for payments made to satisfy a judgment.  
15  
16

17 Dated: September 3, 2019

18 /s/ K. Michelle Grajales  
19 K. Michelle Grajales  
20 Samuel Jacobson  
21 Attorneys for Plaintiff  
22 FEDERAL TRADE COMMISSION  
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**Certificate of Service**

I HEREBY CERTIFY that, on this date, I served the forgoing on Defendants by email to their Counsel, Robert Bare, at rbare@barelaw.com.

Date: September 3, 2019

/s/ K. Michelle Grajales

K. Michelle Grajales

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 15. Certificate of Service for Electronic Filing**

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**9th Cir. Case Number(s)**

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

**Service on Case Participants Who Are Registered for Electronic Filing:**

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is  submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

**Service on Case Participants Who Are NOT Registered for Electronic Filing:**

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

**Description of Document(s)** (*required for all documents*):

Opposition of the Federal Trade Commission to Motion for Summary Reversal

**Signature**

**Date**

(use "s/[typed name]" to sign electronically-filed documents)

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*