No. 12-57246

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GABRIEL FELIX MORAN,
Plaintiff-Appellant,

v.

THE SCREENING PROS, LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
Hon. Stephen V. Wilson
Case No. 2:12-cv-05808-SVW-AGR

BRIEF OF *AMICI CURIAE* CONSUMER FINANCIAL PROTECTION BUREAU AND FEDERAL TRADE COMMISSION SUPPORTING REVERSAL

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Interest of *Amicus Curiae*

The Consumer Financial Protection Bureau (Bureau), an agency of the United States, files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

The Bureau is the federal agency charged, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), with "regulat[ing] the offering and provision of consumer financial products and services under Federal consumer financial law." 12 U.S.C. § 5491(a). The Fair Credit Reporting Act (FCRA), as amended by the Dodd-Frank Act, authorizes the Bureau generally to enforce the FCRA, 15 U.S.C. § 1681s(b)(1)(H), and to "prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives" of the FCRA, *id.* § 1681s(e)(1). At issue in this case is § 605(a) of the FCRA, 15 U.S.C. § 1681c(a), a provision that is critical for fulfilling the objective of preserving consumers' privacy. The Bureau seeks to assist the Court by providing the Bureau's interpretation of that provision.

The Bureau is joined in this brief by the Federal Trade Commission (FTC or Commission). The Commission is the federal

agency with primary responsibility for the protection of consumers from unfair and deceptive trade practices, including through enforcement of the FCRA, 15 U.S.C. § 1681s(a). Additionally, the Commission issued both the *Commentary on the Fair Credit Reporting Act* (1990) and *40 Years of Experience with the Fair Credit Reporting Act* (2011), on which the District Court relied in this case. The Commission thus has an interest in the Court's resolution of the issues presented in this case.

Introduction

Consumer reporting agencies play a "vital role" in our economy by providing "[t]hose who extend credit or insurance or who offer employment . . . the facts they need to make sound decisions." *See* S. Rep. No. 91-517, at 2 (1969). But by assembling and disseminating volumes of information about individuals, consumer reporting agencies have the power unduly to invade individuals' privacy. *See id.* This case involves one provision that balances these dual considerations, § 605(a)—a provision that, with certain narrow exceptions, bars consumer reporting agencies from including in consumer reports information that is, according to the statute, outdated. *See* Pub. L. 91-508, § 605, 84 Stat. 1129 ("Obsolete Information"), codified at 15 U.S.C. § 1681c. In general, an "adverse item of information" is reportable only if it "antedates the report" by seven years or fewer. 15 U.S.C. § 1681c(a)(5).

Defendant-Appellee The Screening Pros, LLC (TSP) provided a consumer report, in the form of a tenant background screening report, on Plaintiff-Appellant Moran. The report, made in 2010, listed (among other items) a 2000 misdemeanor drug charge that was dismissed in

2004. The District Court concluded that the drug charge could be reported for seven years from the date the charge was dismissed. That was error. As a result of a 1998 amendment to the FCRA, the seven-year reporting period for the dismissed drug charge commenced on the date of the charge and therefore ended in 2007.

The District Court's dismissal of Plaintiff's § 605(a) claim thus should be reversed.

Statement

A. Statutory Background

1. Consumer Reporting and the FCRA

Consumer reporting is of fundamental importance in the 21st-century American economy. Information contained in consumer reports can be critical to decisions at many points in consumers' lives: on eligibility for loans and loan pricing,[1] access to checking accounts,[2] eligibility for government benefits,[3] underwriting of insurance,[4] hiring

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[1] Consumer Financial Protection Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System*, p. 5 (Dec. 2012), available at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf (hereinafter *Key Dimensions*).
[2] *Id.*
[3] *See* 15 U.S.C. § 1681b(a)(3)(D).
[4] Federal Trade Commission, *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance, A Report to Congress* (July 2007), available at

and promotion of employees,[5] access to rental housing,[6] and more. For example, a landlord considering a prospective tenant may often obtain a background screening report.[7]

Consumer reporting agencies are central to this system. A consumer reporting agency typically assesses the reliability of various sources of information; gathers information from those sources; collates the information; and assigns the collected information to the files of different individuals. Whether a consumer does or does not get a loan, a job, or an apartment can depend on a piece of information that a consumer reporting agency includes in a report about the person.

The FCRA, enacted in 1970,[8] regulates consumer reporting. The statute was designed to ensure that consumer reporting agencies provide information "in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and

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http://www.ftc.gov/os/2007/07/P044804FACTA_Report_Credit-Based_Insurance_Scores.pdf.

[5] According to one report, forty-seven percent of firms used credit checks to select job candidates, while thirteen percent used credit checks for all job candidates. *See* The Society for Human Resource Management, *SHRM Research Spotlight: Credit Background Checks, Society Human Resource Management* (2010), available at http://bit.ly/rZozFC.

[6] See, e.g., Experian ConnectSM, available at http://ex.pn/16tHGGb.

[7] *See* Nat'l Consortium for Justice Info. & Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, p. 20 (2005).

[8] Pub. L. 91-508, title VI, 84 Stat. 1128.

proper utilization of such information."[9] A primary purpose of the FCRA is "to protect an individual from inaccurate or arbitrary information about himself in a consumer report that is being used as a factor in determining the individual's eligibility for credit, insurance or employment."[10] *Porter v. Talbot Perkins Children's Servs.*, 355 F. Supp. 174, 176 (S.D.N.Y. 1973).

The FCRA fosters this purpose through a set of interlocking requirements, including restrictions on the dissemination of consumer reports, procedures for disputing accuracy, and limitations on the information to be contained in consumer reports. 15 U.S.C. § 1681b; *id.* § 1681i; *id.* § 1681c. Most relevant for this case, the FCRA restricts a consumer reporting agency from including obsolete information in a consumer report. Section 605(a) generally prohibits the reporting of "[a]ny . . . adverse item of information . . . which antedates the report by more than seven years," *id.* § 1681c(a)(5).[11] For certain types of

[9] 15 U.S.C. § 1681(b).

[10] This purpose extends to information used for other purposes—besides assessing eligibility for credit, insurance, or employment—that are also permissible under the FCRA, *see* 15 U.S.C. § 1681b(a) (listing permissible uses of consumer reports).

[11] This prohibition does not apply for a consumer report "to be used in connection with" a credit transaction of more than $150,000, life insurance of more than $150,000, or employment for a salary of over $75,000. *Id.* § 1681c(b).

information, Congress modified the general rule by adjusting either the starting point or the length of the reporting period. For example, the reporting period for bankruptcy cases is 10 years. *Id.* § 1681c(a)(1). The reporting period for a tax lien is seven years from the date the lien is paid off. *Id.* § 1681c(a)(3).

In the original FCRA, "[r]ecords of arrest, indictment, or conviction of crime" were reportable for seven years, starting at the "date of disposition, release, or parole." *Id.* § 1681c(a)(5) (1996). A 1998 amendment to the FCRA deleted this paragraph. Consumer Reporting Employment Clarification Act, Pub. L. 105-347, § 5(2), 112 Stat. 3211. The amendment moved "records of arrest" to pre-existing paragraph (a)(2), which now limits the reporting of "[c]ivil suits, civil judgment, and records of arrest" to seven years "from date of entry," 15 U.S.C. § 1681c(a)(2). *See* Pub. L. 105-347, § 5(1), 112 Stat. 3211.[12] The 1998 amendment also removed criminal convictions altogether from the restriction on reporting obsolete information. *Id.* § 5(3), codified at 15 U.S.C. § 1681c(a)(5) (prohibiting reporting, past seven years, of "any

[12] Information of this type can be reported "until the governing statute of limitations has expired," if that period is longer. 15 U.S.C. § 1681c(a)(2).

other adverse item of information, other than records of convictions of crimes").

2. Administration of the FCRA

Congress originally designated the Commission as the primary agency responsible for enforcing the FCRA. 15 U.S.C. § 1681s (2008). In 1990, the Commission issued a compilation of its interpretations and guidance regarding the FCRA, including § 605(a). FTC, *Commentary on the Fair Credit Reporting Act*, 55 Fed. Reg. 18,804 (May 4, 1990) (hereinafter *1990 Commentary*).

In the Dodd-Frank Act, Congress granted the Bureau authority to enforce the FCRA, along with the Commission and other agencies, and also granted the Bureau authority to issue rules to implement the FCRA. *See* Dodd-Frank Act, Pub. L. 111-203, § 1088(a)(10), 124 Stat. 2088, codified at 15 U.S.C. § 1681s. The Bureau is the first agency to have general rulemaking authority with respect to the FCRA.[13] To

[13] The Commission and other agencies have had the authority to issue rules under several specific provisions of the FCRA, such as § 615(e). 15 U.S.C. § 1681m(e) (authorizing various agencies to prescribe regulations regarding the prevention of identity theft). From 1997 to 2011, the Board of Governors of the Federal Reserve System had authority to "issue interpretations" of the FCRA as it applied to various kinds of banking organization. 15 U.S.C. § 1681s(e) (2008); *see* Pub. L. 111-203, § 1088(a)(10)(E), 124 Stat. 2090 (striking FCRA § 621(e) and replacing it with provision authorizing Bureau rulemaking under FCRA).

coincide with the transfer of authority to the Bureau, the Commission's staff published an updated compilation of past interpretations of the FCRA by the Commission and its staff. FTC Staff Report, *40 Years of Experience with the Fair Credit Reporting Act* (July 2011), available at http://www.ftc.gov/os/2011/07/110720fcrareport.pdf (hereinafter "*40 Years Report*"). In approving the issuance of the staff's *40 Years Report*, the Commission withdrew the *1990 Commentary*. FTC, *Commentary on the Fair Credit Reporting Act*, 76 Fed. Reg. 44,462 (July 26, 2011).

B. Facts and Procedural History

This case arises from the dismissal, by the U.S. District Court for the Central District of California, of Plaintiff's complaint against TSP. According to the complaint, Plaintiff applied for housing at Maple Square, an affordable housing development. ER 55.[14] In assessing Plaintiff's application, the property manager obtained a consumer report on Plaintiff from TSP on February 5, 2010. *Id.*

TSP's report recited four criminal cases against Plaintiff: a May 16, 2000 misdemeanor drug charge, dismissed on March 2, 2004; two

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[14] This brief uses the citation "ER" to refer to the Appellant's Excerpts of Record, filed with this Court on September 27, 2013.

June 2006 charges, for burglary and forgery, dismissed that same month; and a June 2006 conviction for misdemeanor embezzlement from an older adult.[15] ER 67.

Plaintiff claims the FCRA prohibits the reporting of the 2000 drug charge, which antedated TSP's report by nearly 10 years. He sued TSP under the FCRA and under various California statutes, including those regulating consumer reporting. ER 57–65. At first the District Court concluded that the drug charge was an "adverse item of information" that could not be reported for more than seven years from the date of the charge. ER 40. The District Court therefore denied TSP's motion to dismiss Plaintiff's claim under § 605(a). *Id.* On reconsideration, the District Court reversed itself. The court decided that the FCRA reporting period for a criminal case begins with the disposition of the case, such as dismissal of the indictment. ER 9–10. Because Plaintiff's indictment was dismissed in 2004, under the District Court's revised reading of the statute, TSP's 2010 report fell within the FCRA's seven-year reporting period. On that basis, the District Court dismissed Plaintiff's § 605(a) claim. ER 10. Plaintiff appealed. ER 1.

[15] TSP's report does not reveal whether the dates of the charges reflect the dates of arrest, the dates of indictment, or both.

SUMMARY OF THE ARGUMENT

The FCRA restricts the reporting of "[a]ny other adverse item of information . . . which antedates the report by more than seven years." 15 U.S.C. § 1681c(a)(5). An adverse item, when it occurs, starts the seven-year period. Later related events that are not in themselves adverse do not reopen the period.

Thus, in the case of a criminal charge that is eventually dismissed, the dismissal is not an adverse item that starts its own seven-year reporting period. It is simply the disposition of the truly adverse item, the underlying criminal charge. Because the seven-year period here began in 2000, the charge—and the dismissal, which necessarily revealed the existence of the charge—generally could not be reported after 2007.

This conclusion follows from the text and from considering the purposes of § 605(a), as well as from the 1998 amendment to the provision. Before 1998, § 605(a) explicitly made disposition of a charge the trigger for the seven-year reporting period. The 1998 amendment deleted that provision. The District Court, ignoring the amendment,

incorrectly relied on pre-1998 FTC commentary that was based on the old provision.

ARGUMENT

I. The Seven-Year Period for Reporting the Dismissed Drug Charge Began at the Time of the Charge.

Section 605(a)(5) restricts the reporting of an "adverse item of information . . . which antedates the report by more than seven years." 15 U.S.C. § 1681c(a)(5). That TSP reported adverse information for Plaintiff that was more than seven years old in 2010 is apparent from the face of the report. The report lists several criminal cases. For each, the report first provides the "filing date" and the "offense type" (for the drug charge, a misdemeanor); next, the "charge/offense"; and finally, the disposition and its date. ER 67. In light of how TSP presented the information, the "adverse item of information" that TSP reported was evidently—in TSP's understanding, and presumably as understood by users of the report—a "charge/offense." The most natural reading of § 605(a)(5) would limit reporting of the "charge" to the seven years after it occurred. The drug charge, as the report noted, was filed in 2000.

II. The Subsequent Dismissal of the Charge Did Not Reopen the Section 605(a) Reporting Period.

TSP has maintained, and the District Court held, that the drug charge could instead be reported for seven years from the date it was dismissed. ER 10. But § 605(a) does not permit such reopening of the seven-year reporting period.

The dismissal of the drug charge is not adverse information in itself, for purposes of § 605(a). "Courts have found 'adverse information' to mean 'information which may have, or may reasonably be expected to have, an unfavorable bearing on a consumer's eligibility or qualifications for credit, insurance, employment, or other benefit.'" *Seamans v. Temple Univ.*, 901 F. Supp. 2d 584, 593 n.4 (E.D. Pa. 2012); *cf. 40 Years Report* at 55, Comment 605-4 ("The seven-year reporting period applies only to 'adverse' information that casts the consumer in a negative or unfavorable light."). The dismissal of a charge, standing alone, does not ordinarily reflect negatively on a consumer, nor would it reasonably be expected to bear unfavorably on the consumer's eligibility for credit or other benefits. A dismissal is simply a development, ordinarily positive for the charged consumer, in the history of a criminal charge. To the extent a dismissal reflects negatively on a consumer, it

does so because it reveals the existence of the criminal charge, the truly adverse information.

That is not to say the dismissal by itself could be reported indefinitely. It has been a longstanding principle in the application of § 605(a) that "a [consumer reporting agency] may not furnish a consumer report referencing the existence of adverse information that predates the times set forth" in § 605. *40 Years Report* at 55, Comment 605-1. Otherwise the FCRA's clear limitations on the use of obsolete information would be vulnerable to easy evasion. Except in cases of convictions, § 605(a) limits the time for reporting the entire criminal case, including the dismissal.

But the fact that reporting of a dismissal is restricted under § 605(a) because it reveals the existence of the underlying indictment does not mean that the dismissal initiates its own seven-year reporting period. To the contrary, the § 605(a)(5) limitation is based on the time of the adverse item of information. The provision generally prohibits reporting of an "adverse item . . . which antedates the report by more than seven years." 15 U.S.C. § 1681c(a)(5). Therefore, the timing of the

reporting period under § 605(a)(5) depends on the date of the "adverse item" itself.[16]

The contrast with other paragraphs of § 605(a), in which Congress prescribed a different rule for specific categories of information, is instructive. For paid tax liens, the reporting period begins "from date of payment," 15 U.S.C. § 1681c(a)(3); for bankruptcy cases, "from the date of entry of the order for relief or the date of adjudication, *id.* § 1681c(a)(1). Similarly, the pre-1998 version of § 605(a) had the reporting period for a "record[] . . . of indictment" run "from date of disposition, release, or parole." 15 U.S.C. § 1681c(a)(5) (1996). For those categories for which Congress wanted the seven-year period to begin with something other than the occurrence of the adverse item, § 605(a) says so explicitly.

The Bureau's and the Commission's interpretation of § 605(a) as applied to information related to Plaintiff's drug charge is also consistent with the position the Commission staff has long taken with

[16] The Bureau's and Commission's interpretation does not preclude the possibility that a criminal case or a particular account history might include more than one adverse item, each reportable for seven years. *Cf. 40 Years Report* at 57 Comment 605(a)(5)-4 ("The seven year reporting period for criminal record information 'other than convictions of crimes' runs from the date of the reported event.").

respect to old debts. For example, a creditor's referral of a consumer's debt to a collection agency is an "adverse item of information," because it reflects negatively on the consumer's creditworthiness. This adverse information is reportable for a seven-year period that is based on the time of the referral.[17] Later non-adverse events relating to the debt do not extend the period in which a consumer reporting agency may report the fact that the debt was referred to collection. Just as a criminal charge might be dismissed, a consumer might make a partial or full payment of the defaulted debt. The FTC's staff have opined that "[t]he reporting period is not extended" by such a payment. *40 Years Report* at 57, Comment 604(a)(4)-2. Also, a creditor might sell the debt to a new holder or transfer it to another collection agency. These subsequent developments—which are not adverse items of information in themselves— do not trigger new seven-year reporting periods for the debt in collection.[18]

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[17] Section 605 specifies that the seven-year reporting period for a delinquent account placed with a collection agency begins 180 days after "the commencement of the delinquency which immediately preceded the collection activity." 15 U.S.C. § 1681c(c)(1).

[18] *See Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies*, 74 Fed. Reg. 31,484, 31,496 n.24 (final rule July 1, 2009) ("Re-aging of an account . . . when an account is sold or transferred to a third party that resets the account opening date to the date the account was received by

The Bureau agrees with these views regarding obsolete debts, and *amici* believe the same principles apply for obsolete criminal matters under § 605(a)(5). The provision does not, on its face, distinguish criminal cases (aside from those resulting in convictions) from other kinds of adverse information.

III. The Amendment History of the FCRA Confirms *Amici*'s Interpretation.

TSP argued before the District Court that a criminal record can be reported for seven years after the date of disposition. But this interpretation relied on a special rule that existed in the pre-1998 FCRA. Congress has eliminated that special rule.

Before 1998, the FCRA expressly distinguished criminal records from other adverse information. "Records of arrest, indictment, or conviction of crime," originally were reportable for seven years from "the date of disposition, release, or parole." 15 U.S.C. § 1681c(a)(5) (1996). This special rule for criminal records departed from the general rule that "any other adverse item of information" was reportable only for seven years. 15 U.S.C. § 1681c(a)(6) (1996). It follows that the general

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the third party . . . may result in adverse credit information staying on a consumer's credit report longer than what is permissible [under] the FCRA, which for accounts that are placed in collection or charged off is typically no more than seven years.").

rule, had it applied to criminal-record information, would not have made the seven-year reporting period start at the date of disposition of a charge. Congress need not have enacted the special provision for criminal records merely to achieve the same result as would have occurred under the general rule. *Cf. Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. __, 182 L. Ed. 2d 678, 132 S. Ct. 1670, 1685, (2012) (disfavoring interpretation that would render part of statute "insignificant, if not wholly superfluous"). Now that, as a result of the 1998 amendments, the general provision does cover criminal records (aside from convictions and records of arrest), this same original understanding applies.

Moreover, a proper interpretation of § 605(a) must give effect to Congress's 1998 amendment of the provision. Pub. L. 105-347, § 5, 112 Stat. 3211. As amended, § 605(a) includes "records of arrest" along with "civil suits [and] judgments" as adverse items reportable for seven years "from date of entry." 15 U.S.C. § 1681c(a)(2) (2008).[19] Convictions, on the other hand, are exempt entirely from the limitation on reporting old information. *Id.* § 1681c(a)(5). Current § 605(a) is silent about

[19] An item of this type may be reportable "until the governing statute of limitations has expired," if that period is longer. 15 U.S.C. § 1681c(a)(2).

indictments. In eliminating the special rule for indictments, Congress must have intended that indictments be treated under the general rule that applies to adverse items of information.

TSP argued to the District Court that the only effects of the 1998 amendment were to move "records of arrest" into a different paragraph and to exclude convictions from the restrictions of § 605(a). ER 17, 19. That argument fails to recognize the changes Congress actually made. If Congress desired only those two effects, it only needed to move "records of arrest" and "convictions" from the criminal-records paragraph of § 601(a), while leaving that paragraph otherwise intact. Instead, the 1998 amendment deleted the criminal-records paragraph entirely. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258–59 (2004).

IV. The Commission Staff's *40 Years Report* Is Not to the Contrary.

The District Court's decision reconsidering the motion to dismiss the complaint did not grapple with statutory interpretation issues like those discussed above. Instead, the District Court relied on the FTC's *1990 Commentary* to conclude that a criminal charge can be reported

for seven years from the date of its dismissal. The District Court believed that the *40 Years Report* adopted Comment 605(a)(5)-2 of the *1990 Commentary*. This was error.

Comment 605(a)(5)-2 of the *1990 Commentary* said, "The seven year reporting period runs from the date of disposition, release, or parole, as applicable." *1990 Commentary*, 55 Fed. Reg. at 18,818. But this was not an interpretation of the "any other adverse item" clause. It was simply a restatement of the statutory text applicable, at the time, to criminal records; the commentary then provided several helpful examples of dispositions that would trigger seven-year reporting periods under that version of the statute. *See id.* (reciting statutory language).

The statutory text on which 1990 Comment 605(a)(5)-2 was based was deleted in 1998 and is no longer the law.

The *40 Years Report* faithfully reflects the change effected by the 1998 amendment. The portion of the report describing the limitations on reporting of criminal records says the reporting period "runs from the date of the reported event," *40 Years Report* at 57, rather than from "the date of disposition" as the *1990 Commentary* had said.

What led the District Court astray was that the *40 Years Report* referred to 1990 Comment 605(a)(5)-2 on this point. That reference, however, did not indicate that the 1990 comment accurately reflected current law. Indeed, the introduction to the *40 Years Report* noted that the 1990 Commentary had become partially obsolete "[t]hrough the passage of time and the adoption of significant amendments to the FCRA." *40 Years Report* at 7. And FTC staff alerted readers that, relative to the *1990 Commentary*, they had modified some comments "to account for post-1990 FCRA amendments." *Id.* at 16 n.60. By withdrawing the *1990 Commentary*, the Commission intended for it to have no legal effect. Nonetheless, the report noted that references to the *1990 Commentary* are provided "[f]or the convenience of readers" as the source of interpretations. *Id.* at 16. The Commission reiterates here, as stated in the *40 Years Report*, that references to the *1990 Commentary* do not incorporate that withdrawn interpretation. To the extent there is any ambiguity, the Commission now clarifies that the *40 Years Report* referred to 1990 Comment 605(a)(5)-2 merely to flag the previous interpretation for an interested reader, not to suggest that

Comment 605(a)(5)-2 articulated the governing standard notwithstanding the change in the statute.

Conclusion

For the above reasons, the District Court's dismissal of Plaintiff's claim that TSP violated § 605(a) of the FCRA, 15 U.S.C. § 1681c(a), by reporting the dismissal of his criminal charge more than seven years after the initial charge, should be reversed.

Respectfully submitted,

Dated: October 4, 2013 /s/ Keith Bradley

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CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rules of Appellate Procedure 29(d) and 32(a)(7) in that it contains 4,232 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirement 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 Century Schoolbook.

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2013, I filed and served the foregoing with the Court's appellate CM-ECF system.

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