No. 13-1045

In the Supreme Court of the United States

PUBLISHERS BUSINESS SERVICES, INC., ET AL.
PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

JONATHAN E. NUECHTERLEIN
General Counsel
JOHN F. DALY
Deputy General Counsel for Litigation
LESLIE RICE MELMAN
Assistant General Counsel for Litigation
Federal Trade Commission
Washington, D.C. 20580

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals properly vacated and remanded an order granting equitable monetary relief under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), on the grounds that the district court had committed legal error by (i) calculating relief based on revenues received from a small subset of consumers, despite that court's earlier determination that petitioners' widely disseminated statements were likely to mislead consumers; and (ii) offsetting petitioners' revenue by the value of magazines that consumers had received.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-8a) is unreported but is available at 540 Fed. Appx. 555. The order of the district court awarding equitable monetary relief (Pet. App. 9a-14a) is unreported but is available at 2011 WL 7462205. The order of the district court granting summary judgment to the Federal Trade Commission (FTC) is reported at 821 F. Supp. 2d 1205.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 2013. A petition for rehearing was denied on November 29, 2013 (Pet. App. 1a). The petition for a writ of certiorari was filed on February 27, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are Publishers Business Services, Inc., and Ed Dantuma Enterprises, Inc. (collectively PBS), along with six individual corporate officers and managers who are members of the Dantuma family. Pet. App. 3a. Petitioners operated a family business that telemarketed long-term magazine subscriptions by placing "cold calls" to approximately 25 million consumers between January 2004 and August 2008. Gov't C.A. Br. 2, 4.

During that period, PBS telemarketers called business phone numbers and pretended to be conducting a survey. Gov't C.A. Br. 4-5. After thanking the consumer for helping, PBS telemarketers told the consumers that they would be receiving subscriptions to various magazines. *Id.* at 5-6. Although the telemarketers assured consumers they were not being asked to buy anything, they asked consumers to help defray the cost of sending the magazines. *Id.* at 6. Using this ruse, the telemarketers induced consumers to articulate words of apparent assent to long-term magazine subscriptions. *Id.* at 6-9.

Shortly after the initial sales calls, consumers would receive another call from a "verifier" who thanked the consumers for participating in the survey and asked whether their information could be verified on tape. Gov't C.A. Br. 7. During those calls, the verifiers would obtain consumers' apparent consent to the sale of magazines and would inform consumers for the first time that the subscriptions could not be canceled. *Id.* at 8. The verifiers were instructed to avoid telling customers the total price if possible. *Ibid.*

The consumers then received invoices for magazine subscriptions, sometimes for hundreds of dollars.

Gov't C.A. Br. 9-10. Consumers who refused to pay received dunning calls from PBS collection agents and an escalating series of delinquency letters from fictitious PBS personnel threatening, for example, to "move forward reviewing our rights * * * for all monies due plus interest[] and costs." 821 F. Supp. 2d 1205, 1214 (2010) (internal quotation marks and citation omitted). After a "delinquency" of about six months, consumers received a dunning letter from the fictitious "Bob Callahan" from a PBS "Legal Department" that did not exist. Gov't C.A. Br. 11. Consumers who had agreed at most to pay nominal shipping and handling fees for free or cancellable trial magazine subscriptions complained to the FTC, state attorneys general, and the Better Business Bureau. 821 F. Supp. 2d at 1212-1215.

2. On May 14, 2008, the FTC filed a six-count complaint against petitioners in the United States District Court for the District of Nevada, alleging that PBS had violated Section 5(a) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45(a), by making material misrepresentations in the initial telemarketing calls and subsequent communications, in violation of the statutory prohibition against "unfair or deceptive acts or practices." 2:08-cv-00620-PMP-GWF Docket entry No. (Docket entry No.) 1, paras. 20-26. The FTC further alleged that PBS had violated the Telemarketing Sales Rule (TSR), 16 C.F.R. Pt. 310, by failing to disclose the true purpose of the calls, misrepresenting the total cost of the magazine subscriptions, making false and misleading statements to induce payment for the goods, and engaging in a pattern of abusive collection calls. Docket entry No. 1, paras. 34-40.

The FTC brought its complaint under Section 13(b) of the FTC Act, 15 U.S.C. 53(b), which authorizes district courts to grant permanent injunctions with respect to "any provision of law enforced by the Federal Trade Commission." The FTC also relied on its authority under Section 19 of the FTC Act, 15 U.S.C. 57b, with respect to petitioners' violations of the TSR. Under that provision, the court may "grant such relief as the court finds necessary to redress injury to consumers * * * resulting from the rule violation," including, but not limited to, "rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification." 15 U.S.C. 57b(b); Docket entry No. 1, paras. 42-43.

3. a. The district court granted the FTC's motion for summary judgment and permanently enjoined petitioners from engaging in further deceptive and abusive sales practices. 821 F. Supp. 2d at 1205-1228.

The district court concluded that the "overall net impression" of petitioners' conduct was deceptive. 821 F. Supp. 2d at 1223. Applying well-established principles for identifying deception, the court concluded that there was no dispute of material fact that "the way in which PBS selectively disclose[d] the material terms throughout the various calls, preface[d] subsequent calls by informing the consumer PBS [was] just confirming information, and then add[ed] new required terms [was] likely to mislead." *Id.* at 1224-1225. The court concluded that PBS was "in violation of Section 5 of the FTC Act and the TSR with respect to its initial and verification calls." *Id.* at 1226. The court further concluded that PBS's collection practices violated both Section 5 and the TSR because PBS

relied on misrepresentations to induce consumers to pay and engaged in a pattern of abusive calls, in violation of 16 C.F.R. 310.4(b)(1)(i). 821 F. Supp. 2d at 1226-1227.

The district court entered a permanent injunction. 821 F. Supp. 2d at 1227-1228. The court noted that the FTC had requested restitution in "the full amount of the purchase price or payment less any refunds," which amounted to $34.4 million between January 1, 2004, and August 31, 2008. *Id.* at 1227; Pet. App. 10a. The court scheduled a hearing to "fully evaluate the appropriate monetary relief, if any, to award." 821 F. Supp. 2d at 1227.

b. After an evidentiary hearing, the district court ordered petitioners to pay $191,219 in "equitable damages." Pet. App. 9a-14a. The court explained that restitution is a form of "ancillary equitable damages relief" that is available to effect complete justice under Section 13(b) of the FTC Act. *Id.* at 11a. The court concluded, however, that "[c]omplete disgorgement of [PBS's] entire gross revenues" was not appropriate "unless FTC proves that such gross revenue is a 'reasonable approximation' of [petitioners'] gains from violations of [the FTC Act]." *Ibid.* The court concluded that the FTC "[had] not establish[ed] the necessary link between [petitioners'] acts in violation of Section 5, and PBS's entire gross revenues between January 1, 2004[,] and August 31, 2008." *Id.* at 12a.

The district court further stated that, although reimbursement to the consumers who had complained about PBS "might provide a reasonable approximation of revenues received by [PBS] in violation of Section 5," it would be impossible or impracticable to locate those consumers. Pet. App. 12a. The court noted as

well that the consumers had actually received magazines, and that many of the consumers who had complained had elected to withhold payments even in the face of petitioners' collection efforts. *Id.* at 12a-13a. The court concluded that $191,219, the amount suggested by petitioners' expert, was an appropriate amount of "equitable damages." *Id.* at 13a.

The district court further concluded that only two of the six individual defendants had sufficient knowledge of PBS's deceptive business practices to be liable along with PBS for that amount. Pet. App. 13a.

4. The court of appeals affirmed in part and vacated in part. Pet. App. 2a-8a.

The court of appeals held that the district court had abused its discretion with respect to the amount of the equitable monetary relief awarded. Pet. App. 4a. The court concluded that the district court had applied an incorrect legal standard by focusing on petitioners' gain rather than on the loss to the victimized consumers. The court explained that "the FTC Act permits restitution measured by the loss to consumers." *Ibid.* (citing *FTC* v. *Stefanchik*, 559 F.3d 924, 931-932 (9th Cir. 2009)). The court further concluded that the district court had erred in relying on the potential difficulty of locating and reimbursing the particular consumers who had been injured. *Id.* at 5a. The court explained that "[a]ttributing damages to individual consumers and returning value to them is not required for a [Section] 13(b) disgorgement remedy." *Ibid.*

The court of appeals further concluded that the district court had erred in relying on the damages calculation contained in petitioners' expert report. Pet. App. 6a. The court explained that the report was based on the assumption "that most consumers heard

all the terms of the subscription so that they were not misled by the telemarketing salutation." *Ibid.* The court explained that this assumption was flawed because petitioners' fraud consisted not only of "the failure to disclose all pertinent terms," but also of "the misrepresentations that launched the process" and the "net effect" of petitioners' sales tactics. *Ibid.*

The court of appeals further concluded that the expert's calculation was based on the erroneous assumption that the magazine subscriptions had value. Pet. App. 6a-7a. The court explained that the value of magazines actually delivered to consumers was irrelevant because the consumers' injury arose from misrepresentations made in the sales process, which led to tainted purchasing decisions. *Ibid.*

The court of appeals stated that, on remand, the district court "should base its calculation on the injury to the consumers, not on the net revenues received by [petitioners]." Pet. App. 7a. The court stated that the district court was not required to accept the FTC's calculation, and that it could consider, along with petitioners' other arguments, petitioners' contention that customers who had renewed subscriptions or added on to a subscription order "necessarily knew the actual terms of the transaction at the time of renewal." *Ibid.*

The court of appeals further held that, with respect to three of the four individual defendants on whom the district court had declined to impose individual liability, the district court had abused its discretion in concluding that those defendants lacked sufficient knowledge to be held liable. Pet. App. 7a-8a. The court affirmed the district court's order of no personal

liability with respect to the fourth individual defendant. *Id.* at 8a.

ARGUMENT

Petitioners contend (Pet. 6-23) that, under Section 13(b) of the FTC Act, 15 U.S.C. 53(b), a district court cannot award "damages" measured by loss to consumers. The court of appeals correctly vacated and remanded the district court's order awarding monetary relief in this case, which had relied on the report of an economist whose methodology for calculating such relief was inconsistent with governing law. The court of appeals' decision does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. a. Section 13(b) of the FTC Act provides that "in proper cases the Commission may seek, and after proper proof, the court may issue a permanent injunction." 15 U.S.C. 53(b). Though Section 13(b) does not explicitly grant the authority to order equitable monetary relief, it is well-established that, when an agency of the United States prosecutes a civil enforcement action in the public interest, an unqualified grant of authority to enter a permanent injunction carries with it the authority to use "all the inherent equitable powers" of the district courts "for the proper and complete exercise of that jurisdiction." *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946) (sustaining authority of district court to require, as an equitable adjunct to an injunction, restitution of rents charged in excess of the statutory maximum). The Court reaffirmed that principle in *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288 (1960), where it sustained the district court's authority to grant a back-pay award, ancillary to an injunction against an employ-

er's violations of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.* 361 U.S. at 291-292. Although the FLSA did not specifically authorize such relief, the Court explained that, "[w]hen Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes." *Ibid.* The Court further explained that, when Congress authorizes injunctive relief, "the comprehensiveness of [a court's] equitable jurisdiction" does not turn on "affirmative confirmation of the power to order reimbursement." *Id.* at 291.

Applying those principles in the context of Section 13(b) of the FTC Act, the courts of appeals have uniformly held that, upon a showing by the FTC that a defendant has engaged in "unfair or deceptive acts or practices" in violation of 15 U.S.C. 45, the district courts may order not only prospective injunctive relief, but also ancillary remedies, including equitable monetary relief, to achieve complete justice.[1] The

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[1] See *FTC* v. *Ross*, 743 F.3d 886, 891 (4th Cir. 2014) (Section 13(b) authorizes the district courts "to award 'complete relief,' including monetary consumer redress, which is a form of equitable relief"); *FTC* v. *Bronson Partners, LLC,* 654 F.3d 359, 366 (2d Cir. 2011) (Section 13(b) empowers the district courts to grant ancillary equitable relief, including a money judgment); *FTC* v. *Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 14-15 (1st Cir. 2010) (restitution is an appropriate remedy for deceptive advertising); *FTC* v. *Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 n.6 (10th Cir. 2005) (Section 13(b) authorizes "monetary relief * * * incidental to injunctive relief"); *FTC* v. *Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996) (Section 13(b) "carries with it the full range of equitable remedies, including * * * consumer redress and * * * disgorgement"); *FTC* v. *Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.

courts of appeals have similarly upheld the authority of the district courts to provide equitable monetary relief under comparable provisions of other regulatory enactments.[2]

b. The district court's primary error in this case was the logical inconsistency between its liability ruling and the amount of equitable monetary relief that it chose to award. As the court of appeals explained, the district court's grant of summary judgment at the liability stage was based on its recognition that, even though PBS had disclosed all the terms of the agreement to consumers by the end of the verification calls, "the net effect of PBS's sales tactics was misleading." Pet. App. 6a. The district court nevertheless calculated its award of equitable monetary relief using a methodology that petitioners' expert had formulated by listening to tapes and concluding that the terms of the deal had been disclosed to consumers during the verification calls. *Ibid.*; Gov't C.A. Br. 23.

The calculation that the district court accepted from petitioners' expert was also based on the supposed value of the magazines that the consumers had

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1994) (district courts may award the remedy of restitution to correct "unjust enrichment" and "protect consumers from economic injuries"), cert. denied, 514 U.S. 1083 (1995); *FTC* v. *Amy Travel Serv., Inc.*, 875 F.2d 564, 571 (7th Cir.) (Section 13(b) includes grant of power to order ancillary equitable relief, including "rescission and restitution"), cert. denied, 493 U.S. 954 (1989).

[2] See, *e.g.*, *United States* v. *Lane Labs-USA Inc.*, 427 F.3d 219, 225-226 (3d Cir. 2005) (Federal Food, Drug, and Cosmetics Act); *SEC* v. *First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989) (Securities Exchange Act); *CFTC* v. *Co Petro Mkt'g Grp., Inc.*, 680 F.2d 573, 583-584 (9th Cir. 1982) (Commodities Exchange Act); *ICC* v. *B & T Transp. Co.*, 613 F.2d 1182, 1184-1185 (1st Cir. 1980) (Motor Carrier Act).

received, regardless of whether the consumers had been deceptively induced to enter into the expensive subscription contracts. Pet. App. 6a-7a. As the court of appeals explained, courts in similar circumstances have consistently held that "'[t]he fraud in the selling, not in the value of the thing sold, is what entitles consumers * * * to full refunds.'" *Id.* at 6a-7a (quoting *FTC* v. *Figgie Int'l, Inc.*, 994 F.2d 595, 606 (9th Cir. 1993) (per curiam), cert. denied, 510 U.S. 1110 (1994)); see also *FTC* v. *Kuykendall*, 371 F.3d 745, 766 (10th Cir. 2004) (en banc).

The court of appeals thus clearly and correctly identified two respects in which the district court's remedial order violated controlling principles of law, and it appropriately remanded for recalculation of the award in light of those principles.

2. Petitioners do not dispute that equitable monetary relief can be awarded under Section 13(b). Instead, they contend (Pet. 6-7) that, by authorizing the district court to award restitution based on the consumers' loss, the court below has authorized the district court to award legal damages to the FTC, contrary to this Court's decision in *Great-West Life & Annuity Insurance Co.* v. *Knudson*, 534 U.S. 204 (2002), and contrary to the decisions of other courts of appeals that have limited the award of equitable monetary relief to the amount of the defendant's unjust gain (Pet. 8-16). Those contentions rest on a misunderstanding of the court of appeals' opinion.

a. Petitioners contend (Pet. 12) that the court of appeals' direction to use consumer loss as the baseline for calculating a monetary award conflicts with the Second Circuit's decision in *FTC* v. *Verity International, Ltd.*, 443 F.3d 48 (2d Cir. 2006), cert. denied,

549 U.S. 1278 (2007). Petitioners point to language in *Verity* stating that the appropriate measure of equitable monetary relief should be the benefit received by defendants rather than consumers' loss. Pet. 12. The decision in *Verity,* however, turned on an unusual circumstance—specifically, the presence of a blameless intermediary who had kept a portion of the consumers' payments before they reached the wrongdoers. 443 F.3d at 67. Because of that arrangement, the district court order directing the defendants to pay restitution in the full amount lost by consumers effectively required the defendants to pay more than they had actually received. See *FTC* v. *Verity Int'l, Ltd.*, 335 F. Supp. 2d 479, 501-502 (S.D.N.Y. 2004), aff'd in part and rev'd in part, 443 F.3d 48 (2d Cir. 2006).

That issue is not presented in petitioners' case. Here, as in most cases where the FTC sues a group of collaborating defendants who have engaged in transactions with consumers directly, there is no innocent middleman, and the money spent by consumers is therefore equivalent to the funds unlawfully retained by the wrongdoers.[3] As the Second Circuit in *Verity* recognized, when the "consumer buys goods or services directly from the defendant," there is no difference between a defendant's gain and the consumer's

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[3] All courts of appeals that have addressed the issue have agreed that defendants' "gains" for this purpose are measured by gross revenues minus refunds, and are not reduced by defendants' costs of doing business. See, *e.g.*, *Verity*, 443 F.3d at 68 (disgorgement to be measured "without deducting monies paid by the defendants-appellants to other parties"); *FTC* v. *Washington Data Res., Inc.*, 704 F.3d 1323, 1326-1327 (11th Cir. 2013) (per curiam) (collecting cases). Accordingly, the court below properly rejected the proposition that relief could be limited to "defendant's profits." Pet. App. 4a (internal quotation marks and citation omitted).

loss. 443 F.3d at 68. In other words, as the Second Circuit clarified in *FTC* v. *Bronson Partners, LLC,* 654 F.3d 359 (2011), "[t]he only limitation that *Verity* placed on the district court's remedial authority was the requirement that any monetary award be limited to funds that actually were paid to the defendants, as opposed to money that was paid by the consumer but withheld by a middleman." *Id.* at 374.

For those reasons, the answer to the question posed by petitioners—whether monetary equitable relief may ever exceed the collective gain to wrongdoers (Pet. 15)—has no bearing on the outcome of this case. The Eleventh Circuit made precisely that point in *FTC* v. *Washington Data Resources, Inc.*, 704 F.3d 1323 (2013) (per curiam), when it noted that the distinction between consumer loss and unjust enrichment is "of no consequence" when consumers make a purchase directly from the defendants, without the involvement of a middleman. *Id.* at 1326; see *FTC* v. *Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 14 (1st Cir. 2010) (describing "*Verity*'s facts as an exception limited to the situation 'when some middleman not a party to the lawsuit takes some of the consumer's money before it reaches a defendant's hands.'") (quoting *Verity*, 443 F.3d at 68) (emphasis omitted).

The other Eleventh Circuit case cited by petitioners (Pet. 13), *CFTC* v. *Wilshire Inv. Mgmt. Corp.,* 531 F.3d 1339 (2008), illustrates another way—also inapposite to this case—in which consumer loss may differ from a defendant's gain. That case involved losses that customers of a commodity futures broker had suffered in trades they had made based on the defendant's advice. *Id.* at 1342-1343. The court limited relief to the fees received by the defendants, rather

than allowing recovery of the full amounts the customers had lost in market trades with persons not before the court. *Id.* at 1345. That decision has no bearing on the proper scope of petitioners' liability.

Petitioners' reliance (Pet. 12-13) on the unpublished opinion in *FTC* v. *Loanpointe, LLC*, 525 F. Appx. 696 (10th Cir. 2013), is also unavailing. In *Loanpointe*, the FTC sought disgorgement of interest payments that had been collected by means of unlawful garnishment letters, and the court concluded that the district court had not abused its discretion in ordering disgorgement of the interest payments that were connected to the defendant's fraud. *Id.* at 699-702. The court of appeals' decision in this case is consistent with that holding.[4] Petitioners have not identified any conflict warranting this Court's review.

b. The court of appeals at times used the term "damages" to describe the monetary relief at issue here. See, *e.g.*, Pet. App. 3a, 4a. Although those references may be an imprecise description of the district court's equitable authority to order monetary relief under Section 13(b) of the FTC Act, they do not suggest any substantive infirmity in the relief awarded. The court of appeals elsewhere recognized that the relief sought amounted to the disgorgement of unjust enrichment, a prototypical equitable remedy.

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[4] There is likewise no sound basis for petitioners' contention that the court of appeals' decision conflicts with the reasoning adopted by other circuits in civil enforcement actions brought by the Securities and Exchange Commission (SEC), in which the SEC has sought only disgorgement of the defendants' ill-gotten gains. See, *e.g.*, *SEC* v. *First City Fin. Corp.,* 890 F.2d 1215 (D.C. Cir. 1989); *SEC* v. *Blavin*, 760 F.2d 706 (6th Cir. 1985) (per curiam); *SEC* v. *Blatt*, 583 F.2d 1325 (5th Cir. 1978).

Id. at 5a. In any event, some imprecision in the use of the term "damages" at various points in an unpublished opinion is no basis for concluding, as petitioner suggests (Pet. 21-22), that the court of appeals has abandoned the jurisprudence of federal equity practice. As reflected in the district court's own description of the requested remedy and in petitioners' briefs below, there is considerable inconsistency in the terms that courts and litigants use to describe monetary equitable remedies. See, *e.g.*, Pet. App. 9a ("Order Re: Equitable Damages"), *id.* at 11a ("ancillary equitable damages relief"). The court of appeals' choice of words to describe the remedy does not affect the equitable nature of the monetary relief at issue.

There is likewise no sound basis for petitioners' contention (Pet. 15) that the court of appeals' decision will invite awards of "punitive and exemplary damages." The FTC did not request an award of legal damages in this case, let alone punitive and exemplary damages. The court of appeals' observations about the textual differences between Sections 13(b) and 19 (which specifically authorizes damages, except for exemplary and punitive damages) thus cannot fairly be read to approve such relief under Section 13(b).

3. Finally, the Court's review is unwarranted at this time because the case is in an interlocutory posture. The court of appeals vacated the district court's award of equitable monetary relief, "remanded th[e] case for further proceedings," and stated that the district court is not required to accept the FTC's calculation. Pet. App. 7a-8a. The court authorized the district court to consider, along with petitioners' other arguments, petitioners' contention that customers who had renewed their subscriptions or added on to a

subscription order "knew the actual terms of the transaction at the time of renewal." *Id.* at 7a. The interlocutory posture of the case "alone furnishe[s] sufficient ground for the denial" of the petition. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *Brotherhood of Locomotive Firemen* v. *Bangor & Arostock R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (a case remanded to district court "is not yet ripe for review by this Court"); see also *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for certiorari).

After the district court recalculates the appropriate amount of equitable monetary relief, petitioners will have an opportunity to raise their current claim, together with any other claims that may arise from the further proceedings, in a single petition for a writ of certiorari. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam). Petitioner provides no basis for departing from the Court's normal practice of denying petitions challenging interlocutory determinations that, like the decision in this case, may be reviewed after final judgment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

JONATHAN E. NUECHTERLEIN
General Counsel
JOHN F. DALY
Deputy General Counsel for Litigation
LESLIE RICE MELMAN
Assistant General Counsel for Litigation
Federal Trade Commission

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