No. 26-10858

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NEIMA BENAVIDES, of Naibel Benavides Leon, deceased,
MR. DILLON ANGULO,

Plaintiffs-Appellees,

v.

TESLA, INC.

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida,
No. 1:21-cv-21940-BB

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

INTRODUCTION 1

ARGUMENT 3

I. Plaintiffs' Claims Fail As A Matter Of Law. 3

A. Plaintiffs' Design-Defect Theory Fails as a Matter of Law. 3

1. McGee's car was not defectively designed. 3

2. Plaintiffs failed to prove causation. 7

B. Plaintiffs' Failure-to-Warn Theory Fails as a Matter of Law. 8

II. The District Court's Prejudicial Evidentiary Errors Independently Require A New Trial. 12

A. The Data-Handling Evidence Was Irrelevant and Highly Prejudicial. 12

B. The District Court Erred in Admitting Evidence of Dissimilar Accidents Under the Wrong Legal Standard. 15

C. Musk's Statements Were Irrelevant and Highly Prejudicial. 17

III. The Unlawful and Excessive Punitive-Damages Award Cannot Stand. 18

A. Florida Law Prohibits Any Punitive Damages Here. 19

B. Federal Due Process Limits Any Punitive Damages Here to No More Than the Compensatory Damages Awarded Against Tesla. 23

1. Tesla's conduct was not reprehensible. 24

2. There is a substantial disparity between the punitive-damages and compensatory-damages awards. 25

3. The civil penalty for comparable conduct underscores the excessiveness of the punitive-damages award. 26

C. Florida's Statutory Cap Limits Any Punitive Damages Here to Three Times the Compensatory Damages Awarded Against Tesla. 27

CONCLUSION 30

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES*

Cases

Ad-Vantage Tel. Directory Consultants, Inc. v. GTE Directories Corp.,
37 F.3d 1460 (11th Cir. 1994)..... 15, 17, 18

Am. Cyanamid Co. v. Roy,
498 So.2d 859 (Fla. 1986)..... 22, 23

Aubin v. Union Carbide Corp.,
177 So.3d 489 (Fla. 2015)..... 3

**BMW of N. Am. v. Gore*,
517 U.S. 559 (1996)..... 23

Cavanaugh v. Stryker Corp.,
308 So.3d 149 (Fla. Dist. Ct. App. 2020)..... 3

**Chrysler Corp. v. Wolmer*,
499 So.2d 823 (Fla. 1986)..... 19, 22

Coates v. R.J. Reynolds Tobacco Co.,
375 So.3d 168 (Fla. 2023)..... 28

Drabik v. Stanley-Bostitch, Inc.,
997 F.2d 496 (8th Cir. 1993)..... 22

EEOC v. W&O, Inc.,
213 F.3d 600 (11th Cir. 2000)..... 20

Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.,
980 F.3d 1117 (7th Cir. 2020)..... 26

Faulk v. Dimerco Express USA Corp.,
172 F.4th 844 (11th Cir. 2026)..... 25

Flo & Eddie, Inc. v. Sirius XM Radio, Inc.,
827 F.3d 1016 (11th Cir. 2016)..... 29

* Citations upon which Appellant primarily relies are marked with asterisks.

Grieco v. Daiho Sangyo, Inc.,
344 So.3d 11 (Fla. Dist. Ct. App. 2022) 6, 9, 10, 23

Henderson v. Ford Motor Co.,
72 F.4th 1237 (11th Cir. 2023) 16

Hosp. Specialists, P.A. v. Deen,
373 So.3d 1283 (Fla. Dist. Ct. App. 2023) 20

Ingham v. Johnson & Johnson,
608 S.W.3d 663 (Mo. Ct. App. 2020) 25

Jeep Corp. v. Walker,
528 So.2d 1203 (Fla. Dist. Ct. App. 1988) 21

Kohler v. Medline Indus., Inc.,
453 So.2d 908 (Fla. Dist. Ct. App. 1984) 8

Lopez v. S. Coatings, Inc.,
580 So.2d 864 (Fla. Dist. Ct. App. 1991) 12

McGriff v. Minn. Mut. Life Ins. Co.,
127 F.3d 1410 (11th Cir. 1997) 3

McQueeney v. Wilmington Trust Co.,
779 F.2d 916 (3d Cir. 1985) 14

Peat, Inc. v. Vanguard Rsch., Inc.,
378 F.3d 1154 (11th Cir. 2004) 15

Perlmutter v. Fed. Ins. Co.,
434 So.3d 681 (Fla. 2026) 21

Philip Morris USA v. Williams,
549 U.S. 346 (2007) 26

R.J. Reynolds Tobacco Co. v. Townsend,
118 So.3d 844 (Fla. Dist. Ct. App. 2013) 29

Richards v. Michelin Tire Corp.,
21 F.3d 1048 (11th Cir. 1994) 3

Roberts v. Sea-Land Servs., Inc.,
566 U.S. 93 (2012) 27

Smith v. R.J. Reynolds Tobacco Co.,
880 F.3d 1272 (11th Cir. 2018) 28

Sorrels v. NCL (Bahamas) Ltd.,
796 F.3d 1275 (11th Cir. 2015) 16

**State Farm Mut. Auto Ins. Co. v. Duckworth*,
648 F.3d 1216 (11th Cir. 2011) 19, 25

State Farm Mut. Auto. Ins. Co. v. Campbell,
538 U.S. 408 (2003) 23, 24

**Tesla, Inc. v. Banner*,
411 So.3d 1 (Fla. Dist. Ct. App. 2025) ... 1, 3, 4, 5, 6, 10, 17, 19, 20, 21, 24

U.S. Steel, LLC v. Tieco, Inc.,
261 F.3d 1275 (11th Cir. 2001) 15

West v. Caterpillar Tractor Co.,
336 So.2d 80 (Fla. 1976) 5

Statutes

49 U.S.C. §30165(a) 26

*Fla. Stat. §768.1257 5

Fla. Stat. §768.72(2) 19

*Fla. Stat. §768.73(1)(a) 27, 28, 29

Fla. Stat. §768.81(2) 28

Rule

Fed. R. Evid. 403 14

Other Authorities

Entitle, *Black's Law Dictionary* (12th ed. 2024)..... 27

Order, *Banner v. Firstfleet Inc. of Tenn.*, No. 50-2019-CA-009962-XXXX-MB (Fla. Cir. Ct. Nov. 17, 2023)..... 20

Restatement (Third) of Torts: Products Liability (2026)..... 10

Tesla, Inc., *Tesla Q4 2019 Vehicle Production & Deliveries* (Jan. 3, 2020), https://tinyurl.com/5y493kzj..... 24

INTRODUCTION

George McGee sped at 62 miles per hour through a stop sign with his foot on the accelerator and his eyes off the road while rummaging for his dropped phone. That remarkable recklessness—not any defect in his Tesla Model S or its warnings—caused the collision here. Plaintiffs attempt to all but erase McGee from their narrative and blame his car instead. But Plaintiffs never dispute that no car in the world would have overridden McGee's commands or prevented McGee's extraordinarily reckless actions from causing the collision here. And no reasonable person would expect McGee's car to do things no car in existence could do.

Yet Plaintiffs seek not only to hold Tesla liable for failing to design a car that Tesla "did not advertise and that did not exist," *Tesla, Inc. v. Banner*, 411 So.3d 1, 5 (Fla. Dist. Ct. App. 2025), but to impose enormous punitive damages. Florida law forecloses that result. It does not hold manufacturers liable for failing to prevent drivers from manually overriding safety features and disregarding repeated warnings. It imposes no duty to warn of the open and obvious dangers of reckless driving. It reserves punitive damages for those who act with gross negligence tantamount to criminal manslaughter, and it certainly does not permit punitive damages—let alone *$200 million* in punitive damages—against a manufacturer because a driver treated innovative safety features as an invitation to push the limits recklessly.

Unable to square the judgment with Florida law, Plaintiffs rewrite both the law and the record. They pluck out-of-context marketing clips and CEO statements that McGee never heard to inflate consumer expectations to impossible levels. They invent a duty to disable safety features to prevent a tiny subset of the most reckless drivers from misusing them. And they seek to punish Tesla for failing to design a car that no one made. As a wide range of amici warn, accepting those arguments would create all the wrong incentives for manufacturers by penalizing safety innovations that benefit countless responsible drivers but may embolden the reckless few.

The district court's evidentiary errors explain the outsized and indefensible verdict, and independently confirm the judgment cannot stand. Plaintiffs confused and misled the jury with irrelevant evidence that never should have been admitted, including evidence regarding Tesla's post-collision data-handling, evidence of prior dissimilar accidents, and irrelevant forward-looking statements. Plaintiffs cannot plausibly defend those evidentiary errors, and cannot dismiss them as harmless given their outsized role at trial.

Finally, Plaintiffs offer no persuasive defense of the unlawful and grossly excessive punitive-damages award. The Florida District Court of Appeal rejected punitive damages on materially indistinguishable claims and facts, in a decision that is controlling in this diversity case. Plaintiffs cannot reconcile that decision with the

verdict below, and they cannot justify a $200 million punitive-damages award that also contravenes both the Due Process Clause and Florida's statutory cap. For any and all of those reasons, the district court's judgment cannot stand.

ARGUMENT

I. Plaintiffs' Claims Fail As A Matter Of Law.

Plaintiffs do not dispute that Tesla is entitled to judgment if Plaintiffs' liability theories all fail, and a new trial if even one of their design-defect or failure-to-warn theories fails. *McGriff v. Minn. Mut. Life Ins. Co.*, 127 F.3d 1410, 1416 (11th Cir. 1997); *see, e.g.*, *Richards v. Michelin Tire Corp.*, 21 F.3d 1048, 1054-55 (11th Cir. 1994). Their attempts to defend those theories are unpersuasive.

A. Plaintiffs' Design-Defect Theory Fails as a Matter of Law.

1. McGee's car was not defectively designed.

Plaintiffs failed to prove any design defect in Tesla's "state-of-the-art" vehicle, which "complied with all industry and regulatory standards." *Banner*, 411 So.3d at 5. None of their three purported defects comes close to showing that McGee's car "failed to perform as safely as an ordinary consumer would expect," *Aubin v. Union Carbide Corp.*, 177 So.3d 489, 503 (Fla. 2015), or that any "risk of danger in the design outweighs the benefit," *Cavanaugh v. Stryker Corp.*, 308 So.3d 149, 153 (Fla. Dist. Ct. App. 2020) (per curiam); *accord* Chamber.Br.7-13; PLAC.Br.6-19.[1]

[1] Plaintiffs assert *Banner* is "wholly irrelevant" to liability because its "sole holding" addressed punitive damages. Pltfs.Br.25. But in reaching that holding,

Geofencing. Plaintiffs do not (and cannot) dispute that Tesla complied with prevailing industry standards by making its driver-assistance systems available without geographic restrictions. Tesla.Br.22-25. As the Society of Automotive Engineers explained, "it is the role of the user"—not the car—"to determine whether and when engagement and disengagement of the driving automation system is appropriate." D.Ct.Dkt.584.at.156. Of the 76 models then on the market with Level 2 driver-assistance systems, Plaintiffs identified *one* that used geofencing (the Cadillac CT6), and that model relied on an entirely different hands-free system. D.Ct.Dkt.577.at.88-89; *see* Tesla.Br.22-23. Accepting Plaintiffs' argument would mean *every other car on the market* in 2019 with a hands-on-wheel driver-assistance system was defective. That would rob countless attentive drivers of the substantial safety benefits such systems provide. Florida law does not require forgoing those benefits just because a driver like McGee may grossly misuse features that make attentive drivers safer. Tesla.Br.23-25.

Driver-Monitoring System. Plaintiffs' attack on Tesla's driver-monitoring system likewise impermissibly treats an industry-standard design as a defect. Plaintiffs claim steering-wheel torque "is not a good proxy" for driver awareness,

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Banner described the Autopilot features at issue here as state-of-the-art and fully compliant with industry and regulatory standards. 411 So.3d at 4-5. Those observations are no less true or less devastating with respect to liability.

Pltfs.Br.17, but again ignore that Tesla's design reflected industry practice: Of the 76 driver-assistance systems on the market, only four used cameras rather than steering-wheel torque to monitor driver awareness. D.Ct.Dkt.585.at.234. Again, Plaintiffs' theory would mean all but four cars on the market in 2019 with driver-assistance systems were defective. Put simply, Tesla's use of steering-wheel "torque, instead of a camera, to monitor driver inattentiveness" was "'state-of-the-art' and complied with all industry and regulatory standards." *Banner*, 411 So.3d at 4-5. The fact that alternative approaches were "feasible," Pltfs.Br.19, 24, does not show Tesla's driver-monitoring system was "unreasonably dangerous," as Florida law requires, *West v. Caterpillar Tractor Co.*, 336 So.2d 80, 86-87 (Fla. 1976).

Plaintiffs lean heavily on a years-later NHTSA report to claim a "critical safety gap." Pltfs.Br.18-19, 22-23 (citing Dkt.542-11.at.2). But that post-hoc assessment focused on driver complacency, not active misuse. Regardless, it does not show that McGee's vehicle defied consumer expectations or that its risks outweighed its benefits under "the state of the art of scientific and technical knowledge" that "existed at the time of manufacture." Fla. Stat. §768.1257; *see* Tesla.Br.26. Nor does Tesla's later acknowledgment that its system "may be insufficient to prevent driver misuse" mean Tesla agreed its system "was defective," *contra* Pltfs.Br.19, 23; instead, it shows only that Tesla understood that "virtually

any product can be misused," *Grieco v. Daiho Sangyo, Inc.*, 344 So.3d 11, 18 (Fla. Dist. Ct. App. 2022).

Automatic Emergency Braking and Forward Collision Warning. Tesla's Automatic Emergency Braking (AEB) and Forward Collision Warning (FCW) systems likewise were not defective. Like all such systems in 2019, Tesla's systems were designed to react only to a vehicle detected in the same lane traveling in the same direction, not stop signs, parked cars, or other out-of-lane hazards. D.Ct.Dkt.586.at.100-01, 109. Consistent with those limitations, McGee's owner's manual specified his car could not "detect and stop for a stop sign" or prevent collisions with out-of-lane objects. D.Ct.Dkt.579.at.71; D.Ct.Dkt.585.at.160-63. Tesla's vehicle was not defective for failing to provide technology that "did not exist." *Banner*, 411 So.3d at 5.

Plaintiffs assert Tesla claimed its technology would do the impossible and drive itself. Pltfs.Br.19-20. But Tesla never suggested McGee's car would brake even when the driver was instructing it to do the opposite by pressing the accelerator. *Contra* Pltfs.Br.20-21, 23. No ordinary consumer would have expected McGee's car to disregard his commands and prevent this collision. Indeed, McGee himself knew his car "was not a fully self-driving vehicle," would not "stop for a stop sign," and did not allow him to safely "take [his] eyes off the road." D.Ct.Dkt.579.at.70-71. And Plaintiffs do not even try to show any risks in Tesla's design outweighed its

benefits, particularly when a more aggressive automatic-braking system could create countervailing risks, such as braking unpredictably. Tesla.Br.27-28.

2. Plaintiffs failed to prove causation.

Plaintiffs likewise have not shown causation. Given McGee's extraordinary (and admitted) recklessness, no alternative design choices could have prevented this collision. *See* Tesla.Br.29-32.

As at trial, Plaintiffs offer nothing but speculation. They invoke McGee's testimony that he would have driven more carefully if he had "not been driving a Tesla on Autopilot." Pltfs.Br.25-26. But that self-serving testimony cannot be reconciled with McGee's repeated admissions to police at the scene that he drove through the stop sign and collided with a parked car because he was distracted by his phone, not because he trusted his car to do the driving for him. *See* D.Ct.Dkt.575.at.34-37, 40-41. More to the point, Plaintiffs cite no testimony from McGee that any of the purported defects here actually contributed to the collision. General assertions that McGee "trusted the technology too much" cannot prove that, for example, a different driver-assistance system would have produced a different result. *Contra* Pltfs.Br.25-26. And Plaintiffs' assertion that McGee "could have braked and avoided the crash completely" with an additional warning a few seconds before the crash, Pltfs.Br.26, cannot be squared with the undisputed fact that

McGee's car started giving him warnings *more than a minute* before the collision, *see* D.Ct.Dkt.584.at.116-19, all to no avail.

McGee's extreme recklessness independently forecloses proximate causation. *See* Tesla.Br.30-32. Plaintiffs tacitly concede that "knowing or intentional misuse" of a product bars proximate causation under Florida law, and argue only that McGee's conduct fell short of that level. Pltfs.Br.27-28 (brackets omitted). But if deliberately accelerating while well over the 45 miles per hour speed limit, looking down for a lost phone, and ignoring repeated warnings for more than a minute despite knowing that the road ended in in T-intersection is not intentional misuse of a car and its safety features, it is hard to imagine what would be. Plaintiffs' assertions that McGee's car "furnished [him] with the opportunity to be careless" would gut the rule. *Kohler v. Medline Indus., Inc.*, 453 So.2d 908, 909 (Fla. Dist. Ct. App. 1984). Florida law does not condemn safety features that improve safety for attentive drivers just because those features can be misused by a reckless few.

B. Plaintiffs' Failure-to-Warn Theory Fails as a Matter of Law.

Plaintiffs' failure-to-warn theory is even more obviously flawed. *First*, Tesla had no duty to warn McGee against the open and obvious risks of his own reckless driving. Tesla.Br.33-34; *accord* Chamber.Br.14-16. Plaintiffs concede as much, admitting that Tesla cannot be held liable for failing to warn McGee against "speeding through a stop sign and T-intersection in the dark while looking down for a lost

phone." Pltfs.Br.28. Plaintiffs nevertheless claim that Tesla had a duty to warn McGee against "the specific risk of overreliance on Autopilot." Pltfs.Br.28. But Tesla did; it gave McGee extensive warnings about the capabilities and limitations of his car, which is why McGee understood that his car was not autonomous, that it was "[a]bsolutely" his responsibility to control the car and pay attention to the road at all times (even when using Autopilot), and that the car "wasn't going to stop at the stop sign" on Card Sound Road by itself. D.Ct.Dkt.576.at.108; D.Ct.Dkt.579.at.59, 70-72. Tesla had no duty to warn McGee of the "obvious" and "known" dangers of abandoning his responsibility, disregarding the road, and blowing through a stop sign. *Grieco*, 344 So.3d at 20; *see* Tesla.Br.33-34.

Second, Tesla provided ample warnings that were more than adequate for any driver not impervious to warnings. Its owner's manual told McGee he should "[n]ever depend" on his driver-assistance system "to keep you safe," D.Ct.Dkt.542-10.at.P-53-0081, to "adequately slow down," D.Ct.Dkt.542-10.at.P-53-0083, -0087, "to prevent a collision," D.Ct.Dkt.542-10.at.P-53-0103, -0104, or "to warn you of a potential collision," D.Ct.Dkt.542-10.at.P-53-0103. It told him to "[a]lways watch the road … and be prepared to take corrective action at all times," D.Ct.Dkt.542-10.at.P-53-0083, -0087, -0088, and warned him more than a dozen times that failure to abide by those instructions could result in "serious injury or death," *e.g.*, D.Ct.Dkt.542-10.at.P-53-0066, -0083, -0092, -0103. Each time McGee turned on

his driver-assistance system, his car warned him to keep his hands on the steering wheel, pay attention to the road, and stay in control. D.Ct.Dkt.584.at.120. During the 49 seconds leading up to the collision, McGee's car warned him that "Cruise will not brake. The accelerator pedal is being pressed." D.Ct.Dkt.584.at.118-19. Those "accurate, clear, and unambiguous" warnings more than sufficed under Florida law. *Grieco*, 344 So.3d at 21; *see Banner*, 411 So.3d at 5 (recognizing that Tesla "repeatedly warned against misuse of the [Autopilot] features" and its warnings accorded with "industry practice").

Plaintiffs complain that McGee's owner's manual did not specifically state that his vehicle's AEB and FCW systems would identify only "in-lane, in-path" obstacles, or that "automatic braking has difficulty operating at night." Pltfs.Br.29. But Tesla had already warned McGee that he needed to remain in control of his vehicle at all times—day or night—and could not rely on Autopilot to prevent collisions. *See* D.Ct.Dkt.542-10.at.P-53-0083, -0087, -0088, -0103, -0104. Tesla had no duty to specifically reiterate those warnings as to out-of-lane obstacles at night. When a company warns of a risk, it need not specify every possible scenario in which the risk might materialize. *See* Restatement (Third) of Torts: Products Liability §2 cmt.i (2026).

Plaintiffs contend that Tesla's "in-car warnings related to driver attention were inadequate," faulting Tesla for not including "additional alerts to the driver to keep

their hands on the steering wheel" and "an audio alert after it detects driver inattention." Pltfs.Br.30. But again, Tesla's clear and copious warnings—including the detailed warnings in McGee's owner's manual, the additional warnings that McGee's vehicle displayed each time McGee turned on his driver-assistance system, and the repeated warnings that the vehicle gave McGee before the crash occurred—were more than enough to ensure any ordinary consumer would understand the risks involved in McGee's remarkably reckless driving, particularly given the obviousness of those risks. *See* Tesla.Br.34-35. That is why Plaintiffs cannot point to any other car that provided the warnings Plaintiffs deem necessary.

Finally, Plaintiffs cannot show any purported shortcomings in Tesla's warnings proximately caused the collision. Indeed, McGee proved himself utterly impervious to warnings. He was given numerous warnings in his owner's manual and in real time, and understood it was "[a]bsolutely" his responsibility to control his vehicle and pay attention to the road even while using his driver-assistance system, D.Ct.Dkt.579.at.59; he chose to ignore all those warnings and drive with extreme recklessness anyway, pressing the accelerator while taking his eyes off the road. No amount of additional warnings would have altered that choice.

That is especially obvious with respect to the warnings in McGee's owner's manual, because McGee admitted he never read his manual. D.Ct.Dkt.579.at.52. Plaintiffs blame Tesla for that failure, claiming the manual was hard to find.

Pltfs.Br.30-31. But accessing the manual just required pressing a book-shaped icon labeled "Manual" on the vehicle's touchscreen. D.Ct.Dkt.587.at.107-08. McGee simply chose not to read it—just as he chose not to read the hard-copy owner's manuals for his other vehicles. D.Ct.Dkt.579.at.52-53. All this underscores that McGee was bent on recklessness and impervious to warnings, so the failure to provide additional warnings "cannot be the proximate cause of [Plaintiffs'] injuries" as a matter of law. *Lopez v. S. Coatings, Inc.*, 580 So.2d 864, 865 (Fla. Dist. Ct. App. 1991) (per curiam); *see* Tesla.Br.36.[2]

II. The District Court's Prejudicial Evidentiary Errors Independently Require A New Trial.

Even if Plaintiffs' claims could survive as a matter of law, the district court's highly prejudicial evidentiary errors still warrant a new trial.

A. The Data-Handling Evidence Was Irrelevant and Highly Prejudicial.

The district court allowed Plaintiffs to spend hours at trial examining a parade of witnesses about Tesla's supposed data-mishandling, punctuated with incendiary accusations that Tesla deliberately deleted evidence to avoid liability. *See*

[2] Plaintiffs assert a factual dispute over whether McGee received an additional warning 1.5 seconds before impact, *see* Pltfs.Br.20 n.3, and speculate that one last audible warning might have finally caught McGee's attention and prevented the crash, Pltfs.Br.30. But it is undisputed that McGee's vehicle had already been giving him warnings for nearly a minute before the crash, making it impossible to credit Plaintiffs' speculation that one last warning might have saved the day. *See* D.Ct.Dkt.584.at.116-19.

D.Ct.Dkt.587.at.50-52. Plaintiffs' efforts to defend that prejudicial error are unavailing.

Plaintiffs begin by defending the admission of the crash data, *see* Pltfs.Br.32-34, but that misses the point. The district court's error was not that it admitted the data, but that it allowed Plaintiffs to saturate the trial with their assertion that Tesla mishandled the data. Tesla.Br.37-40.

To justify *that* sideshow, Plaintiffs claim for the first time on appeal that the data-handling evidence provided "critical context" for the parties' expert evidence. Pltfs.Br.34-36. But Plaintiffs told the district court they were introducing that evidence to prove Tesla's supposed misconduct and argue they were "entitle[d] to punitive damages," D.Ct.Dkt.469.at.1-2, which is why Plaintiffs conceded at the charge conference that it was "not relevant to any of the liability claims in this case." D.Ct.Dkt.586.at.254. Plaintiffs' assertion that their counsel simply "misspoke" in making that explicit concession—which reflected Plaintiffs' position throughout the trial—strains credulity. *Contra* Pltfs.Br.36 n.5.

Plaintiffs next contend that the data-handling evidence showed Tesla's purported "consciousness that its products were defective." Pltfs.Br.37. But product-defect claims have no *mens rea* element, making evidence of Tesla's mental state irrelevant to liability. Tesla.Br.39. Tellingly, the sole case Plaintiffs cite for their contrary rule is a 40-year-old out-of-circuit decision involving a plaintiff who

suborned perjury in a case unrelated to products liability. *See* Pltfs.Br.37 (citing *McQueeney v. Wilmington Trust Co.*, 779 F.2d 916 (3d Cir. 1985)). That decision is irrelevant here, particularly given the district court's finding that Tesla never "willfully withheld information or deliberately attempted to destroy evidence," D.Ct.Dkt.405.at.12.[3]

Plaintiffs eventually retreat to their original argument that the data-handling evidence was relevant to punitive damages. *See*, *e.g.*, D.Ct.Dkt.586.at.254. But the district court correctly rejected that argument, because there was no "causal relationship" between any purported data-handling issues and Plaintiffs' injuries. D.Ct.Dkt.586.at.270. Moreover, given that any mishandling of the relevant data was inadvertent and not willful or deliberate, evidence of that purported mishandling still could not justify imposing punitive damages. D.Ct.Dkt.405.at.12; *see* Tesla.Br.45. *Contra* Pltfs.Br.37-38. And once the court ruled the data-handling evidence

[3] Plaintiffs insist the district court's finding did not "control the jury's factual findings," Pltfs.Br.37 n.6 (brackets omitted). But given the court's finding, the relevance of the data-handling evidence was minimal at best, and massively outweighed by its prejudicial effect. Fed. R. Evid. 403; *see* Tesla.Br.39-40. Plaintiffs additionally claim that Tesla never raised a Rule 403 objection at trial and opened the door to "some of the testimony" (without saying which testimony). Pltfs.Br.36. But Tesla asserted a Rule 403 objection before trial, *see* D.Ct.Dkt.444.at.4-5, and as the court recognized, it never remotely opened the door to Plaintiffs' extensive presentation on the alleged data-mishandling, *see, e.g.*, D.Ct.Dkt.577.at.118-19 (finding Tesla opened the door solely on the fact of delay in producing the data, not any evidence of mishandling).

irrelevant to punitive damages, a mistrial was required because the evidence had overwhelmingly been used for that improper purpose. *See* Tesla.Br.38-39.

Plaintiffs' cursory harmlessness argument is cursory for a reason. Plaintiffs emphasized the data-handling evidence "throughout the trial," including "[m]ost notably, during closing argument," *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275, 1288 (11th Cir. 2001), and repeatedly relied on that evidence to portray Tesla as "willful and malicious," *Peat, Inc. v. Vanguard Rsch., Inc.*, 378 F.3d 1154, 1162-63 (11th Cir. 2004). That evidence "was highly prejudicial, no correcting instructions were given, and the inadmissible evidence was not only intentionally elicited but also emphasized in closing argument." *Ad-Vantage Tel. Directory Consultants, Inc. v. GTE Directories Corp.*, 37 F.3d 1460, 1465 (11th Cir. 1994). On that record, there can be no "fair assurance" that "the verdict was not substantially swayed" by the error. *Id.* at 1465.

B. The District Court Erred in Admitting Evidence of Dissimilar Accidents Under the Wrong Legal Standard.

The district court's error in admitting prejudicial evidence of a host of unrelated accidents—after initially excluding that evidence, *see* D.Ct.Dkt.486.at.12—also warrants a new trial.

As to eight prior accidents identified in Tesla's response to Plaintiffs' requests for admission, the district court explicitly recognized that Plaintiffs had "failed to satisfy their burden of establishing substantial similarity." D.Ct.Dkt.486.at.13. It

nevertheless admitted that evidence, relying solely on Tesla's admission that those accidents had occurred. Pltfs.Br.40; *see* D.Ct.Dkt.486.at.13. But whether those accidents *occurred* says nothing about whether they are relevant, which is what the substantial-similarity test exists to address. *See Henderson v. Ford Motor Co.*, 72 F.4th 1237, 1242-43 (11th Cir. 2023); Tesla.Br.40-41. Plaintiffs never confront that basic point.

As to the many accidents in the NHTSA report, Plaintiffs do not deny that the district court explicitly applied a "relaxed" substantial-similarity test. D.Ct.Dkt.486.at.13-14. They emphasize that the substantial-similarity test "allows for some play in the joints depending on the scenario presented and the desired use of the evidence." *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1287 (11th Cir. 2015). But "play in the joints" does not mean allowing in prior accidents just because the plaintiff claims to be introducing them "for the limited purpose of notice," *contra* D.Ct.Dkt.486.at.13-14, or just because the prior accidents involved "a collision … resulting from driver inattention while using [A]utopilot," *contra* D.Ct.Dkt.486.at.14-15; Pltfs.Br.39, especially when none of those accidents is known to have involved a driver who was pressing the accelerator to exceed the speed limit while running a stop sign.

Plaintiffs fall back to arguing harmlessness, noting that the jury heard evidence of three prior collisions (including the Banner collision, where the Florida

appellate court found Tesla's technology was "'state-of-the-art' and complied with all industry and regulatory standards," 411 So.3d at 4-5). *See* Pltfs.Br.40. But there is a dramatic difference between evidence of three prior accidents and evidence that the government investigated many more—which is why Plaintiffs fought so hard below to ensure those additional (dissimilar) accidents came in after the district court initially excluded them. *See* D.Ct.Dkt.486.at.12-16. Once again, the record cannot support a "fair assurance" that "the verdict was not substantially swayed" by inadmissible evidence. *Ad-Vantage*, 37 F.3d at 1465.

C. Musk's Statements Were Irrelevant and Highly Prejudicial.

The district court further erred by admitting numerous irrelevant and prejudicial statements by Elon Musk about the potential capabilities of *future* self-driving cars. D.Ct.Dkt.320.at.13-14; *see* D.Ct.Dkt.579.at.88-91; Tesla.Br.42-44.

Plaintiffs do not dispute that Musk's forward-looking statements about future Tesla vehicles are irrelevant (and highly prejudicial); instead, they claim the statements "plainly were not aspirational." Pltfs.Br.41. But the statements they cite disprove their point. One explicitly describes the future (calling Tesla vehicles "less than two years away from complete autonomy," D.Ct.Dkt.576.at.146-47), while the other explains that Tesla hardware (but not software) is "capable of Level 5 autonomy" and predicts that the software "will continue to improve," D.Ct.Dkt.585.at.125-26. And Plaintiffs ignore numerous other plainly forward-

looking statements the court admitted. *See, e.g.*, D.Ct.Dkt.585.at.129-30 ("[T]he system's improving so much, so fast, that this is going to be a moot point very soon."). Musk's (accurate) predictions about future technology could not have persuaded an ordinary consumer—least of all McGee himself, who never even heard them—that the future was now, let alone that McGee's car would override his commands or was safe to drive without watching the road. *Contra* Pltfs.Br.41-42.

Nor was the error harmless. *Contra* Pltfs.Br.42. Plaintiffs relied on Musk's statements in their opening, in examining their design expert, in cross-examining Tesla's corporate representative, and in their closing, claiming those statements showed a "consistent and intentional pattern of using words to play fast and loose with important facts and information" and "an intentional effort to create confusion and false expectations." D.Ct.Dkt.587.at.37-38. By confusing and misleading the jury on the critical issue of what an ordinary consumer would have expected, the improper admission of those statements "substantially swayed" the verdict, requiring a new trial. *Ad-Vantage*, 37 F.3d at 1465.

III. The Unlawful and Excessive Punitive-Damages Award Cannot Stand.

At a minimum, the unlawful and grossly excessive punitive-damages award must be vacated. This is the rare diversity case with controlling, on-point state appellate precedent. *Banner* rejected an effort to recover punitive damages for the same alleged defects in the same features from the same manufacturer. And for good

reason, as the claimed defects come nowhere near showing the extreme recklessness rising to the level of criminal manslaughter that Florida law requires. That forecloses any punitive damages here, let alone a massive $200 million award, which independently violates federal due process and Florida's statutory cap.

A. Florida Law Prohibits Any Punitive Damages Here.

Florida law permits punitive damages only where a plaintiff proves by "clear and convincing evidence" that the defendant "was personally guilty of intentional misconduct or gross negligence." Fla. Stat. §768.72(2). That rigorous standard requires "a reckless disregard for human life equivalent to manslaughter," *Chrysler Corp. v. Wolmer*, 499 So.2d 823, 825 (Fla. 1986); *see* States.Br.9-16. Applying that demanding standard in a case "essentially indistinguishable from the facts at hand," *State Farm Mut. Auto Ins. Co. v. Duckworth*, 648 F.3d 1216, 1224 (11th Cir. 2011), the Florida District Court of Appeal in *Banner* rejected punitive damages for Tesla's driver-assistance system, which the court recognized was "'state-of-the-art' and complied with all industry and regulatory standards," 411 So.3d at 4-5. Critically, the State of Florida reads Florida law the same way. States.Br.15-16. It is simply not possible to equate making an industry-standard product with manslaughter.

Plaintiffs' efforts to distinguish *Banner* uniformly fail. First, *Banner*'s "different posture" is a distinction without a difference. *Contra* Pltfs.Br.47. *Banner* involved a motion to amend the complaint to add a punitive-damages claim, meaning

the court was required to "consider the record evidence and the proffered evidence in the light most favorable to the plaintiff." *Hosp. Specialists, P.A. v. Deen*, 373 So.3d 1283, 1287 (Fla. Dist. Ct. App. 2023). The same standard applies here. *See, e.g.*, *EEOC v. W&O, Inc.*, 213 F.3d 600, 610 (11th Cir. 2000).

Second, the relevant record was materially indistinguishable as well. The *Banner* plaintiff challenged the same features for the same reasons, and even relied on the same liability expert for punitive damages. *Banner*, 411 So.3d at 2-5; *see* Tesla.Br.10-11, 45-46. Plaintiffs' purported factual distinctions are either wrong or red herrings. For example, Plaintiffs claim *Banner* involved "no testimony from plaintiffs' accident reconstructionist expert," Plfts.Br.48, when in fact the *Banner* plaintiff proffered "an expert in the area of accident reconstruction," Order at 9, *Banner v. Firstfleet Inc. of Tenn.*, No. 50-2019-CA-009962-XXXX-MB (Fla. Cir. Ct. Nov. 17, 2023), *available at* https://perma.cc/8MAR-VR9L ("*Banner* Order"). Plaintiffs claim *Banner* lacked evidence of "safety improvements [Tesla] declined to make" and "inculpatory" testimony from Tesla's witnesses, Pltfs.Br.48, ignoring that *Banner* also had testimony from a Tesla engineer about other "technically possible" safety measures. *Banner* Order at 5-7. And while Plaintiffs try to distinguish *Banner* based on the years-later NHTSA report and Tesla's purported "admissions that its technology was defective," Pltfs.Br.48, that reliance is misplaced for the reasons already explained, *see* Tesla.Br.26; *supra* pp.5-6. None of Plaintiffs' purported

distinctions justifies ignoring an on-point Florida appellate decision applying Florida law to a virtually identical record.

Even less plausibly, Plaintiffs claim the Florida Supreme Court "expressly rejected the punitive-damages approach taken in *Banner*" in *Perlmutter v. Federal Insurance Co.*, 434 So.3d 681 (Fla. 2026). Pltfs.Br.48-49. Not so. *Perlmutter* clarified a procedural point: in deciding whether to grant a motion to amend to add a punitive-damages claim, the court "should consider only the evidence identified or proffered by the claimant." *Perlmutter*, 434 So.3d at 688. That procedural holding does not alter the substantive standard for punitive damages under Florida law, and does not undermine *Banner*'s substantive holding on a materially indistinguishable record that punitive damages are unavailable. 411 So.3d at 4-5.

Even absent *Banner*, the same result follows from first principles of Florida law. *Accord* States.Br.9-16. Plaintiffs claim Florida courts "routinely" award punitive damages in product-liability cases where the defendant "had knowledge of a defective or dangerous condition and chose not to remedy" it. Pltfs.Br.43-44. In reality, Florida "has all but eliminated punitive damage awards in products liability cases," *Jeep Corp. v. Walker*, 528 So.2d 1203, 1205 (Fla. Dist. Ct. App. 1988). And Plaintiffs identify no cases—*none*—where a defendant who complied with all applicable regulatory standards and industry practice was nevertheless deemed grossly negligent and held liable for punitive damages. *See Wolmer*, 499 So.2d at

826-27 (quashing punitive-damages award where defendant complied with federal safety standards); *Drabik v. Stanley-Bostitch, Inc.*, 997 F.2d 496, 510 (8th Cir. 1993) (recognizing that "[c]ompliance with industry standard and custom serves to negate conscious disregard and to show that the defendant acted with a nonculpable state of mind"); Tesla.Br.47-48. Finally, even assuming Plaintiffs could prove a defect here, they never proved that Tesla knew of any such defect or deliberately chose not to remedy it. *See* Tesla.Br.20-37. *Contra* Pltfs.Br.44-47.

Plaintiffs misleadingly suggest that *American Cyanamid Co. v. Roy*, 498 So.2d 859 (Fla. 1986), holds "'compliance with industry guidelines should not be taken as conclusive evidence' for purposes of punitive damages." Pltfs.Br.47 (quoting *Am. Cyanamid*, 498 So.2d at 862-63). But that case simply said compliance with industry guidelines is not dispositive as to "negligence"—and *held*, consistent with other Florida precedent, that such compliance *negated* "a finding of willful and wanton disregard for the safety of persons" for punitive-damages purposes. *Am. Cyanamid*, 498 So.2d at 863.

Plaintiffs next insist that Tesla's product-development process was inadequate, that Tesla knew some drivers were inattentive and misused their driver-assistance systems, and that Tesla continued to sell vehicles with driver-assistance systems even after a few reckless drivers caused accidents by misusing those systems. Pltfs.Br.44-46. But Florida law has long recognized that "virtually any

product can be misused," and "[p]roducts liability does not make the manufacturer an insurer of all foreseeable accidents which involve its product"—let alone impose *punitive damages* on a manufacturer for continuing to sell a product even though a small minority of consumers may recklessly (or even intentionally) misuse that product. *Grieco*, 344 So.3d at 18. None of the evidence Plaintiffs cite shows anything like the kind of "flagrant misconduct" and "willful and wanton disregard for the safety of persons" required for punitive damages under Florida law. *Am. Cyanamid*, 498 So.2d at 863; *see* Tesla.Br.48-49; States.Br.9-16; WLF.Br.4-14.

B. Federal Due Process Limits Any Punitive Damages Here to No More Than the Compensatory Damages Awarded Against Tesla.

Even if (contrary to fact and law) Florida law allowed any award of punitive damages here, the massive $200 million award violates due process. On this record, the highest award that could conceivably comport with due process would be "only equal to [the substantial] compensatory damages" against Tesla, i.e., $42,570,000. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Because none of the relevant guideposts supports a higher award, Tesla lacked "fair notice" of the "magnitude of the sanction" imposed here. *BMW of N. Am. v. Gore*, 517 U.S. 559, 574 (1996). Tesla.Br.49-54; *see State Farm*, 538 U.S. at 418. Plaintiffs fail to identify a single federal case upholding anything close to a 5:1 ratio when compensatory damages already amounted to tens of millions of dollars. This Court should not be the first.

1. Tesla's conduct was not reprehensible.

The "degree of reprehensibility of the defendant's conduct" is the "most important" guidepost, and Tesla's conduct here was not at all reprehensible as judged by the five factors identified in *State Farm*. *See* 538 U.S. at 419. First, as the verdict recognized, the "physical harm" that Plaintiffs experienced was caused primarily by McGee's reckless driving, not by Tesla. *Contra* Pltfs.Br.50. Second, the record shows nothing like "reckless disregard" for the safety of others. *Contra* Pltfs.Br.50. In fact, Tesla developed its driver-assistance system to *improve* safety. *See* Tesla.Br.4-7. Third, as Plaintiffs tacitly concede, no "financially vulnerable" victims were involved. *See* Pltfs.Br.50. Fourth, a small handful of dissimilar prior accidents does not remotely establish an "ongoing pattern of harmful conduct," *contra* Pltfs.Br.50, particularly when Tesla manufactured hundreds of thousands of vehicles in 2019, *see* Tesla, Inc., *Tesla Q4 2019 Vehicle Production & Deliveries* (Jan. 3, 2020), https://tinyurl.com/5y493kzj (reporting "approximately 367,500 vehicles" delivered in 2019). Fifth, the record shows no "intentional malice, trickery, or deceit." *Contra* Pltfs.Br.50. Far from "declin[ing] to improve its technology" and "misle[ading] drivers," Pltfs.Br.50, Tesla adopted "state-of-the-art" technology and "repeatedly warned against misuse of the features," consistent with "industry practice." *Banner*, 411 So.3d at 4-5; *see* Tesla.Br.20-37. The reprehensibility factors

thus weigh against *any* punitive-damages award, and cannot be reconciled with a record-setting ratio.

2. There is a substantial disparity between the punitive-damages and compensatory-damages awards.

The nearly 5:1 ratio between the $200 million punitive-damages award and the $42.57 million compensatory-damages award further underscores the excessiveness of the punitive-damages award. Where, as here, "compensatory damages are substantial," then punitive damages "equal to compensatory damages" (i.e., a 1:1 ratio) will typically "reach the outermost limit of the due process guarantee." *State Farm*, 538 U.S. at 425.

Plaintiffs assert that this Court has "never held a single-digit ratio unconstitutionally excessive when a defendant's conduct involved a high degree of reprehensibility." Pltfs.Br.51 (quoting *Faulk v. Dimerco Express USA Corp.*, 172 F.4th 844, 862-63 (11th Cir. 2026)). But Tesla's conduct was *not at all* reprehensible, let alone "exceedingly reprehensible"; and regardless, the $3 million punitive-damages award in *Faulk* (for knowingly discriminatory conduct, on $390,000 in compensatory damages) pales in comparison to the *$200 million* punitive-damages award here. 172 F.4th at 854, 863-64. While Plaintiffs identify a single outlier decision from a Missouri intermediate appellate court approving a large punitive-damages award in a case involving "significant reprehensibility," *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 721-22 (Mo. Ct. App. 2020); *see* Pltfs.Br.52 n.8, federal

courts indisputably do not permit ratios far higher than 1:1 when compensatory damages are significant, *see Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1143-45 (7th Cir. 2020).

3. The civil penalty for comparable conduct underscores the excessiveness of the punitive-damages award.

The $200 million punitive-damages award here is likewise wildly out of step with the civil penalty for comparable conduct, at nearly *ten thousand times* the maximum $21,000 civil penalty for violations of federal motor-vehicle safety standards. *See* 49 U.S.C. §30165(a). Plaintiffs note that the maximum penalty for a "related series of violations" of the Federal Motor Vehicle Safety Standards is $105 million, but even that is barely half of the punitive-damages award here. More to the point, Plaintiffs never proved any "series of violations," *contra* Pltfs.Br.53—which is hardly surprising, given that the Model S complied with all the relevant federal standards—and a "series of violations" penalty could not be comparable anyway, because punitive damages may not be based on violations experienced by "strangers to the litigation," *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007). The extreme disparity between the $200 million punitive-damages award and the comparable civil penalties thus confirms that the punitive-damages award cannot stand.

C. Florida's Statutory Cap Limits Any Punitive Damages Here to Three Times the Compensatory Damages Awarded Against Tesla.

The punitive-damages award also exceeds Florida's statutory cap, which limits punitive damages to "[t]hree times the amount of compensatory damages *awarded* to each claimant *entitled* thereto." Fla. Stat. §768.73(1)(a) (emphasis added). Plaintiffs do not dispute that the $200 million punitive-damages award is more than three times the $42.57 million in compensatory damages the jury "awarded" Plaintiffs—and "entitled" them to claim—from Tesla. *Id.* Instead, Plaintiffs ask this Court to compare the punitive-damages award to the *total* injury the jury found—including over $85 million in harm that the jury attributed to *McGee*. *See* Pltfs.Br.53-56. As the State of Florida explains in its amicus brief, Plaintiffs' reading of Florida law fails at every turn. States.Br.17-19; *see* FJRI.Br.4-14; Tesla.Br.55-56.

Plaintiffs posit that the jury "awarded" $129 million in compensatory damages (against both McGee and Tesla) and "entitled" Plaintiffs to that amount. Pltfs.Br.54. But the only defendant in this case was Tesla, and the jury could not (and did not) "award[]" Plaintiffs compensatory damages beyond the $42.57 million it awarded against Tesla. Tesla.Br.55-56. That is also the most Plaintiffs are "entitled" to—i.e., that they have a "legal right to" collect. Entitle, *Black's Law Dictionary* (12th ed. 2024). The judgment, not the verdict form, is what awards damages by judicial decree. *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012). No judgment

here awards Plaintiffs $129 million in compensatory damages or entitles Plaintiffs to recover that amount.

Plaintiffs note the district court made "an appropriate reduction in the damages awarded," but that simply confirms that the amount of compensatory damages ultimately "awarded" was the post-reduction amount. Dkt.588.at.14; *see also Smith v. R.J. Reynolds Tobacco Co.*, 880 F.3d 1272, 1275 (11th Cir. 2018) (recognizing that reduction would "result[] in a compensatory damages award" of a lower amount).

Plaintiffs point to a nearby provision under which contributory fault "diminishes proportionately the amount awarded." Fla. Stat. §768.81(2); *see* Pltfs.Br.54-55. That proves Tesla's point. The amount ultimately "awarded" is what the plaintiff is entitled to claim *after* the fault reduction—not the unreduced total. Fla. Stat. §768.81(2). And §768.73(1)(a) confirms the point by using the word "entitled," as Plaintiffs plainly are not "entitled" to the unreduced figure. Fla. Stat. §768.73(1)(a).

Florida precedent cuts the same way. The only relevant Florida Supreme Court decision explicitly considered whether the punitive-damages award bore "a reasonable relation to the … *net compensatory damages award*," not the plaintiff's total (unreduced) injury. *Coates v. R.J. Reynolds Tobacco Co.*, 375 So.3d 168, 176 (Fla. 2023). That choice of benchmark "provides guidance" that this Court must

follow in applying Florida law. *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 827 F.3d 1016, 1020 (11th Cir. 2016). And it supersedes the pre-*Coates* intermediate-appellate-court decisions in *Townsend*, which never addressed §768.73(1)(a), and which used the unreduced total harm only because the defendant "did not challenge this benchmark." *R.J. Reynolds Tobacco Co. v. Townsend*, 118 So.3d 844, 847 (Fla. Dist. Ct. App. 2013).

Finally, Plaintiffs offer no practical defense of their counterintuitive approach. The entire purpose of Florida's statutory cap is to protect defendants against excessive punitive damages. Comparing the punitive-damages award to the total harm to the plaintiff, regardless of who caused that harm, would perversely punish defendants who are less at fault with higher punitive-damages ratios. *See* FJRI.Br.4-11. Plaintiffs make no attempt to defend that untenable approach in the federal due-process context, *see* Pltfs.Br.51-52, and it likewise makes no sense as a construction of Florida's statutory cap.

CONCLUSION

This Court should reverse with instructions to enter judgment for Tesla. Alternatively, the Court should vacate and remand for a new trial. At a minimum, the Court should eliminate or substantially reduce the punitive-damages award.

Respectfully submitted,

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November 6, 2026

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii) because it contains 6,496 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 32-4.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type.

November 6, 2026

s/Paul D. Clement
Paul D. Clement

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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