No. 22-13412-B

In the United States Court of Appeals for the Eleventh Circuit

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ELEANOR FISHER AND TAMMY FU, IN THEIR CAPACITY AS FOREIGN REPRESENTATIVES OF RELIEF DEFENDANT, TCA GLOBAL CREDIT FUND, LTD.

Petitioners/Appellants

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Appellee

On Appeal from the United States District Court
for the Southern District of Florida

APPELLANTS, ELEANOR FISHER AND TAMMY FU, IN THEIR CAPACITY AS FOREIGN REPRESENTATIVES OF RELIEF DEFENDANT, TCA GLOBAL CREDIT FUND, LTD.'S RESPONSE TO JURISDICTIONAL QUESTION

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1, the following is a list of all persons and entities known to Appellants, Eleanor Fisher and Tammy Fu, in their capacity as Foreign Representatives of Relief Defendant, TCA Global Credit Fund, Ltd., to have an interest in the outcome of this appeal:

Altonaga, Cecilia M., United States District Judge

Avila, Rodriguez, Hernandez, Mena & Ferri, Attorneys for Respondent, Ocean Bank AW Exports Pty Ltd, Claimant

Baker & McKenzie LLP, Attorneys for Appellant

Banque Pictet & CIE S.A., Petitioner in Cayman Islands Liquidation Proceeding

Bast Amron LLP, Attorneys for Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth

Bast, Jeffrey P., Attorney for Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth

Batista, Paul J., Attorney for Jonathan E. Perlman, Receiver

Benjamin, Todd, Claimant

Bloom, Mark D., Attorney for Appellants

Broxom, Warwick, Claimant

Cahill Gordon & Reindel LLP, Attorneys for Credit Suisse

Claritas, LLC, Cayman Islands Counsel for Appellants

Clearstream Banking S.A., Limited Objector

Credit Suisse, Limited Objector

Cuccia II, Richard A., Attorney for Paycation Travel, Inc., Xstream Travel, Inc. and David Manning

Cuccia Wilson, PLLC, Attorneys for Paycation Travel, Inc., Xstream Travel, Inc. and David Manning

Dodd, John R., Attorney for Appellant

Dorchak, Joshua, Attorney for Clearstream Banking S.A.

EY Cayman Ltd.

Fide Funds Growth

Fisher, Eleanor, Foreign Representative of Relief Defendant TCA Global Credit Fund, Ltd.

Fu, Tammy, Foreign Representative of Relief Defendant TCA Global Credit Fund, Ltd.

Fulton, Andrew, IV, Attorney for Lease Corporation of America

Garno, Gregory M., Attorney for Jonathan E. Perlman, Receiver

Genovese, Joblove & Battista, P.A. Attorneys for Jonathan E. Perlman, Receiver

Genovese, John H., Attorney for Jonathan E. Perlman, Receiver

Hall, Jason, Attorney for Credit Suisse

Kaplan Saunders Valente & Beninati, LLP, Attorneys for AW Exports Pty Ltd,

Warwick Broxom, and Jonathan James Kaufman

Kaufman, Jonathan James, Claimant

Kellogg, Jason Kenneth, Attorney for Todd Benjamin International, Ltd. and Todd Benjamin

Kelley & Fulton, P.A., Attorneys for Claimant, Lease Corporation of America

Lease Corporation of America, Claimant

Leggett, Jaime B., Attorney for Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth

Levine Kellogg Lehman Schneider & Grossman, Counsel for Todd Benjamin International, Ltd. and Todd Benjamin

McIntosh, Elizabeth G., Attorney for Jonathan E. Perlman, Receiver

Moot, Stephanie N., Attorney for Securities and Exchange Commission

Mora, Martha Rose, Attorney for Respondent, Ocean Bank

Morgan, Lewis & Bockius LLP, Attorneys for Clearstream Banking S.A.

Ocean Bank, Non-Party Respondent

Paycation Travel, Inc., Claimant

Pearson, Katharine Lucy Bladen, Cayman Island Attorney for Appellants

Perlman, Jonathan, E., Receiver

Roldan Cora, Javier A., Attorney for Clearstream Banking S.A.

Sadovic, Irina R., Attorney for Jonathan E. Perlman, Receiver

TCA Fund Management Group Corp., Defendant, Receivership Entity

TCA Global Credit Fund GP, Ltd., Defendant, Receivership Entity

TCA Global Credit Fund, L.P., Defendant, Receivership Entity

TCA Global Credit Fund, Ltd., Defendant

TCA Global Credit Master Fund, L.P., Defendant

TCA Global Lending Corp.

Tritium Fund, Claimant

Tseng, Hsueh-Feng, Claimant

Todd Benjamin International, Ltd., Claimant

U.S. Securities and Exchange Commission, Plaintiff

Valente, Charles A., Attorney for AW Exports Pty Ltd, Warwick Broxom, and Jonathan James Kaufman

van de Linde, Peter, Claimant

Xstream Travel, Inc., Claimant

Zohari, Armand, Claimant

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Appellants, Eleanor Fisher and Tammy Fu, in their capacity as Foreign Representatives of Relief Defendant, TCA Global Credit Fund, Ltd., state that there is no parent corporation or any publicly held corporation that owns 10% or more of its stock.

STATEMENT OF THE FACTS AND CASE[1]

The underlying litigation arises out of an investigation by the Securities and Exchange Commission ("SEC") into the revenue recognition operation of TCA Fund Management Group Corp. and TCA Global Credit Fund GP. That operation employed a master-feeder investment scheme involving TCA Global Credit Master Fund, LP (the "Master Fund"), TCA Global Credit Fund, LP, and TCA Global Credit Fund, Ltd. (collectively, the "Feeder Funds"), and TCA Global Lending Corp.

On May 11, 2020, the SEC filed a Complaint against the foregoing TCA entities, alleging that certain of the Defendants were knowingly causing the Cayman Islands Master Fund to report inflated revenue numbers to investors, and adding the Cayman Islands Feeder Funds as Relief Defendants. D.E. 1 at ¶¶ 2–3. That same day, the Court appointed the Receiver, Jonathan E. Perlman, to marshal and preserve receivership property. D.E. 5.

On February 28, 2022, the Receiver filed a Motion for Approval of Distribution Plan and First Interim Distribution (the "Motion"), proposing a distribution plan that prioritizes distributions to 872 of the 920 pooled net loser investors and subordinates the other 48 (the "Distribution Plan"). *See* D.E. 208 at 26–27, 30–31. The Distribution Plan also proposed an initial distribution of

[1] This Statement of the Facts and Case includes only the information necessary for this Court to consider and rule on the pending jurisdictional question.

$55,452,651 on a "rising tide" basis to the 764 pooled net losers whose losses exceeded 76.95% of their investments. *See id.* at 27.

Over the course of the months that followed, several individuals and entities filed objections to the Receiver's Distribution Plan. In their capacity as Joint Official Liquidators appointed by the Grand Court of the Cayman Islands, and recognized by the District Court as Foreign Representatives of TCA Global Credit Fund Ltd., a feeder fund organized and regulated under the laws of the Cayman Islands ("Feeder Fund Ltd."), Appellants objected to the Distribution Plan, contending that the "rising tide" methodology proposed by the Receiver conflicts with the statutory requirements of Cayman Islands law that govern the liquidation of the Feeder Fund Ltd. D.E. 240.

Separately, another group of objectors, comprised of Paycation Travel, Inc., Xstream Travel, Inc., and David Manning, objected on the basis that the proposed initial distribution would deplete over 80% of the receivership assets and that money should be set aside for their claims against the Master Fund, which were being litigated in Texas state court (the "Manning Objection"). D.E. 237. The Manning objectors were not investors in the Feeder Funds. Rather, in their pending lawsuit, they contend that the Master Fund illegally tried to seize their business and is liable for more than $10 million. As such, they asked the District Court to deny the Receiver's Motion because it failed to "reserve sufficient cash available for

distributions in the future." *Id.* at ¶ 13. The Receiver disagreed with the Manning objectors, estimating that claims against the Receivership Estate would not exceed $3 million and, thus, proposed a set-aside in line with that amount. *See* D.E. 208 at 35; D.E. 263 at 15.

On August 4, 2022, the United States District Court for the Southern District of Florida entered an order partially granting the Receiver's Motion for Approval of Distribution Plan and First Interim Distribution (the "Distribution Order"). In so doing, the District Court overruled the objections of the Foreign Representatives and approved the Receiver's proposed "rising tide" Distribution Plan.

The District Court declined to rule on the Manning Objection because the Court (correctly) anticipated that the Distribution Plan adopted in its Distribution Order would be subject to appeal. Because the amount a receiver must set aside is "fact dependent and may be subject to modification in the face of changing circumstances," the District Court opted not to rule on the Manning Objection. D.E. 284 at 44 (citing *Rsrv. Funds Secs. & Derivative Litig. v. Rsrv. Mgmt. Co.*, 673 F. Supp. 2d 182, 206 (S.D.N.Y. 2009)). The Court stated that it would be "a fool's errand" to "[s]peculat[e]" on a suitable set-aside in light of the fact that the receivership assets "will continue to grow and shrink as the Receiver litigates an appeal, identifies more investors, sells off assets, prosecutes claims against debtors, and settles claims against the Receivership Estates." *Id.*

The Distribution Order concluded by stating that it was stayed until September 6, 2022, "to allow the filing of an interlocutory appeal." D.E. 284 at 34. On September 1, 2022, the Foreign Representatives filed a motion to alter or amend the Distribution Order pursuant to Federal Rule of Civil Procedure 59(e) (the "Rule 59(e) Motion") requesting that the stay be extended through October 13, 2022, given that Federal Rule of Appellate Procedure 4 provides 60 days within which to file an appeal where one of the parties involved is a United States agency. D.E. 298 (citing Fed. R. App. P. 4(a)(1)(B)(ii)). On September 2, 2022, the District Court entered an order granting the Rule 59(e) Motion and extending the stay through October 13, 2022. D.E. 299 at 1.

On October 12, 2022, the Foreign Representatives filed a Notice of Appeal, appealing the District Court's August 4, 2022 Order granting in part the Receiver's Motion for Approval of Distribution Plan and First Interim Distribution, as amended by the September 2, 2022 Order.

On November 16, 2022, this Court issued a jurisdictional question asking the parties to address whether the District Court's "(1) August 4, 2022 order partially granting the receiver's 'Motion for Approval of Distribution Plan and First Interim Distribution' and deferring judgment on the 'Manning Objection' and (2) September 2, 2022 order granting the motion to alter or amend are immediately appealable."

This jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

As made clear by this Court's own precedent, the Distribution Order is appealable under the collateral order doctrine as set forth in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949). In *SEC v. Torchia*, 922 F.3d 1307 (11th Cir. 2019), this Court unequivocally held that "[a] district court's order approving [a] receiver's distribution plan is appealable as a collateral order." *Id.* at 1315. And appealability under § 1291 and, therefore, the collateral order doctrine "is to be determined for the entire category to which a claim belongs." *Acheron Cap., Ltd. v. Mukamal*, 22 F.4th 979, 989 (11th Cir. 2022). Thus, under *Torchia*, the class of orders approving of a receiver's distribution plan—like the Distribution Order in this case—is appealable under the collateral order doctrine.

The Foreign Representatives' Rule 59(e) Motion was a proper and timely motion that tolled the applicable time to file the instant appeal. The District Court clearly intended for the Distribution Order to be stayed during the time period in which an interlocutory appeal could be filed. Erroneously, however, the Distribution Order stated that it would be stayed for a period of approximately 30 days, through September 6, 2022.

The Foreign Representatives then filed their Rule 59(e) Motion to correct the time period during which the order would be stayed to reflect the fact that in this case the parties have 60 days to take an appeal. On September 2, 2022, the Court

granted that Motion and extended the stay through October 13, 2022, resetting the 60-day time period to file a Notice of Appeal. Thus, the Notice of Appeal in this case was timely filed.

ARGUMENT

I. THE DISTRIBUTION ORDER IS IMMEDIATELY APPEALABLE UNDER THE COLLATERAL ORDER DOCTRINE.

The collateral order doctrine is a "practical construction of [28 U.S.C.] § 1291's final decision rule that accommodates a small class of rulings, not concluding the litigation, but conclusively resolving claims of right separable from, and collateral to, rights asserted in the action." *Plaintiff A v. Schair*, 744 F.3d 1247, 1252 (11th Cir. 2014) (quoting *Will v. Hallock*, 546 U.S. 345, 349 (2006)). The doctrine applies where the issues raised in the appeal are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.* at 1253 (quoting *Cohen*, 337 U.S. at 546).

The United States Supreme Court has distilled the *Cohen* requirements for a collateral order appeal into a three-part test. *See Will*, 546 U.S. at 349–50. The order must: "[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." *Id.* (internal quotation marks omitted). The Distribution Order satisfies all three prongs of that test—it conclusively determines the distribution plan or scheme to be used by the Receiver by approving the "rising tide" methodology; it resolves this issue, which is

completely separate from the merits of the case; and it will be effectively unreviewable on appeal from a final judgment in the underlying case.

The Distribution Order falls squarely within the confines of the collateral order doctrine as laid out by this Court in *Torchia*. In *Torchia*, this Court held that "the district court's order approving the receiver's distribution plan is appealable as a collateral order."[2] 922 F.3d at 1315. Adopting the Fifth Circuit's reasoning from *SEC v. Forex Asset Management, LLC*, 242 F.3d 325, 330 (5th Cir. 2001), the Court stated that an order adopting a receivership plan falls within the collateral order doctrine because:

> First, it conclusively determines the manner in which the receivership assets should be distributed. Second, it resolves an important issue regarding distribution of the assets, which is separate from the merits of the SEC's complaint against [the defendant]. Third, it is effectively unreviewable on appeal because the assets from the receivership will be distributed, and likely unrecoverable, long before the action brought by the SEC is subject to appellate review.

[2] *Torchia* remains good law, and nothing in this Court's more recent jurisprudence modifies its holding. In *Acheron Capital*, 22 F.4th 979, for example, the Court was analyzing its jurisdiction over a post-judgment order involving a receivership and trust—a completely different class of orders from that at issue in this case. The Court's rationale regarding the inapplicability of the collateral order doctrine to that class of orders would have no bearing on the applicability of the doctrine to orders granting a receiver's distribution plans in SEC actions.

Torchia, 922 F.3d at 1316. The Sixth and Seventh Circuits also have held that orders approving receivership distribution plans are appealable under the collateral order doctrine. *See, e.g.*, *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 330–31 (7th Cir. 2010) (noting that "interlocutory review makes sense out of fairness to the investors and as a matter of judicial economy"); *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 666–67 (6th Cir. 2001) (holding that the court had jurisdiction over the appeal of the order granting the receiver's distribution plan under the collateral order doctrine).

The Distribution Order in this case is appealable as a collateral order for the reasons enunciated by the Fifth Circuit in *Forex* and relied upon by this Court in *Torchia*. As to the first prong of the test, the Distribution Order was conclusive in its determination of the distribution scheme or plan by which the Receiver should distribute the assets. The Distribution Order determined the manner and order in which the Receiver would distribute the assets to investors. There is nothing further for the District Court to do with respect to choosing a distribution plan—the disputed question. It has chosen a plan and explained the reasons why it believes that plan to be the proper course of action.

The fact that the District Court deferred ruling on the Manning Objection does nothing to change this analysis because the ruling on that Objection will not alter its decision regarding the Distribution Plan in any way. It would merely affect the

amount of money the Receiver would be required to set aside for the Manning objectors, not the order in which the Manning objectors would receive those funds or the order in which anyone else is entitled to receive funds.

Torchia is instructive on this point. In that case, like this one, the district court declined to rule on an objection to the receiver's distribution plan prior to this Court's consideration on appeal of the order adopting that plan. Specifically, the district court there deferred ruling on an objection by a former employee of the receivership who claimed he was owed commissions for his work. The district court concluded that it did not need to consider the objection until after the conclusion of parallel litigation against other receivership employees. *See SEC v. Torchia*, No. 1:15-cv-03904-ELR-CCB, D.E. 501, at 40–42 (N.D. Ga. Aug. 7, 2017) (distribution order). The objection remained unresolved at the time various investors filed the notice of appeal.

On appeal, this Court issued a jurisdictional question—much like the question posed in this case—asking the parties to explain the theory under which the distribution order was immediately appealable given the deferred objection. *See SEC v. Torchia*, No. 17-13651 (11th Cir. Sep. 1, 2017) (jurisdictional question). Nevertheless, this Court ultimately determined it had jurisdiction over the distribution order and reached the merits of all issues on appeal, notwithstanding the existence of the pending objection. In fact, the Court did not even address the

outstanding objection as part of its analysis, and unequivocally held that the distribution order was a collateral order over which it had jurisdiction. *Torchia*, 922 F.3d at 1315.

The Court in *Torchia* implicitly concluded, as it should in this case, that a deferred objection does not strip the Court of otherwise proper jurisdiction under the collateral order doctrine. The pending objection in *Torchia* is analogous to the Manning Objection in the instant case. In both cases the objections were separate from the district court's decision to adopt a given distribution plan; a ruling on the objection would not change the chosen distribution plan in any way.

As such, the Manning Objection in this case does not prevent this Court from exercising jurisdiction over the appeal under the collateral order doctrine. This is especially true given that the Distribution Plan does not impair the rights of the Manning objectors. *See SEC v. Michael Kenwood Cap. Mgmt.*, 630 F. App'x 89, 91 (2d Cir. 2015) (affirming a district court's approval of a distribution plan and initial distribution where sufficient funds were set aside to satisfy what the receiver concluded was the "maximum possible value" of the claims against the receivership entities). Regardless of the proper set-aside amount—be it $10 million as the Manning objectors argue or $3 million as the Receiver posits—their claims will be covered by the remaining receivership assets following the initial distribution. That distribution of $55,452,651 represents approximately 80% of the cash in the

receivership estates. *See* D.E. 284 at 32. The remaining funds, along with the amounts set aside by the Receiver, are sufficient to make a ratable distribution to the Manning objectors once the amount of their claims is fully liquidated and determined.

As to the second prong of the collateral order doctrine, the distribution of the receivership assets is an incredibly important issue, which is completely separate from the merits of the SEC's claims against the TCA Defendants. In this case, the question of the applicable distribution scheme or plan is one that involves Cayman Islands law, issues of choice of law and international comity, and the applicability of federal common law as a rule of decision in a case of this type. These are very significant issues that should be clearly decided prior to the distribution of assets and certainly prior to the conclusion of the SEC lawsuit. *See Torchia*, 922 F.3d at 1316; *cf. Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020) ("[O]nly limited areas exist in which federal judges may appropriately craft the rule of decision."); *In re Vitro SAB De CV*, 701 F.3d 1031, 1043–44 (5th Cir. 2012) (stating that comity is "a principal objective" in Chapter 15 cross-border cases).

Finally, as to the third prong of the collateral order doctrine, the Distribution Plan will be unreviewable on appeal from the final judgment in the SEC action. Similar to *Torchia* and the cases from other circuits, if the Receiver is permitted to distribute the assets, they will be long-gone and unrecoverable well before the

issuance of a final judgment. Once the distribution scheme has been implemented and funds are disbursed, an appeal would be virtually meaningless.

Given the foregoing circumstances and existing law within this Circuit, "the [D]istrict [C]ourt's order approving the [R]eceiver's [D]istribution [P]lan is appealable as a collateral order." *Torchia*, 922 F.3d at 1315.

II. THE SEPTEMBER 2ND ORDER GRANTING THE RULE 59(e) MOTION RESET THE 60-DAY APPEAL PERIOD, SO THE NOTICE OF APPEAL WAS TIMELY FILED.

The District Court's September 2nd order is relevant only to the extent that it modified the Distribution Order and reset the time period to file the Notice of Appeal. The Foreign Representatives do not specifically seek review of that order; indeed, they were not aggrieved by that order and, as such, take no issue with the substance of the District Court's ruling.

A timely and properly filed Rule 59(e) motion suspends the finality of the order at issue and tolls the time for taking an appeal. Fed. R. App. P. 4(a)(4); *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020); *Wooden v. Bd. of Regents*, 247 F.3d 1262, 1272 (11th Cir. 2001). Under Rule 59(e), a party may properly move for relief within 28 days of the entry of the judgment or order "where the judgment [or interlocutory order] was based upon manifest errors of law or fact." *White v. State Farm Fire & Cas. Co.*, No. 1:09-CV-1852-0DE, 2020 U.S. Dist. LEXIS 150222, at *5 (N.D. Ga. Aug. 16, 2010) (quoting *Prevatte v. French*, 499 F. Supp. 2d 1324,

1327 (N.D. Ga. 2007)); *see also Rudd v. Branch Banking & Tr. Co.*, No. 2:13-cv-02016-SGC, 2020 U.S. Dist. LEXIS 263684, at *13 (N.D. Ala. Dec. 2, 2020) (citations and internal quotation marks omitted) (stating that courts may apply the Rule 59(e) standard to motions for reconsideration of an interlocutory order).

"If a party files a motion under Rule 59(e) . . . within 28 days of a[n] . . . order, the . . . period for appealing the . . . order resets and runs only from 'entry of the order disposing of the last such remaining motion.'" *Valentine v. BAC Home Loans Servicing, L.P.*, 635 F. App'x 753, 755 (11th Cir. 2015). Upon the court's disposition of the Rule 59(e) motion, finality of the order is restored and the appellate clock starts again. *Banister*, 140 S. Ct. at 1703.

In this case, the Foreign Representatives filed their Rule 59(e) Motion on September 1, 2022—28 days from the entry of the Distribution Order. The Rule 59(e) Motion sought to correct an error in the length of time of the stay imposed in the Distribution Order. The District Court originally stayed the Distribution Order for approximately 30 days for the express purpose of "allow[ing] the filing of an interlocutory appeal." D.E. 284 at 34. That time period, however, was erroneous because the parties in this case had 60 days during which to appeal the Distribution Order, not 30. *See* Fed. R. App. P. 4(a)(1)(B). The Rule 59(e) Motion properly requested that the District Court amend the Distribution Order to reflect the correct 60-day period.

On September 2, 2022, the District Court granted the Rule 59(e) Motion and amended the Distribution Order, extending the stay through October 13, 2022, and resetting the 60-day clock for filing an appeal. *See Banister*, 140 S. Ct. at 1703; *Valentine*, 635 F. App'x at 755. As a result, the Foreign Representatives' Notice of Appeal, filed on October 12, 2022, was timely.

CONCLUSION

The Distribution Order is immediately appealable under the collateral order doctrine and as set forth by this Court in *SEC v. Torchia*, 922 F.3d 1307 (11th Cir. 2019). This Court has jurisdiction over the appeal filed by the Foreign Representatives and should consider the case on the merits.

Further, the Foreign Representatives' filing of the Rule 59(e) Motion to amend the Distribution Order to reflect the correct the length of the stay tolled the time period for the filing of the instant appeal. The District Court's ensuing September 2, 2022 order granting the Rule 59(e) Motion reset the 60-day period for filing the Notice of Appeal. Thus, the notice of appeal in this case was timely filed and the Court has jurisdiction over that order as well.

Respectfully submitted this 30th day of November, 2022.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND TYPE-STYLE REQUIREMENTS

I certify that this document 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).

/s/ Mark D. Bloom
Mark D. Bloom

CERTIFICATE OF SERVICE

I certify that on November 30, 2022, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, and entered the required information on the web-based CIP system on the Court's website. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Mark D. Bloom
Mark D. Bloom