

No. 23-20035

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JENNIFER HARRIS,

Plaintiff-Appellee,

v.

FEDEX CORPORATE SERVICES, INC.,

Defendant-Appellant.

From the United States District Court for the Southern District of Texas,
Hon. Kenneth M. Hoyt, District Judge (Case No. 4:21-cv-1651)

**MOTION OF INTERNATIONAL ASSOCIATION OF DEFENSE
COUNSEL TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF
DEFENDANT-APPELLANT**

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Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, the International Association of Defense Counsel (“IADC”) requests permission to file the accompanying *amicus curiae* brief in support of the Defendant-Appellant.¹

IADC is an invitation-only, peer-reviewed membership organization of about 2,500 in-house and outside defense attorneys and insurance executives. IADC is dedicated to the just and efficient administration of civil justice and improvement of the civil justice system. IADC supports a justice system in which plaintiffs are fairly compensated for genuine injuries, responsible defendants are held liable for appropriate damages, and non-responsible defendants are exonerated without unreasonable cost.

IADC has a strong interest in this case; it implicates the circumstances in which punitive damages may be awarded and the extent to which a civil defendant may be punished in accordance with due process. IADC’s members often defends entities against improper awards of punitive damages, and the case at bar exemplifies fundamental concerns regarding the imposition of punitive damages.

The proposed *amicus* brief seeks to assist the Court by contextualizing this case within the dramatic, decades-long rise in the size and unpredictability of punitive damages that led the U.S. Supreme Court to set forth clear due process

¹ No counsel for a party authored this brief in whole or in part, and no such counsel nor any party here contributed money to fund the brief or its submission. No person, other than IADC, its members, or its counsel, contributed money to the preparation or submission of the brief.

limits that must be followed in this case. It discusses how the Court's jurisprudence evolved to establish increasingly strict constitutional limits that the District Court did not adhere to in allowing a \$365 million punitive damage award in a run-of-the-mill employment dispute, where the punitive damages award is more than *300 times* compensatory damages. The proposed brief further explains that punitive damage awards in a case of this nature cannot exceed a 1:1 ratio when compared to compensatory damages, as other courts following this guidance have found.

IADC sought consent of the parties to file this brief. Counsel for Defendants provided consent, but counsel for Plaintiffs did not.

CONCLUSION

For these reasons, *amicus* respectfully requests the Court grant leave to file the attached brief.

Respectfully submitted,

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Dated: May 3, 2023

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because it contains 371 words, excluding parts exempted by Fed. R. App. P. 32(f); and (2) 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 font for text and footnotes.

Dated: May 3, 2023

/s/ Philip S. Goldberg
Philip S. Goldberg

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2023, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, which will serve all counsel of record.

/s/ Philip S. Goldberg
Philip S. Goldberg

No. 23-20035

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***AMICUS CURIAE BRIEF OF THE
INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL***

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DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4), counsel for *amicus curiae*, the International Association of Defense Counsel, hereby state that *amicus* has no parent corporation and has issued no stock.

Pursuant to Fed. R. App. P. 29(a)(4)(E) and Circuit Rule 29.2, counsel for *amicus curiae* state that (1) no party's counsel authored the brief in whole or in part; (2) no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person – other than *amicus*, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief.

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record for *amicus curiae* certifies that, in addition to those already listed in the parties' briefs, the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amicus: The International Association of Defense Counsel ("IADC") is a non-profit, tax-exempt organization that maintains a registered office and a registered agent in Chicago, Illinois. The IADC has no parent company, and no publicly held company has 10% or greater ownership in the IADC.

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Date: May 3, 2023

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IDENTITY AND INTEREST OF AMICUS CURIAE
AND SOURCE OF AUTHORITY TO FILE

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IADC has a strong interest in this case, which implicates the appropriate circumstances in which a jury may award punitive damages and the extent to which a civil defendant may be punished in accordance with due process. IADC’s membership often defends entities against improper awards of punitive damages and the case at bar exemplifies fundamental concerns regarding the imposition of punitive damages.

STATEMENT OF THE CASE

Amicus adopts Defendant-Appellant’s Statement of the Case to the extent needed to make the arguments herein.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves a jury trial in a run-of-the-mill employment dispute gone awry, resulting in a \$365 million punitive damage award that is more than 300

times the jury's assessment of compensatory damages. The District Court's final judgment allowing this punitive damages award clearly disregards the U.S. Supreme Court's jurisprudence establishing due process limits on the imposition of punitive damages. This Court should take corrective action to ensure that this improper ruling is dealt with clearly and swiftly to ensure both justice here and that such deprivations of a defendants' constitutional rights do not proliferate.

In this case, Plaintiff was a FedEx worker who was terminated following unsatisfactory performance over a period of many months, during which she had been placed on performance improvement plans and participated in multiple performance reviews. More than a year after her termination, she pursued racial discrimination and employment retaliation claims. The jury found no racial discrimination, but determined there had been a retaliatory discharge. In our estimation, the record in this garden-variety case fails to establish the requisite clear and convincing evidence of actual malice or reckless indifference by FedEx to support *any* award of punitive damages, let alone an award of several hundred million dollars. Yet, the district court entered the award without a hearing or explanation. This case, therefore, provides a stark example of the need for trial and appellate courts to act as a check against unconstitutional punitive damage awards.

Over the past several decades, the U.S. Supreme Court has set forth due process and federal law limits on punitive damage awards specifically to eliminate

“unpredictable outlier cases that call the fairness of the system into question.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 513 (2009). In articulating the now-familiar ratio “guidepost” which compares the amount of punitive damages imposed to the compensatory damages awarded, the Court also tightened the constitutional limits from a suggested single-digit “relevant ratio.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 581 (1996). Further, when compensatory damages are substantial under the circumstances and the dispute arises out of a financial, not physical harm, then “a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003) (emphasis added).

Amici respectfully request that the Court overturn the ruling below and hold that punitive damages are not supported by the case record or, at the very least, reduce the punitive damage award to a constitutionally defensible ratio, namely 1:1, as other courts following the U.S. Supreme Court’s guidance have done.

ARGUMENT

I. THE COURT’S SCRUTINY IS NEEDED HERE TO CORRECT IRRATIONAL PUNITIVE DAMAGE AWARDS

A. This Case Is Indicative of a Dramatic, Decades-Long Rise in the Size and Unpredictability of Punitive Damages

For much of American jurisprudence, the availability of punitive damages “merited scant attention” because these awards “were rarely assessed and likely to

be small in amount.” Dorsey D. Ellis Jr., *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. Cal. L. Rev. 1, 2 (1982). This paradigm no longer exists. The availability and size of punitive awards have expanded dramatically over the past five decades. *See, e.g.*, Jonathan LaCour, ‘Nuclear Punitives’ Could Be the New Normal for Damages, Bloomberg Law, Jan. 31, 2022.¹

In the second half of the twentieth century, the scope of misconduct giving rise to punitive damages gradually broadened significantly. Punitive damage awards were soon no longer reserved for intentional, malicious, or willful misconduct. For example, in the late 1960s, courts began allowing punitive damages in unintentional tort cases. *See Toole v. Richardson Merrell, Inc.*, 251 Cal. App. 2d 689 (Cal. Ct. App. 1967) (holding for the first time that punitive damages were recoverable in products liability). The standards for awarding punitive damages changed so dramatically that they were “awarded in cases in which liability of any sort would have been almost out of the question” earlier. Gary T. Schwartz, *Deterrence and Punishment in the Common Law of Punitive Damages: A Comment*, 56 S. Cal. L. Rev. 133, 133 (1982).

Starting in the late 1970s, the size of punitive damages awards “increased dramatically,” as plaintiffs’ lawyers sought them regularly and became skilled at

¹ *See also Nuclear Verdicts: Trends, Causes, and Solutions*, U.S. Chamber Inst. for Legal Reform (Sept. 2022) (analyzing 1,376 verdicts of \$10 million or more in state and federal courts from 2010–2019 and finding that large verdicts grew significantly in frequency and amount).

inflaming juries against defendants. George L. Priest, *Punitive Damages and Enterprise Liability*, 56 S. Cal. L. Rev. 123, 123 (1982); John Calvin Jeffries, Jr., *A Comment on the Constitutionality of Punitive Damages*, 72 Va. L. Rev. 139, 142 (1986) (seeing “unprecedented numbers of punitive awards in product liability and other mass tort situations”). By the late 1980s, “hardly a month [went] by without a multi-million dollar punitive damage verdict.” Malcolm Wheeler, *A Proposal for Furthering Common Law Development of the Use of Punitive Damages in Modern Products Liability Litigation*, 40 Ala. L. Rev. 919, 919 (1989).

In 1991, the U.S. Supreme Court found punitive damages had “run wild.” *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1991). Justice O’Connor observed that “the frequency and size of such awards have been skyrocketing” and “it appears that the upward trajectory continues unabated.” *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 500 (1993) (O’Connor J., dissenting). The resulting excessive liability was interfering with the ability of federal and state courts to ensure that liability was within constitutionally appropriate bounds. Between 1996 and 2001, the annual number of punitive damages awards exceeding \$100 million doubled. See John Y. Gotanda, *Punitive Damages: A Comparative Analysis*, 42 Colum. J. Transnat’l L. 391, 392 (2004). As scholars observed, “high stakes and high variability of punitive damages are of substantial concern to companies, as punitive damages may pose a catastrophic threat of corporate

insolvency.” Kip Viscusi, *The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts*, 87 Geo. L.J. 285, 285 (1998).

In response to this trend, legislatures and courts have been placing commonsense limits on the availability and size of punitive damage awards. For instance, federal employment laws and Texas statutes restrict when punitive damages are available, such as by requiring clear and convincing evidence that the misconduct at issue was willfully malicious or indicative of reckless indifference to the consequences of their conduct, and how large the awards can be. *See* 42 U.S.C. § 1981a(b)(1), (3); Tex. Civ. Prac. & Rem. Code Ann. §§ 41.003, 41.008. These reforms work together to create a fairer, more predictable system for determining the scope and impact of these civil penalties.²

B. The U.S. Supreme Court Has Set Forth Clear Due Process Limits for the Imposition of Punitive Damages that Must be Adhered to in this Case

The continued growth in the size and frequency of punitive awards led the U.S. Supreme Court, in the 1990s and 2000s, to take up the issue of excessive punitive damages on multiple occasions and set forth increasingly strict constitutional limits on punitive damages. In *Haslip*, the Court for the first time acknowledged that excessive punitive damage awards could violate the Fourteenth

² *See also* Victor E. Schwartz & Christopher E. Appel, *Perspectives on the Future of Tort Damages: The Law Should Reflect Reality*, 74 S.C. L. Rev. 1, 45 (2022) (“The dramatic rise in frequency and amount of punitive damage awards has . . . led most states to limit punitive damages.”) (citing state laws).

Amendment. 499 U.S. at 18. Even at this early juncture, the Court stated that a 4:1 punitive damages ratio “may be close to the line” of “constitutional impropriety.” *Id.* at 23-24. In *TXO*, a plurality of the Court said “the Due Process Clause of the Fourteenth Amendment imposes substantive limits ‘beyond which penalties may not go.’” 509 U.S. at 454. In *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415 (1994), the Court departed from substantive due process questions, holding that states must allow for judicial review of the size of punitive damages awards.³ The Court, however, noted that “[p]unitive damages pose an acute danger of arbitrary deprivation of property,” and affirmed “that the Constitution imposes a substantive limit on the size of punitive damages awards.” *Id.* at 432, 420.

Then, in 1996, the Court in *Gore* struck down an excessive punitive damages award for the first time, finding that “elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.” 517 U.S. at 574. In doing so, the Court established the three now familiar “guideposts” for lower courts to follow in evaluating punitive damage awards: (1) the degree of reprehensibility of the defendant’s conduct, (2) the ratio of punitive damages to the harm inflicted on the

³ See also *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424 (2002) (holding that appellate courts reviewing punitive damages for excessiveness must apply a *de novo* standard of review).

plaintiff, and (3) the civil or criminal penalties that could be imposed for comparable misconduct. *See id.* at 575. The Court also indicated that the “most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff.” *Id.* at 581.

In *Campbell*, the Court again reversed a large punitive damages award. With respect to the ratio guidepost, the Court recognized that, “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process,” and also referred to “a long legislative history . . . providing for sanctions” in the low single-digits. 538 U.S. at 425. The Court reiterated that a larger ratio might be permissible where extremely egregious behavior resulted in a small compensatory award. *See id.* But, “[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *Id.* at 425-26.⁴ This principle is especially applicable where “the harm arose from a transaction in the economic realm, not from some physical assault or trauma.” *Id.*

In *Phillip Morris USA v. Williams*, 549 U.S. 346, 351 (2007), the Court issued another decision that resonates with the \$365 million punitive damages verdict in the instant case by rejecting a \$79.5 million punitive award that was

⁴ *See also Bains LLC v. ARCO Prods. Co.*, 405 F.3d 764, 776 (9th Cir. 2005) (finding *Campbell* “emphasizes and supplements” the limitation that a 1:1 ratio may be the outermost limit when substantial compensatory damages are awarded).

roughly 100 times the jury’s compensatory damages award. The Court reiterated that “it is constitutionally important for a court to provide assurance that the jury will ask the right question, not the wrong one” to avoid unfairness concerns that enable an arbitrary punitive award. *Id.* at 355.

Most recently, in *Baker*, the Court, discussed the need to ensure that punitive damages are fair and predictable in federal cases. The Court recognized that “punitive damages overall are higher and more frequent in the United States than they are anywhere else” and that data over the past several decades “suggest that in many instances a high ratio of punitive to compensatory damages is *substantially greater than necessary* to punish or deter.” 554 U.S. at 496, 499 (emphasis added). The Court stated the “real problem” with punitive damage awards is their unpredictability: “the spread is great, and the outlier cases subject defendants to punitive damages that dwarf the corresponding compensatories.” *Id.* 499, 500. It found that for federal law cases, the “median ratio for the entire gamut of circumstances at less than 1:1” such that in “a well-functioning system, we would expect that awards at the median or lower would roughly express jurors’ sense of reasonable penalties in cases with no earmarks of exceptional blameworthiness within the punishable spectrum.” *Id.* at 512-13.

After reiterating its instruction in *Campbell* that a “lesser ratio, perhaps only equal to compensatory damages” may represent the constitutional limit where

“substantial” compensatory damages are awarded, 554 U.S. at 501 (internal quotation marks omitted), the Court settled on a 1:1 ratio of punitive to compensatory damages as a “fair upper limit” in federal maritime cases. *Id.* at 502. The “penalty scheme [Defendants] face,” the Court found, “ought to threaten them with a fair probability of suffering in like degree when they wreak like damage.” *Id.* at 502. In reaching this conclusion, the Court emphasized that “a penalty should be reasonably predictable in its severity.” *Id.* These public policy rationales echo the Supreme Court’s due process jurisprudence and counsel a 1:1 maximum punitive damages ratio in this case.⁵

II. UNDER PRECEDENT FROM THE SUPREME COURT AND FEDERAL CIRCUITS, PUNITIVE DAMAGES EXCEEDING A 1:1 RATIO IN THIS TYPE OF CASE ARE UNCONSTITUTIONAL

The gradual refinement of due process limitations in the Supreme Court’s punitive damages jurisprudence, culminating in express statements regarding a 1:1 punitive damages ratio in *Campbell* and in the holding of *Baker*, is instructive here. Federal Circuits have generally applied this ratio when assessing the outer bound of a punitive damages award.

For example, the Ninth Circuit in *Dawe v. Corrections USA*, 506 Fed. App’x 657, 660 (9th Cir. 2013), highlighted the statement in *Campbell* regarding

⁵ See Victor E. Schwartz et al., *The Supreme Court’s Common Law Approach to Excessive Punitive Damage Awards: A Guide for the Development of State Law*, 60 S.C. L. Rev. 881, 897-901 (2009) (discussing the 1:1 punitive damages ratio).

“substantial” compensatory damages in affirming the reduction of a \$10 million punitive damages award to reflect a 1:1 ratio with the jury’s award of approximately \$2.6 million in compensatory damages. In reaching this conclusion, the Court expressly recognized that “Plaintiffs did not suffer physical harm” with respect to their contract and tort claims and that a defendant’s conduct “did not evince a reckless disregard of bodily health” such that the “overall degree of reprehensibility suggests that, under the circumstances, a 1:1 ratio was proper.” *Id.*⁶

The Tenth Circuit reached a similar result in *Jones v. United Parcel Serv., Inc.*, 674 F.3d 1187, 1206-08 (10th Cir. 2012), reducing a \$2 million punitive award to an amount equal to the \$630,307 compensatory award in a retaliatory discharge action. There, the court indicated that the compensatory award was indeed “substantial” for the purpose of applying *Campbell*’s 1:1 ratio guideline. *Id.* at 1208. In evaluating the degree of reprehensibility of a defendant’s conduct, the Tenth Circuit found that “courts are to consider . . . whether the harm caused was physical as opposed to economic,” and that the primary reason for the decision to impose a 1:1 punitive damages ratio was because the defendant’s conduct “resulted solely in economic injury.” *Id.* at 1207.

⁶ See also *Noyes v. Kelly Servs., Inc.*, 349 Fed. App’x 185, 187 (9th Cir. 2009) (affirming reduction of \$5.9 million punitive damages award in religious discrimination suit to roughly \$650,000 to reflect a 1:1 ratio of punitive to compensatory damages).

The Sixth Circuit in *Bach v. First Union Nat'l Bank*, 486 F.3d 150, 156 (6th Cir. 2007), found that a \$400,000 compensatory award was “substantial” for the purpose of applying *Campbell*’s 1:1 ratio guideline. That case involved a bank’s breach of the Fair Credit Reporting Act resulting in economic harm, but led to a punitive damage award exceeding \$2.6 million. *See id.* at 152. In reducing the punitive award to \$400,000, the court reasoned the case “simply [did] not justify a departure from the general principle that a plaintiff who receives a considerable compensatory damages award ought not also receive a sizeable punitive damages award absent *special circumstances.*” *Id.* at 156 (emphasis added).⁷

Other federal appellate courts have similarly applied a 1:1 ratio to comport with due process where a lower court awarded “substantial” compensatory damages arising from non-physical harm.⁸ Notably, courts have also applied a 1:1

⁷ *See also Morgan v. New York Life Ins. Co.*, 559 F.3d 425, 443 (6th Cir. 2009) (vacating \$10 million punitive award that was 1.67 times the compensatory award and ordering remittitur “in an amount . . . compatible with due process, not to exceed the amount of compensatory damages”); *Bridgeport Music, Inc. v. Justin Combs Publ’g*, 507 F.3d 470, 487 (6th Cir. 2007) (finding a \$366,939 compensatory award for economic harm in a copyright action to be “substantial” and reversing a \$3.5 million punitive award because “a ratio in the range of 1:1 to 2:1 is all that due process will allow”).

⁸ *See, e.g., Jurinko v. Medical Protective Co.*, 305 Fed. App’x 13, 27-32 (3d Cir. 2008) (reducing 3.13:1 ratio to 1:1 where compensatory damages and attorneys’ fees totaled approximately \$2 million “[i]n light of the substantial compensatory award and the harm being exclusively economic”); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 798-99 (8th Cir. 2004) (reducing punitive

ratio where substantial compensatory damages are awarded for harm that includes physical injury, which may suggest a greater degree of reprehensible conduct than solely economic harm or emotional distress. *See, e.g., Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1069, 1073-75 (10th Cir. 2016) (reducing award of punitive damages in personal injury action involving carbon monoxide exposure from malfunctioning furnace from \$22.5 million to approximately \$2 million, reflecting a reduction from a ratio of 11.5:1 to a 1:1 ratio of punitive damages); *Mendez-Matos v. Municipality of Guaynabo*, 557 F.3d 36, 53, 56 (1st Cir. 2009) (reducing \$350,000 punitive award to \$35,000, equaling compensatory damages, in action involving unlawful arrest and “a real and serious threat of violence”).⁹

This Court has approved punitive damage awards below a 1:1 ratio where a jury awarded substantial compensatory damages. *See Rain Bird Corp. v. National Pump Co. LLC*, 144 Fed. Appx. 373, 376 (5th Cir. 2005) (finding \$500,000 punitive damages award appropriate in non-physical injury case in which jury assessed more than \$2.8 million in actual damages, resulting in punitive damages

damage award of more than \$6 million on workplace harassment claim to \$600,000, an amount equal to the compensatory damages).

⁹ *See also Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 603 (8th Cir. 2005) (reducing ratio from 3.7:1 to 1.2:1 where compensatory damages were about \$4 million in product design defect case); *DiSorbo v. Hoy*, 343 F.3d 172, 176-77, 189 (2d Cir. 2003) (ordering remittitur of compensatory award in action involving police brutality to \$250,000 and remittitur of punitive damages from \$1,275,000 to \$75,000).

ratio of 0.17). The Court has also rejected large punitive damage ratios for modest compensatory damage awards. *See Rubinstein v. Administrators of Tulane Educ. Fund*, 218 F.3d 392, 408 (5th Cir. 2000) (rejecting 30:1 ratio of punitive to compensatory damages in employment discrimination case where jury awarded \$2,500 in compensatory damages and \$75,000 in punitive damages).

Moreover, this is an employment discrimination dispute arising from an economic loss and involving no physical injury. Due process cannot support a \$365 million punitive damages award that is more than 300 times the compensatory damage award. Rather, if any punitive award may be supported in these circumstances, which is unlikely, 1:1 is the constitutionally permissible ratio.

CONCLUSION

For these reasons, the Court should reverse the District Court's judgment awarding punitive damages or, alternatively, hold that punitive damages may not exceed a 1:1 ratio.

Respectfully submitted,

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Dated: May 3, 2023

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1. 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 the brief has been prepared in proportionally-spaced typeface using Microsoft Word 2016 in Times New Roman, 14 point.

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/s/ Philip S. Goldberg
Philip S. Goldberg

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Dated: May 3, 2023

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I hereby certify that on May 3, 2023, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, which will serve all counsel of record. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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