No. 22-1444

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LOUIS A. RUPP, II, individually and in capacity as trustee for the Louis A. Rupp II Revocable Trust; PAULINE RUPP, in their capacity as trustees for the Louis A. Rupp II Revocable Trust,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AS APPELLEE

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SUMMARY AND STATEMENT REGARDING ORAL ARGUMENT

Defendant-appellant Louis Rupp, a landlord in St. Louis, Missouri, evicted a financially vulnerable family from their apartment because the mother gave birth to a second child. He evicted the family—which included another young child—while the mother was still recovering from an emergency Caesarean section, and he refused to give the family time to find another place to live.

The district court concluded that Mr. Rupp's actions violated the Fair Housing Act (FHA) and granted summary judgment to the United States. After a trial on damages, a jury awarded the family $14,400 in compensatory damages and $60,000 in punitive damages. On appeal, Mr. Rupp challenges the punitive-damages award on two grounds. First, he argues that he cannot be liable for punitive damages because he testified that he did not know the FHA prohibited familial-status discrimination. Second, he argues that the amount of punitive damages awarded—which was approximately four times the compensatory damages awarded—was unconstitutionally excessive.

Mr. Rupp's arguments do not withstand scrutiny. His first challenge rests entirely on the mistaken assertion that the jury was required to believe his self-serving testimony. His second distorts the evidence and governing case law. Both should be rejected.

Oral argument is unnecessary as the issues in this appeal are straightforward.

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STATEMENT OF JURISDICTION

The United States brought this civil action against defendant-appellant Louis Rupp and his wife Pauline Rupp under the Fair Housing Act, 42 U.S.C. 3604.[1] The district court had jurisdiction under 18 U.S.C. 3231 and 28 U.S.C. 1331, 1345. The district court entered judgment on August 23, 2021 and denied Mr. Rupp's

[1] Pauline Rupp, who is now deceased, was found liable for violating the FHA, but was not found liable for punitive damages. As this appeal concerns only the punitive-damages award, this brief focuses on Mr. Rupp's actions.

post-trial motion on January 31, 2022. App. 14-25; R. Doc. 125 (Mem. and Order); App. 137; R. Doc. 104 (J.).[2] Mr. Rupp filed a timely notice of appeal on March 1, 2022. App. 138-139; R. Doc. 126; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUES AND APPOSITE CASES

After the district court concluded that Mr. Rupp violated a family's rights under the Fair Housing Act, a jury awarded the family $14,400 in compensatory damages and $60,000 in punitive damages. The questions presented are:

1. Whether a reasonable jury could conclude based upon the evidence presented that Mr. Rupp recklessly disregarded the family's rights, and is therefore liable for punitive damages.

Kolstad v. *American Dental Ass'n*, 527 U.S. 526 (1999)

Letterman v. *Does*, 859 F.3d 1120 (8th Cir. 2017)

Badami v. *Flood*, 214 F.3d 994 (8th Cir. 2000)

[2] "App. __" refers to the Joint Appendix, filed concurrently with defendant-appellant's opening brief. "Supp. App. __" refers to the Supplemental Appendix, filed concurrently with this brief, and includes select government exhibits ("GX") that were admitted during trial and were filed in this Court on May 11, 2022. "R. Doc. __, at __" refers to documents, by number, on the district court docket sheet and page number. "Br. __" refers to page numbers in defendant-appellant's opening brief. "Tr., Vol. __, __" refers to the trial transcript by volume and page number.

2. Whether the $60,000 punitive-damages award is unconstitutionally excessive.

U.S. Const. Amend. V

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

Bryant v. *Jeffrey Sand Co.*, 919 F.3d 520 (8th Cir. 2019)

May v. *Nationstar Mortg., LLC*, 852 F.3d 806 (8th Cir. 2017)

United States v. *Big D Enters., Inc.*, 184 F.3d 924 (8th Cir. 1999), cert. denied, 529 U.S. 1018 (2000)

STATEMENT OF THE CASE

The United States brought this action under the Fair Housing Act (FHA) on behalf of a young family who had rented an apartment from Louis Rupp. In 2017, Mr. Rupp evicted the family because he learned that the mother had recently given birth to a second child. The district court held that the Mr. Rupp's actions violated the FHA's prohibition against discrimination based on familial status. After a three-day trial on damages, a jury awarded the family $14,400 in compensatory damages and $60,000 in punitive damages.

1. Statutory Background

The FHA prohibits familial-status discrimination, that is discrimination done because a tenant has a child or children. 42 U.S.C. 3602(k), 3604(a)-(c). Landlords may not "refuse to sell or rent"—or evict tenants or terminate a lease—

because a family has children. 42 U.S.C. 3604(a); 24 C.F.R. 100.60(b)(2) and (5). Landlords also may not "offer different lease terms based on applicants' familial status," and may not use "an application and lease that express limitations or preferences for tenants based on their familial status." App. 98-99; R. Doc. 56, at 7-8 (Summ. J. Order) (citing 42 U.S.C. 3604(b)-(c)).

2. Factual Background

a. The Erwin-Teals' Rental Of Mr. Rupp's Apartment

In 2016, Laura Erwin and Martin "Mack" Teal applied to rent an apartment in St. Louis, Missouri, from Mr. Rupp—a landlord who operated eight multifamily apartment buildings. When they saw that the application form stated that "NO PETS OR CHILDREN ARE PERMITTED," they disclosed that they had a six-year-old son, B.T., who would live with them in the apartment. Tr., Vol. I, 153, 158-159, 162; Supp. App. 1; R. Doc. 98, at 1 (GX 1); Supp. App. 2; R. Doc. 98, at 1 (GX 2). Mr. Rupp agreed to let the Erwin-Teals rent the apartment with their son on a "trial basis." Tr., Vol. I, 153-154. He gave them a lease that contained an explicit "NO CHILDREN" provision, but also included a handwritten addendum stating: "This lease contract is being entered on a trial basis in consideration of the 'NO CHILDREN' clause in the contract and the building must be qui[et] at all times." Supp. App. 3, 5; R. Doc. 98, at 1 (GX 3).

The Erwin-Teals were "really excited" to move into the apartment. Tr., Vol. I, 161. They "fell in love" with the apartment and its "[b]eautiful street, nice houses, [and] very friendly, nice neighborhood [with a] location you couldn't beat." Tr., Vol. II, 48. The apartment was conveniently located near their son's school, a playground, various sports courts and fields, and a grocery store, and the neighborhood offered access to amenities such as an annual Candy Cane Lane. Tr., Vol. I, 161-164; Tr., Vol. II, 56-57. Laura felt safe in the neighborhood, even when she was walking alone with B.T. after dark. Tr., Vol. I, 165. The apartment itself was spacious and allowed each member of the family to have his or her own space, and to have comfortable common spaces where they could spend time together. Tr., Vol. I, 165-166.

In May 2017, Mr. Rupp sent the Erwin-Teals a letter stating that he had "high hopes" that they would renew their lease. Supp. App. 6; R. Doc. 98, at 1 (GX 6). The Erwin-Teals signed and returned the new lease two days later. Tr., Vol. II, 59-60; Supp. App. 8; R. Doc. 98, at 1 (GX 7). The lease stated that "[a]ll conditions and terms of the initial lease contract"—including the "NO CHILDREN" and "trial basis" provisions—remained in place. Supp. App. 3-5; R. Doc. 98, at 1 (GX 3); Supp. App. 8; R. Doc. 98, at 1 (GX 7).

b. The Birth Of The Erwin-Teals' Second Child And Resulting Eviction

Two weeks after the family renewed their lease, Laura gave birth to a baby girl, M.T. Tr., Vol. I, 175. M.T.'s delivery was difficult. Tr., Vol. I, 175-177. Because of complications with M.T.'s position in utero, doctors had to attempt to manually reposition M.T. by pushing on Laura's abdomen. Tr., Vol. I, 175; Tr., Vol. II, 61. When that did not work, the doctors had to perform an emergency Caesarean section (C-section). Tr., Vol. I, 175-176; Tr., Vol. II, 61-62. Additionally, M.T.'s umbilical cord was tangled around her neck, exacerbating an already-stressful delivery. Tr., Vol. I, 176-177. Ultimately, the doctors were able to remove the cord, and M.T. was born healthy. Tr., Vol. I, 177. The family returned to their apartment later that week. Tr., Vol. I, 177.

Laura's recovery from the emergency C-section, however, brought further challenges. Tr., Vol. I, 178-182. She was unable to sit up or get out of bed immediately following the surgery, and struggled to climb the stairs leading to her apartment. Tr., Vol. I, 178, 181-182. Because she was at risk of reopening her incision, she had to wear a binder to put pressure on her abdomen and protect the incision site. Tr., Vol. I, 178-179. She took opioids for pain management, but the pills caused nausea and vomiting that threatened to reopen the incision. Tr., Vol. I, 179. Eventually, her coughing did cause the incision to reopen, inducing even more pain. Tr., Vol. I, 178-179.

In June 2017—just two weeks after Laura returned from the hospital—the family found an eviction letter from Mr. Rupp taped to their front door. Tr., Vol. I, 186. The letter accused the Erwin-Teals of misrepresenting their living situation and stated that the family had violated the "NO CHILDREN" provision of their new lease, citing the fact that B.T. "ha[d] been living full time at the apartment during the past year." Supp. App. 9; R. Doc. 98, at 1 (GX 13). The letter also cited the fact that, "during the past two (2) week[s], Laura has given birth to a girl who is also now living at the apartment." Supp. App. 9; R. Doc. 98, at 1 (GX 13); see also Tr., Vol. II, 193 (recounting that Mr. Rupp expressed the sentiment that he evicted the family because Laura had "the nerve" to get pregnant).[3]

The Erwin-Teals tried repeatedly to dissuade Mr. Rupp from evicting them. Tr., Vol. I, 194, 196; Tr., Vol. II, 69-70. Laura called Mr. Rupp, but instead reached his wife, who claimed, falsely, that the Erwin-Teals did not have a lease agreement at all. Tr., Vol. I, 194-195. See also Tr., Vol. II, 59-60; Supp. App. 6-7; R. Doc. 98, at 1 (GX 6); Supp. App. 8; R. Doc. 98, at 1 (GX 7) (establishing that the Erwin-Teals and defendants had renewed the lease the previous month). After further unsuccessful attempts to reach Mr. Rupp by phone, Mack saw Mr. Rupp on

[3] The letter also informed the Erwin-Teals that they owed $15 in fees, but stated that the purported violation of the "NO CHILDREN" provision was the "[m]ore important[]" issue. Supp. App. 9; R. Doc. 98, at 1 (GX 13).

the property and tried to explain their situation, pleading with him not to evict the family and newborn baby, or to at least give them more time to find a new place to live. Tr., Vol. II, 69-70. Mr. Rupp responded, "[t]his conversation's not going to happen. You got to go." Tr., Vol. II, 70. The family was forced to vacate the apartment the following month. Tr., Vol. I, 199-200.

c. The Erwin-Teals' Life After Eviction

The Erwin-Teals were unable to find or afford a new apartment before they were forced to leave Mr. Rupp's building, and ultimately had to move in with Laura's father and step-mother. Tr., Vol. I, 195. There, Laura and Mack were not allowed to share a room, and B.T. was not able to have his own room. Tr., Vol. I, 200-201. Instead, Laura slept in one room with the newborn, and Mack slept in another room with B.T. Tr., Vol. I, 201. This left Laura alone to handle middle-of-the-night feedings and diaper changes while she was still recovering from her C-section. Tr., Vol. I, 201. Additionally, the neighborhood was not safe and had "a lot of break-ins." Tr., Vol. I, 204-205. The house itself was also "very cluttered" because Laura's father hoarded items; because of this, Laura was forced to keep baby M.T. confined to their bedroom. Tr., Vol. I, 201-202, 205-206; Tr., Vol. II, 76.

It took the Erwin-Teals about seven months to find a new apartment within their budget. Tr., Vol. I, 207.

3. Procedural Background

When the family received the eviction notice, Laura suspected that it "can't be legal" to evict someone simply for having a new baby. Tr., Vol. I, 208. A quick internet search on her phone confirmed her suspicion: evicting people based on their familial status was unlawful. Tr., Vol. I, 208-209. In August 2017, the Erwin-Teals filed a complaint alleging discrimination with the United States Department of Housing and Urban Development (HUD). App. 93; R. Doc. 56, at 2. HUD issued a charge of discrimination in July 2019, and Mr. Rupp elected to have the charges heard in federal court. App. 93; R. Doc. 56, at 2.

a. District Court Finds The Rupps Liable For Violating Fair Housing Act

The United States filed this suit on behalf of the Erwin-Teals in 2019. App. 42-55; R. Doc. 1 (Complaint). The complaint alleged that the Rupps had violated three provisions of the FHA by evicting the Erwin-Teals and using forms with the "NO CHILDREN" and "trial basis" provisions. App. 53; R. Doc. 1, at 12. Specifically, the government alleged that Mr. Rupp terminated the family's lease based on their familial status, in violation of 42 U.S.C. 3604(a); imposed different lease "terms" and "conditions" upon the family based on their familial status, in violation of 42 U.S.C. 3604(b); and used application and lease forms expressing a "preference" based on familial status, in violation of 42 U.S.C. 3604(c). The district court ultimately granted summary judgment to the United States under each

provision and ordered a trial on damages. App. 95-97; R. Doc. 56, at 4-6; R. Doc. 60.

b. Jury Trial On Damages

The district court held a three-day jury trial on the issue of damages in August 2021. App. 10; R. Docs. 92, 94-95. To support its claim for punitive damages, the government presented evidence to demonstrate the egregiousness of Mr. Rupp's actions, including how the eviction upended the Erwin-Teals' lives and left them both physically and financially vulnerable. See p. 8, *supra*. For example, the government highlighted how the eviction forced Laura to go back to work months before she had healed from her emergency C-section because the family needed the second income to qualify for and secure a new apartment. Tr., Vol. I, 182, 197-198. The government also presented evidence of the financial and emotional toll of being forced to search and apply for a new apartment on such a short timeline, while caring for a newborn and six-year-old child. Tr., Vol. I, 195-196.

Additionally, the government presented evidence of Mr. Rupp's experience and practices as a landlord to demonstrate his reckless disregard for the Erwin-Teals' rights. In particular, the government offered evidence that Mr. Rupp had been a landlord for nearly 50 years, and owned and managed all aspects of eight multi-family residential properties (through which he had rented to more than 100

tenants). Tr., Vol. II, 101-102, 113-120. Mr. Rupp testified that in the course of running his business, he had to become familiar with various legal rules governing landlords, including housing-code requirements, eviction procedures, and tenants'-rights protections under Missouri law. Tr., Vol. II, 111, 113-117, 121-122. He also testified that he was aware that state and federal law prohibited him from discriminating against his tenants on various grounds, including on the basis of a tenant's disability—a form of discrimination that was added to the FHA at the same time as the ban on familial-status discrimination. Tr., Vol. II, 122-123; see also Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (H.R. 1158). Despite this, Mr. Rupp admitted that he used the forms expressly prohibiting tenants with children throughout his nearly-50 years as a landlord. Tr., Vol. II, 103.

At the close of the United States' case, Mr. Rupp moved for judgment as a matter of law on the issue of punitive damages. Tr., Vol. II, 232. He argued that the government failed to present any evidence that he knew that federal law prohibited discrimination on the basis of familial status—a prerequisite for imposing punitive damages. Tr., Vol. II, 232-238. The district court denied his motion. Tr., Vol. II, 250. It reasoned that determining whether Mr. Rupp knew that federal law prohibited familial-status discrimination "depends almost entirely

on the jury's assessment of Mr. Rupp's own credibility." Tr., Vol. II, 249-250 (explaining that "credibility determinations are precisely what we have juries for").

As to Mr. Rupp's credibility, the government identified numerous inconsistencies in his testimony. For example, Mr. Rupp initially testified that "as soon as" he learned that his old lease was illegal, he replaced it with a new lease that did not forbid children from living in his buildings. Tr., Vol. II, 109; Tr., Vol. III, 89-90. But he later admitted that he in fact used and signed a lease in June 2018—nearly a year after he initially claimed to have learned that his original lease was unlawful—that still included the "NO CHILDREN" provision. Tr., Vol. III, 90-93. The government highlighted inconsistencies in his testimony on various other points, as well. Compare, *e.g.*, Tr., Vol. III, 9-10 (Mr. Rupp's testimony that the Erwin-Teals did not renew their lease), with Tr., Vol. III, 44 (Mr. Rupp's admission that the Erwin-Teals did renew their lease).

The government also elicited testimony from other witnesses that contradicted Mr. Rupp's assertions. For example, Mr. Rupp testified that the HUD investigator "came out of the blue at [him]" and did not allow him time to explain his side of the story. Tr., Vol. II, 126. But the HUD investigator testified that Mr. Rupp called *her* "out of the blue" and immediately "started going into his position." Tr., Vol. II, 188-191. Additionally, while Mr. Rupp claimed that Laura tried to cover up the birth of her second child by claiming that she had a

miscarriage (Tr., Vol. III, 22, 49-53), Laura testified that she said no such thing and would never lie about miscarrying M.T. because she had miscarried before and "was very grateful to have another baby" (Tr., Vol. III, 101-103).

The jury ultimately awarded the family a total of $14,400 in compensatory damages, with Laura to receive $9400, Mack to receive $3000, and each child to receive $1000. Tr., Vol. III, 184. The jury also awarded a total of $60,000 in punitive damages—less than 1.5% of Mr. Rupp's total net worth of over $4 million—with Laura and Mack to each receive $10,000, and each child to receive $20,000. Tr., Vol. II, 155; Tr., Vol. III, 184-185.

c. Post-Trial Motion To Set Aside Or Reduce Punitive-Damages Award

Mr. Rupp moved to set aside or reduce the punitive-damages award under Federal Rules of Civil Procedure 50 and 59. App. 26-38; R. Doc. 113. He renewed his argument that he could not be found liable for punitive damages because he had testified that he did not know that familial-status discrimination was illegal. App. 26-28; R. Doc. 113, at 1-3. He argued further that the amount of punitive damages awarded was unconstitutionally excessive. App. 28-37; R. Doc. 113, at 3-12.

The district court once again denied Mr. Rupp's motion. App. 14-25; R. Doc. 125 (Order Denying Mot. to Set Aside or Reduce Damages). It concluded that a reasonable jury could disbelieve Mr. Rupp—especially in light of his

damaged credibility—and find that he had sufficient knowledge to be liable for punitive damages. App. 17-19; R. Doc. 125, at 4-6. As to the damages amount, the court found that the jury's award was within the guideposts established for determining the boundaries of a constitutional punitive-damages award. App. 19-25; R. Doc. 125, at 6-12.

SUMMARY OF ARGUMENT

The scope of Mr. Rupp's appeal is narrow. He does not contest the district court's judgment that he violated the FHA in multiple ways. Nor does he challenge the jury's compensatory-damages award. Instead, he seeks only to challenge the jury's punitive-damages award, arguing that the district court erred in permitting the jury to consider such an award in the first place, and that the award itself is unconstitutionally excessive. As explained below, each of his arguments is unavailing.

I. The government presented sufficient evidence for a reasonable jury to determine that Mr. Rupp knew that the law forbade discriminating against tenants because they had children. In particular, the government presented evidence that Mr. Rupp was an experienced landlord who had been renting apartments for almost 50 years, that he understood that it was unlawful to discriminate against his tenants, and that he generally kept himself informed on the law related to his rental business. Accordingly, the district court was correct in submitting the issue of

punitive damages to the jury and in denying Mr. Rupp's motions for judgment as a matter of law. Mr. Rupp's arguments to the contrary essentially ask this Court to re-weigh the evidence and vacate the award because the jury chose not to believe his self-serving testimony. This is not an appropriate ground for reversal.

II. The jury's punitive-damages award of $60,000 is not excessive and satisfies due process. The amount is proportionate to the harm Mr. Rupp caused when he unlawfully evicted a young family—including a newborn, a six-year-old, and a mother still recovering from an emergency C-section—from their home and upended their lives. Mr. Rupp's actions were reprehensible, and the $60,000 punitive-damages award is in line with the $14,400 compensatory damages award, as well as comparable to statutory penalties and other juries' damages awards.

Mr. Rupp argues that the $40,000 portion of the punitive-damages award given to the Erwin-Teal children is excessive because it is twenty times greater than the $2,000 that the jury awarded to the children in compensatory damages. But he offers no authority or rationale to explain why the children's portion of the punitive-damages award should be analyzed in isolation from the rest of the award. His novel theory thus underscores a fundamental problem with his argument: that his principal objection is not to the total *quantum* of punitive damages awarded but, rather, to the jury's decision about how to *allocate* that award among his victims. Even if that were a valid basis for objecting to the award, Mr. Rupp has

not shown that the jury's decision to award the bulk of punitive damages to the children—his most vulnerable victims—was unreasonable, much less unconstitutional. Nor has he identified any other grounds for this Court to overturn the jury's reasonable damages award. This Court should therefore affirm the district court's ruling and the jury's punitive-damages award.

ARGUMENT

I

A REASONABLE JURY COULD CONCLUDE THAT MR. RUPP ACTED WITH RECKLESS DISREGARD FOR THE ERWIN-TEALS' RIGHTS WHEN HE EVICTED THEM BECAUSE THEY HAD A BABY

A. Standard Of Review

This Court reviews the denial of a renewed motion for judgment as a matter of law *de novo*, "viewing the evidence in the light most favorable to the verdict." *Southern Wine and Spirits* v. *Mountain Valley Spring Co.*, 646 F.3d 526, 533 (8th Cir. 2011). "Th[is] [C]ourt is not at liberty to reweigh the evidence or consider questions of credibility, and it must give great deference to the jury's verdict." *Letterman* v. *Does*, 859 F.3d 1120, 1124 (8th Cir. 2017) (internal quotation marks and citation omitted). "Judgment as a matter of law is granted if a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." *Weitz Co. LLC* v. *MacKenzie House, LLC*, 665 F.3d 970, 974 (8th Cir.) (internal quotation marks and citation omitted), cert. denied, 567 U.S. 917 (2012).

B. The Government Presented Sufficient Evidence To Warrant Submitting The Issue Of Punitive Damages To The Jury

"The Fair Housing Act provides for the recovery of punitive damages by victims of discriminatory housing practices." *Badami* v. *Flood*, 214 F.3d 994, 997 (8th Cir. 2000) (citing 42 U.S.C. 3613(c)(1)). A jury may award punitive damages under the FHA if it finds that the defendant's conduct "involves reckless or callous indifference to the federally protected rights of others." *Ibid.* (citation omitted). This standard does not require "egregious or outrageous" misconduct by the defendant, although such conduct may evince recklessness. *Kolstad* v. *American Dental Ass'n*, 527 U.S. 526, 534-535, 538-539 (1999). Rather, to be liable for punitive damages, a defendant must either know that his discriminatory conduct is unlawful or "at least discriminate in the face of a perceived risk that [his] actions will violate federal law." *Id.* at 536; see *Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit* § No. 5.72 (2021).

1. There was sufficient evidence for a reasonable jury to find that Mr. Rupp knew it was unlawful to evict someone for having a child, and thus that he acted in the face of "a perceived risk that [his] actions [would] violate federal law" when he evicted the Erwin-Teals. In particular, the government presented extensive evidence about Mr. Rupp's decades of experience—nearly 50 years as a residential landlord and manager of multiple properties—and established that familial-status discrimination was unlawful for the majority of that period. Tr.,

Vol. II, 100, 102. Mr. Rupp also admitted that he was aware of nearly every characteristic protected by the FHA other than familial status—including disability, which had been added to the FHA at the same time as familial status.[4] Tr., Vol. II, 122-123. Mr. Rupp acknowledged that he educated himself about and was aware of other legal requirements related to his rental business, and that he closely followed the news. Tr., Vol. II, 111, 113-114, 118-119, 121-122. Further, the government presented evidence that anyone—even those without decades of experience as a landlord—could easily determine that the FHA forbade familial-status discrimination: Laura testified that it was "easy" to find the information via a quick Google search on her phone. Tr., Vol. I, 208-209. A jury could reasonably infer from this evidence that Mr. Rupp knew that familial-status discrimination was unlawful.

Courts have recognized that juries may reasonably infer that landlords with extensive experience in the real-estate industry are familiar with the FHA's prohibitions on discrimination. See, *e.g.*, *Badami*, 214 F.3d at 997 (citing as relevant the defendant's 27 years of property-management experience); *Lincoln* v. *Case*, 340 F.3d 283, 291 (5th Cir. 2003) ("There can be little doubt that [the

[4] As noted above, Congress added the prohibition of familial-status discrimination to the FHA in 1988—nearly thirty years before Mr. Rupp evicted the Erwin-Teal family. Pub. L. No. 100-430, 102 Stat. 1619.

defendant], an experienced landlord, knew that discriminating against prospective tenants based on race violated federal law, and has for over 30 years."). In *Preferred Properties, Inc.* v. *Indian River Estates, Inc.*, for instance, the Sixth Circuit upheld a punitive-damages award against a landlord who had been found liable under the FHA for discriminating against tenants with disabilities. 276 F.3d 790, 800, cert. denied, 536 U.S. 959 (2002). The court concluded that a jury could reasonably infer that the landlord was aware of the FHA's prohibition on disability discrimination because he had been "involved in the real estate industry for more than twenty years, during which time he has rented property to persons with disabilities." *Ibid.*

2. Mr. Rupp's challenge rests entirely on his testimony that although he was aware of the other forms of discrimination the FHA prohibits, he was uniquely unaware that it prohibited familial status discrimination as well. But there were ample grounds for a reasonable jury to reject Mr. Rupp's self-serving testimony. The trial record—including Mr. Rupp's own testimony—demonstrates that he kept using the "NO CHILDREN" clause in his lease agreements for a full nine months *after* he claimed to have discovered that familial-status discrimination was unlawful. Tr., Vol. III, 90-93. A jury could thus reasonably conclude that "discovering" the possible illegality of his actions did not change his behavior because he already knew—and did not care—that his conduct was likely unlawful.

Further, Mr. Rupp contradicted his own testimony (and other prior statements) by attempting to invoke new justifications for his decision to evict the Erwin-Teals. Compare Tr., Vol. III, 9-15 (offering reasons for evicting the Erwin-Teals other than those listed in the eviction letter), with Supp. App. 9-10; R. Doc. 98, at 1 (GX 13) (letter stating that he was evicting them because of their children). The government also impeached Mr. Rupp on other factual issues, including: whether the Erwin-Teals had signed the lease extension before Mr. Rupp evicted them (Tr., Vol. III, 9-10, 44; see also App. 101, 104; R. Doc. 63, at 1, 4); whether Laura tried to cover up the birth of M.T. by telling Mr. Rupp that she had a miscarriage (Tr., Vol. III, 22, 49-53, 101-103); and his interactions with the HUD investigator assigned to the Erwin-Teals' complaint (Tr., Vol. II, 126, 188-191). These and other contradictions compromised Mr. Rupp's credibility and could lead a reasonable jury to disbelieve his testimony.

Mr. Rupp's insistence that there was "no evidence that [he] had knowledge that he may be acting in violation of federal law" (Br. 14 (cleaned up)) disregards all of this evidence. In essence, Mr. Rupp asks this Court to reverse the district court's denial of his Rule 50 motion based solely on his own testimony that he was unaware of the FHA's prohibition on familial-status discrimination. That request is unwarranted. A jury is entitled to decide which witnesses and testimony to believe, and entitled to consider all of the evidence—both direct and

circumstantial. See, *e.g.*, *B&B Hardware, Inc.* v. *Hargis Indus., Inc.*, 912 F.3d 445, 452 (8th Cir. 2018) ("[A] jury is free to disbelieve any witness, even if the testimony is uncontradicted or unimpeached." (alteration in original; citation omitted)), cert. denied, 140 S. Ct. 218 (2019). Here, the government presented more than sufficient evidence for a reasonable jury to conclude that Mr. Rupp was recklessly indifferent to the Erwin-Teals' rights. It was therefore proper for the district court to submit the issue of punitive damages to the jury.

II

THE JURY'S PUNITIVE-DAMAGES AWARD OF $60,000 DOES NOT VIOLATE DUE PROCESS

A. Standard Of Review

This Court reviews the constitutionality of punitive-damages awards *de novo*. *Bryant* v. *Jeffrey Sand Co.*, 919 F.3d 520, 527 (8th Cir. 2019). A punitive-damages award "that is a product of fair procedures is entitled to a strong presumption of validity." *Dean* v. *Olibas*, 129 F.3d 1001, 1006-1007 (8th Cir. 1997) (alterations omitted) (quoting *TXO Prod. Corp.* v. *Alliance Res. Corp.*, 509 U.S. 443, 457 (1993)). Thus, where jurors "were selected as impartial; they heard all the evidence presented by both sides; the district judge properly instructed them on the law; and the judge upheld the award after considering its constitutionality * * * * [this Court] begin[s] [its] review of the legality of [the] award with the presumption that it is constitutional." *Id.* at 1007.

B. The Punitive-Damages Award Of $60,000 Is Well Within Constitutional Limits

Mr. Rupp contends that the jury's $60,000 punitive-damages award is so grossly excessive that it violates the Due Process Clause. "[P]unitive damages are grossly excessive if they 'shock the conscience' of the court or 'demonstrate passion or prejudice on the part of the trier of fact.'" *Adeli* v. *Silverstar Auto., Inc.*, 960 F.3d 452, 460 (8th Cir. 2020) (citation omitted). The Supreme Court has identified three "guideposts" to consider when determining whether an award meets this standard:

> (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award [(often stated as the ratio between compensatory and punitive-damages awards)]; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

State Farm Mut. Auto. Ins. Co. v. *Campbell*, 538 U.S. 408, 418 (2003) (citing *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 575 (1996)). All of these guideposts demonstrate that the punitive-damages award in this case was proper.

1. Mr. Rupp's Conduct Was Reprehensible

"The degree of reprehensibility is perhaps the most important indicium of the reasonableness of a punitive damages award." *Watkins* v. *Lundell*, 169 F.3d 540, 545 (8th Cir.), cert. denied, 528 U.S. 928 (1999). When considering reprehensibility, the Supreme Court instructs courts to consider whether:

> [1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] the conduct involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident.

May v. *Nationstar Mortg., LLC*, 852 F.3d 806, 816 (8th Cir. 2017) (citation omitted). "The presence of just one indicium of reprehensibility is sufficient to render conduct reprehensible and support an award of punitive damages." *Ibid.*

Here, Mr. Rupp has openly conceded that one of these indicia—specifically, the financial-vulnerability factor—supports a finding of reprehensibility. See Br. 20 ("Defendant will concede that the third factor weighs against Defendants because the children were financially vulnerable."); see also Tr., Vol. I, 166-168. Under *May*, that concession alone is sufficient to end the reprehensibility inquiry. See 852 F.3d at 816 (explaining that "just one indicium of reprehensibility is sufficient"). But even if this Court chooses to examine the other reprehensibility factors, all of those factors likewise support the conclusion that Mr. Rupp's conduct was reprehensible.

a. As to the first factor—whether the harm suffered was purely economic—the record contains ample evidence to support the jury's finding that it was not. As noted, Laura suffered significant physical harm as she was forced to return to work just weeks after giving birth via emergency surgery—and months before she had healed—because the family needed proof of an additional income to obtain a new

place to live. Tr., Vol. I, 182, 197-198. Further, the government introduced evidence of the emotional harm suffered by each of the family members. See *Ondrisek* v. *Hoffman*, 698 F.3d 1020, 1024, 1029 (8th Cir. 2012) (considering both emotional and physical harm as factors weighing in favor of reprehensibility), cert. denied, 569 U.S. 919 (2013). Both Laura and Mack testified about the emotional toll caused by being unexpectedly evicted from their home at a time that was supposed to be a celebration of their new child. See, *e.g.*, Tr., Vol. I, 224-225; Tr., Vol. II, 72, 74-75. And, while their children were too young to articulate their experiences, a reasonable jury could infer that B.T. and M.T. also suffered as their lives were uprooted from the home their parents had built for them and they were forced to move to an environment with significant safety and health concerns. See Tr., Vol. I, 201-206; Tr., Vol. II, 76.

Mr. Rupp ignores this evidence and argues, without support, that there was no harm (either economic or otherwise) done to the children. This characterization disregards significant testimony about the changes in environment and circumstances that the children experienced after being evicted.[5] Because the jury was not bound by Mr. Rupp's preferred reading of the record, this Court should

[5] Mr. Rupp also limits his discussion of this factor to the harm done to the Erwin-Teal children. But, as discussed below, see pp. 28-32, *infra*, punitive damages awarded as a result of a single course of discrimination against a group of people are properly considered in the aggregate.

conclude—in line with all of the evidence presented—that the Erwin-Teal children (and their parents) suffered non-economic harm.

b. Mr. Rupp's conduct also evinces his disregard for the Erwin-Teals' health and safety—the second reprehensibility factor. He evicted them *because of* circumstances that are inherently filled with health risks—that is, because Laura had the nerve to get pregnant. Tr., Vol. II, 193. And, when both Laura and Mack pleaded with him to let them stay in the apartment in light of their new baby—or to at least give them more time to find a new place to live—Mr. Rupp refused to even discuss the matter. Tr., Vol. II, 70. Instead, he chose to evict them, fully aware that they had two young children and nowhere else to go. This demonstrates a flagrant disregard of the family's health and safety and further weighs in favor of finding his conduct reprehensible.

Despite this evidence, Mr. Rupp insists that "he treated children quite well, and had leased apartments to persons with children in the past." Br. 20. But, again, this Court is not bound by Mr. Rupp's selective reading of the record. The whole record—including the uncontroverted evidence that Mr. Rupp knowingly threw a family with a newborn and a six-year-old out of their home—demonstrates that he acted with reckless disregard for the Erwin-Teals' health and safety. See, *e.g.*, Tr., Vol. II, 69-70 (discussing Mr. Rupp's refusal to reconsider "putting a couple out in the street with a newborn baby").

c. Nor was Mr. Rupp's decision to evict the family an isolated incident, the fourth reprehensibility factor. As the district court concluded, he violated the FHA in three distinct ways over the course of the sixteen months that he leased the apartment to the family: he unlawfully terminated the family's lease because of their children, in violation of 42 U.S.C. 3604(a); he unlawfully imposed different lease terms upon the family because of their children, in violation of 42 U.S.C. 3604(b); and he unlawfully used application and lease forms that expressed an explicit "preference" based on familial status, in violation of 42 U.S.C. 3604(c). App. 97-100; R. Doc. 56, at 6-9. Mr. Rupp has not appealed any of those rulings.

Moreover, Mr. Rupp admitted that he had a policy of treating *all* tenants with children the same way he treated the Erwin-Teals, and that he had enforced this policy throughout the nearly fifty years that he was a landlord. See, *e.g.*, Tr., Vol. III, 59-64. And, as noted above, he used the same unlawful lease contract—with the same "NO CHILDREN" clause—with another tenant even *after* the Erwin-Teals filed a complaint against him under the FHA. This pattern of FHA violations underscores that the third reprehensibility factor weighs heavily against him. See, *e.g.*, *May*, 852 F.3d at 816 (concluding that a pattern of misconduct may constitute "repeated actions").

Mr. Rupp's arguments to the contrary are not persuasive. He ignores the district court's summary-judgment ruling and attempts to characterize his

misconduct as one isolated incident, while also ignoring all of the other evidence of his decades-long policy of discrimination. Compare Br. 20 ("There was no evidence of repeated violations by Rupp."), with Tr., Vol. II, 103, 106-108 (evidence of repeated violations by Mr. Rupp). This argument, which distorts and omits significant trial evidence, must fail.

d. Mr. Rupp's decades-long policy of discriminating against tenants with children also demonstrates that he did not evict the family based on some "mere accident"—the fifth reprehensibility factor. The record makes clear that he acted deliberately. Tr., Vol. II, 103, 106-108. And the fact that he maintained the same general policy even after he evicted the Erwin-Teals only reaffirms that his conduct was intentional. Supp. App. 11-13; R. Doc. 98, at 2 (GX 58).

Mr. Rupp's arguments, once again, rest on a selective reading of the trial record. He argues that there was no evidence that he intentionally discriminated against the Erwin-Teals (Br. 21), despite his testimony admitting to a long-standing policy of discriminating against families with children and despite the district court's unchallenged ruling that his actions were intentional (Tr., Vol. II, 103, 106-108; App. 97-100; R. Doc. 56, at 6-9). He also continues the falsehood he gave during trial that he stopped using the discriminatory lease contract when he learned of the Erwin-Teals' complaint, despite the fact that he used the same lease prohibiting children almost a year later. Compare Br. 21 ("And, Rupp corrected

his conduct after finding out that he was violating the law."), with Tr., Vol. III, 89-93 (admitting that Mr. Rupp continued to use his discriminatory lease at least nine months after he learned of the Erwin-Teals' HUD complaint).

In sum, the evidence presented at trial more than suffices to establish the reprehensibility of Mr. Rupp's conduct, and supports the constitutionality of the damages award.

2. The Punitive-Damages Award Is Proportional To The Harm Mr. Rupp Caused

Punitive-damages awards must bear a "reasonable relationship to compensatory damages." *Quigley* v. *Winter*, 598 F.3d 938, 954 (8th Cir. 2010) (internal quotation marks omitted) (quoting *Gore*, 517 U.S. at 580). But "[w]hat constitutes a 'reasonable relationship' varies from case to case." *Ibid.* "The Supreme Court has 'consistently rejected the notion that the constitutional line [between a proper and improper damages ratio] is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award.'" *Adeli*, 960 F.3d at 461 (quoting *Gore*, 517 U.S. at 582). Instead, the "acceptability of the punitive to compensatory damage award ratio" generally depends on the "relative strength or weakness of the other factors." *United States* v. *Big D Enters., Inc.*, 184 F.3d 924, 933 (8th Cir. 1999), cert. denied, 529 U.S. 1018 (2000).

Here, the jury awarded the Erwin-Teals $14,400 in compensatory damages and $60,000 in punitive damages—a ratio of roughly four-to-one. Given the strength of the reprehensibility factors in this case, see pp. 22-28, *supra*, that ratio falls well within the bounds of constitutional limits. Indeed, "the Supreme Court has repeatedly intimated that a four-to-one ratio is likely to survive any due process challenges given the historic use of double, treble, and quadruple damages as a punitive remedy." *Trickey* v. *Kaman Indus. Techs. Corp.*, 705 F.3d 788, 803 (8th Cir. 2013) (citation omitted).

a. Rather than challenge this well-settled proposition, Mr. Rupp urges this Court to examine a different ratio altogether. Specifically, he seeks to disaggregate the portion of damages that the jury awarded to the Erwin-Teal children from the portion awarded to their parents, so that the ratio appears to be 20-to-1 ($20,000 in punitive damages compared to the $1000 each child was awarded in compensatory damages). See Br. 17, 23-26. Mr. Rupp offers no explanation or authority to justify this unconventional approach, which differs from that taken by courts—even those courts in his own cited cases.[6] Nor does he explain why the children's

[6] See, *e.g.*, *Big D Enters.*, 184 F.3d at 928, 932-934 (analyzing the total $50,000 awarded to a couple under the FHA, rather than analyzing each $25,000 award separately); *Szwast* v. *Carlton Apartments*, 102 F. Supp. 2d 777, 779, 783-785 (E.D. Mich. 2000) (analyzing the total $400,000 awarded to a mother and her two children under the FHA).

portion of the award should be disaggregated when comparing punitive damages to compensatory damages (*i.e.*, under the second due-process guidepost) but not when comparing punitive damages to potential civil penalties (*i.e.*, under the third due-process guidepost). See Br. 27 (using the total $60,000 award as the baseline for comparison to civil penalties).

In any event, his proposal to examine the children's portion of the punitive-damage award in isolation makes no sense in this context. Mr. Rupp was found liable for discriminating against the Erwin-Teals as a unit—not for engaging in independent discriminatory acts against each individual family member. In other words, the jury imposed punitive damages on him to punish him for a violation that he committed against *all* members of the family. It would be incongruous to assess the constitutionality of that punishment on a victim-by-victim basis in the way that Mr. Rupp suggests. See *United States* v. *Veal*, 365 F. Supp. 2d 1034, 1040 n.3 (W.D. Mo. 2004) ("The Court arrived at the 22 to 1 ratio by comparing the aggregate punitive damages award * * * to the total awarded in compensatories[.] * * * Even though the monetary judgment will eventually be paid to the eleven aggrieved women in varying amounts, there is only *one* plaintiff in this case—the United States of America. It is therefore appropriate to view the punitive and compensatory damages collectively.").

In reality, Mr. Rupp does not object to the size of the jury's punitive-damage award; he objects to the jury's decision about how to allocate the award among his victims. But the jury's decision to award the bulk of punitive damages to the Erwin-Teal children—the most vulnerable members of the family—was eminently reasonable. And, more to the point, Mr. Rupp has not identified any authority for the proposition that a jury's choices about how to apportion an otherwise-constitutional punitive-damage award are subject to due-process constraints.

b. The jury's $60,000 punitive-damage award is a reasonable punishment for Mr. Rupp's conduct. As stated above, it is well-within the Supreme Court's range of ratios that are likely, presumptively constitutional. See, *e.g.*, *Adeli*, 960 F.3d at 461 (describing the Supreme Court's suggestion that single-digit ratios are likely constitutional). And, in absolute terms, it is nowhere near as high as the types of damage awards that have been found to raise constitutional concerns—awards that almost always fall in the hundreds of thousands, if not millions, of dollars. See, *e.g.*, *Campbell*, 538 U.S. at 418-428 (considering whether an award of $145 million was excessive); *May*, 852 F.3d at 815-818 (concluding that award of $400,000 was not excessive); *Ondrisek*, 698 F.3d at 1028-1031 (considering whether an award of $30 million was excessive); *Boerner* v. *Brown & Williamson Tobacco Co.*, 394 F.3d 594, 602-603 (8th Cir. 2005) (considering whether an award of $15 million was excessive).

Moreover, the fact that the $60,000 award represents only about 1.5% of Mr. Rupp's net worth of more than $4 million provides further evidence that it is objectively reasonable. Indeed, this Court has approved far more stinging awards. See, *e.g.*, *Stogsdill* v. *Healthmark Partners, LLC*, 377 F.3d 827, 833 (8th Cir. 2004) (concluding that punitive-damages award of up to $2 million—over three times defendant's net worth—was reasonable); *Jones* v. *Swanson*, 341 F.3d 723, 738 (8th Cir. 2003) (concluding that punitive-damages award of approximately 11% of defendant's net worth would be reasonable).

Finally, the award is also commensurate with the harm Mr. Rupp likely would have continued to inflict but for this case, as the evidence shows that he continued to use his unlawful lease even after he learned of the Erwin-Teals' HUD complaint. See, *e.g.*, *Adeli*, 960 F.3d at 462 ("[W]e recognize that an otherwise excessive ratio may be justified by factoring in the magnitude of * * * the possible harm to other victims that might have resulted if similar future behavior were not deterred." (internal quotation marks and citation omitted)).

c. Even if this Court were to analyze the children's portion of the punitive-damage award in isolation, as Mr. Rupp suggests, the award would still pass constitutional muster. This Court has recognized that higher punitive-to-compensatory-damage ratios may be permitted in cases where "the monetary value of noneconomic harm might have been difficult to determine." *Quigley*, 598 F.3d

at 954 (citation omitted). That is frequently true in FHA cases, like this one, where the full extent of actual injuries is hard to determine, *Lincoln* v. *Case*, 340 F.3d 283, 294 (5th Cir. 2003), and factors of reprehensibility and comparable civil penalties strongly counsel in favor of high punitive damages, *Big D Enters.*, 184 F.3d at 933. Indeed, exactly how much harm Mr. Rupp caused the Erwin-Teals' two young children here is not easily quantifiable. Given their youth, the family might not even learn of the full impact on the children until years later. These are precisely the kinds of circumstances that would justify a punitive-damage award significantly higher than the compensatory award.

3. The Punitive-Damages Award Is In Line With Civil Penalties And Damage Awards In Comparable Cases

Finally, courts must consider any "disparity between the punitive damages award and the civil penalties authorized or imposed in comparable cases." *Adeli*, 960 F.3d at 463 (citation omitted). There is no meaningful disparity here.

First, the $60,000 punitive-damage award comports with awards that appellate courts—including this Court—have endorsed in other FHA cases. See, *e.g.*, *Lincoln*, 340 F.3d at 294 (remitting punitive-damages award to $55,000 in FHA disability-discrimination case, in accordance with due process). In *Big D Enterprises*, for instance, this Court upheld a pair of $50,000 punitive-damage awards against a management company that had refused to rent to two families because of their race. 184 F.3d at 932-934. The Court reasoned that the awards

served, among other things, to "reinforce[ ] the nation's commitment to protecting and preserving the civil rights of all." *Id.* at 934. That rationale has particular resonance in this case, given the likely impact of Mr. Rupp's actions: unlike the defendant in *Big D Enterprises*, Mr. Rupp admitted to discriminating against families with children for decades, and acknowledged that he has no way of knowing how many families were dissuaded from attempting to rent from him because of his discrimination. See, *e.g.*, Tr., Vol. II, 137-138; Tr., Vol. III, 59-64.

Cases like *Big D Enterprises* and *Lincoln* ensure that defendants like Mr. Rupp have "proper notice of [the] possible penalties" they might face in FHA cases like this one. *Adeli*, 960 F.3d at 460 (citation omitted). And they also confirm that a $60,000 punitive-damage award is in line with the amount of civil penalties that might be authorized in comparable cases. In *Big D Enterprises*, this Court explicitly cited the civil penalties available under 42 U.S.C. 3614(d)(1)(C)(i)—another FHA provision that provides for a fine of up to $50,000 for a first-time offense—as instructive in housing-discrimination cases. 184 F.3d at 933. As this Court explained, "[t]he fact that the FHA permits courts to impose a fine up to $50,000 *in addition to* compensatory and punitive damages significantly undercuts appellants' argument that the punitive damage award [of $50,000] in this case is excessive." *Ibid.*

Mr. Rupp's arguments do not compel a contrary conclusion. He urges this Court to look to a statute governing the size of awards that may be issued by administrative law judges. Br. 26-27. But he ignores the fact that he *chose* to forego the administrative process here, and instead opted to have his case heard in federal court, where larger damage awards are common. App. 93; R. Doc. 56, at 2. Furthermore, even if the statute governing administrative-law-judge awards provided the relevant comparison here, courts are clear that such a comparison would merely provide one factor in the broader due-process analysis. Courts have consistently allowed awards that are higher than comparable statutory penalties. See, *e.g.*, *Adeli*, 960 F.3d at 463 (affirming punitive-damages award of $500,000 despite comparable civil penalty of $10,000).

In sum, the jury's punitive-damages award of $60,000 is not excessive—much less so excessive as to "shock the conscience" or overcome the "strong presumption of validity" imbued by the trial's fair procedures. *Adeli*, 960 F.3d at 460 (citation omitted); *Dean*, 129 F.3d at 1006-1007 (citation omitted). The award was reasonable, and should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 8292 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman, 14-point font.

3. This brief complies with Local Rule 28A(h)(2) because the ECF submission has been scanned for viruses with the most recent version of Windows Defender (Version1.2.3412.0) and is virus-free according to that program.

s/ Janea L. Lamar
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Date: June 24, 2022

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2022, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

I further certify that, within five days of receipt of the notice that the brief has been filed by this Court, the foregoing brief will be sent by Federal Express, next-day mail, to the Clerk of the Court (ten copies) and to the following counsel of record (one copy) pursuant to Local Rule 28A(d):

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