No. 23-1206

In the Supreme Court of the United States

ELITE IT PARTNERS, INC., DBA ELITE IT HOME, ET AL.,
PETITIONERS

v.

FEDERAL TRADE COMMISSION

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in denying relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure in the circumstances of this case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 91 F.4th 1042. The amended opinion and order of the district court (Pet. App. 37a-54a) is reported at 653 F. Supp. 3d 1089. An earlier stipulated order of the district court (Pet. App. 19a-36a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2024. A petition for rehearing was denied on March 21, 2024 (Pet. App. 55a-56a). The petition for a writ of certiorari was filed on May 7, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In February 2019, the Federal Trade Commission (FTC or Commission) sued petitioners Elite IT Partners, Inc. and James Martinos for operating a technical-support telemarketing scam that preyed mostly on elderly Americans. Pet. App. 38a-39a. Petitioners' telemarketers called consumers who had responded to an online ad. *Ibid.* Based in part on fake diagnostic tests purporting to show that the consumers' computers were infected with viruses, the telemarketers tricked the consumers into signing up for costly and unnecessary support services. *Ibid.* The FTC's complaint alleged that petitioners' conduct had violated the Federal Trade Commission Act (FTC Act), 15 U.S.C. 41 *et seq.*; the Restore Online Shoppers' Confidence Act (ROSCA), 15 U.S.C. 8401 *et seq.*; and the FTC's Telemarketing Sales Rule, 16 C.F.R. Pt. 310. See Pet. App. 20a.

Section 13(b) of the FTC Act authorizes the Commission to sue in federal district court for a "permanent injunction" barring violations of any laws within the agency's purview. 15 U.S.C. 53(b). When the complaint in this case was filed, the courts of appeals had uniformly held that Section 13(b) authorized district courts to award equitable monetary relief to redress consumer injury. See, *e.g.*, *FTC* v. *Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 n.6 (10th Cir. 2005). Accordingly, the FTC's complaint sought both injunctive and monetary relief under Section 13(b). Compl. ¶ 72. The complaint also sought monetary relief under Section 19 of the FTC Act, which authorizes the Commission to sue in district court and to obtain a "refund of money" when a defendant has violated a rule that relates to unfair or deceptive acts or practices and that was promulgated under the FTC Act. 15 U.S.C. 57b(a)(1) and (b); see Compl. ¶ 73;

15 U.S.C. 8404(a) (providing that a violation of ROSCA "shall be treated as a violation of a rule under [the FTC Act] regarding unfair or deceptive acts or practices"); 15 U.S.C. 6102(c) (violation of a telemarketing rule "shall be treated as a violation of a rule under [the FTC Act] regarding unfair or deceptive acts or practices").

The district court granted a temporary restraining order to shut down petitioners' scam. Pet. App. 39a. The court also appointed a receiver to manage the business, and it froze petitioners' assets to avoid dissipation and to ensure that the assets would remain available for consumer redress. *Ibid.* Petitioners later stipulated to the entry of a preliminary injunction that maintained the asset freeze and receivership but allowed petitioners to continue their business-to-business technical-support operations, which were not at issue in the FTC's complaint. *Id.* at 40a.

In August 2019, while this case was still pending in the district court, the Seventh Circuit overruled its prior precedent and held that Section 13(b) does not authorize equitable monetary relief, creating a circuit split on that issue. See *FTC* v. *Credit Bureau Ctr., LLC*, 937 F.3d 764, 767 (2019), cert. denied, 141 S. Ct. 195 (2020), and 141 S. Ct. 2614 (2021). In October 2019, a petition for a writ of certiorari was filed in *AMG Capital Management, LLC* v. *FTC*, No. 19-508, asking this Court to review whether Section 13(b) authorizes monetary relief.

In December 2019, petitioners (who were represented by counsel throughout the litigation) agreed to entry of a stipulated judgment to resolve the FTC's claims against them. Pet. App. 19a-36a, 40a. The stipulated judgment contained several injunctive-relief provisions, including a permanent ban on selling technical-

support products to consumers (though not to businesses), that were designed to prevent petitioners from engaging in the kind of unlawful conduct that was alleged in the complaint. *Id.* at 22a-25a. The stipulated judgment also imposed a monetary judgment of approximately $13.5 million, which represented the FTC's calculation of the total consumer losses that petitioners' scam had caused. *Id.* at 25a. Under the terms of the stipulated judgment, however, petitioners' payment obligations were limited to their available assets (about $355,000), based on their sworn representations regarding their ability to pay. *Id.* at 25a-27a. The stipulated judgment provided that petitioners' obligation to pay the remainder of the monetary judgment would take effect if the district court later determined that petitioners had misrepresented their financial status. *Id.* at 27a.[1]

As part of the stipulated judgment, petitioners agreed to "waive all rights to appeal or otherwise challenge or contest the validity of this Order." Pet. App. 21a.

2. This Court granted the petition for a writ of certiorari in *AMG* and subsequently held that Section 13(b) does not authorize monetary relief. See *AMG Capital Mgmt., LLC* v. *FTC*, 593 U.S. 67, 75 (2021). Nearly 11 months after that decision, petitioners moved to vacate the stipulated judgment in this case under Rule 60(b)(6) of the Federal Rules of Civil Procedure, arguing that

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[1] Petitioners assert (Pet. 3-4) that more than $1 million obtained from the liquidation of Elite IT's assets was paid toward the judgment. That is incorrect. The FTC received a total of $355,138.80 from petitioners and from the receiver who had been appointed to operate and wind down Elite IT. See D. Ct. Doc. 174-1, at ¶ 3 (Apr. 14, 2022).

"in light of the Supreme Court's new precedent, extraordinary circumstances exist to vacate the judgment." D. Ct. Doc. 169, at 1 (Mar. 17, 2022).[2]

The district court denied the motion. Pet. App. 37a-54a. The court explained that a change in law, standing alone, generally does not constitute an extraordinary circumstance warranting relief under Rule 60(b)(6). *Id.* at 53a. The court determined that petitioners had identified no "legal or factual basis to hold otherwise" in this case. *Ibid.*; see *id.* at 50a-53a. The court therefore found it unnecessary to address the FTC's additional argument that petitioners had given up the right to seek Rule 60(b)(6) relief by agreeing to settle the FTC's claims. See *id.* at 50a n.69.

3. The court of appeals affirmed on two independent grounds. Pet. App. 1a-18a.

First, the court of appeals held that petitioners had waived their right to seek relief under Rule 60(b)(6) by agreeing not to "'challenge or contest the validity of' the stipulated judgment." Pet. App. 5a; see *id.* at 3a-9a. The court explained that, in arguing that this Court's "opinion in *AMG* rendered the stipulated judgment invalid from the outset," petitioners were asserting exactly the sort of post-judgment challenge that they had waived their right to raise. *Id.* at 6a. The court emphasized that it was not unfair to hold petitioners to their waiver, because petitioners "could have foreseen a change in the case law" in light of the Seventh Circuit's decision in *Credit Bureau Center LLC*, *supra*, and the petition for a writ of certiorari in *AMG*, which had been

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[2] Petitioners also sought relief under Rule 60(b)(5), but they did not appeal the district court's denial of relief under that provision. See Pet. App. 2a n.1.

filed "before [petitioners] entered the stipulation." *Id.* at 7a.

Second, the court of appeals held that petitioners would not have been entitled to relief "even if they hadn't waived their appellate arguments." Pet. App. 9a; see *id.* at 9a-18a. The court explained that a post-judgment change in decisional law, standing alone, is generally insufficient to support relief under Rule 60(b)(6). See *id.* at 12a (discussing *Collins* v. *City of Wichita*, 254 F.2d 837, 839 (10th Cir. 1958)). The court acknowledged that it had recognized exceptions where Rule 60(b)(6) relief was necessary to avoid "anomalies," but it concluded that petitioners did not come within any of those exceptions. *Id.* at 14a; see *id.* at 13a-14a (discussing *Pierce* v. *Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (en banc), cert. denied, 423 U.S. 1079 (1976), and *Adams* v. *Merrill Lynch, Pierce, Fenner & Smith*, 888 F.2d 696, 697-698, 702 (10th Cir. 1989)). The court further held that petitioners had not offered any additional arguments for vacatur beyond the intervening change of law; rather, all of their arguments "depended on the Supreme Court's new opinion in *AMG*." *Id.* at 16a; see *id.* at 16a-18a. Accordingly, the court of appeals determined that "the district court didn't abuse its discretion in denying vacatur" under Rule 60(b)(6). *Id.* at 18a.

Judge Briscoe concurred to note that she would have resolved the case based solely on petitioners' waiver of their right to challenge the stipulated judgment, and that she would not have addressed the merits of petitioners' Rule 60(b)(6) argument. Pet. App. 18a.

The court of appeals denied a petition for rehearing without any noted dissent. Pet. App. 55a-56a.

ARGUMENT

Petitioners contend (Pet. 13-17) that the 2019 stipulated monetary judgment should be set aside under Rule 60(b)(6) based solely on the subsequent change in decisional law announced by this Court in *AMG Capital Management, LLC* v. *FTC*, 593 U.S. 67, 75 (2021). As the court of appeals recognized, petitioners unambiguously waived any right to bring such a challenge in settling the claims against them. This case accordingly does not provide an appropriate vehicle in which to address arguments about the availability of relief under Rule 60(b)(6).

In any event, the court of appeals correctly held that the *AMG* decision, standing alone, would be an insufficient basis to set aside the stipulated judgment under Rule 60(b)(6). That alternative holding does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. Petitioners' request for relief under Rule 60(b)(6) fails at the threshold because petitioners expressly waived the right to seek such relief.

In stipulating to the district court's entry of judgment, petitioners agreed to "waive all rights to appeal or otherwise challenge or contest the validity of this Order"—*i.e.*, the stipulated judgment. Pet. App. 21a; see D. Ct. Doc. 144-1, at 17 (Nov. 21, 2019) (request signed by petitioners asking district court to adopt stipulated judgment). That agreement not to "challenge or contest the validity" of the stipulated judgment unambiguously encompasses petitioners' current request for Rule 60(b)(6) relief on the ground that the judgment is invalid. See Pet. App. 5a-9a. And petitioners made the agreement knowingly, while represented by counsel. See D. Ct. Docs. 22-25 (Mar. 6, 2019) (entries of

appearance by four separate attorneys on behalf of petitioners).[3] The court of appeals therefore correctly recognized that the waiver is enforceable and bars petitioners from obtaining Rule 60(b)(6) relief. See Pet. App. 3a-9a; cf. *United States* v. *Mezzanatto*, 513 U.S. 196, 203 (1995) (observing that federal procedural rules "were enacted against a background presumption that legal rights generally * * * are subject to waiver by voluntary agreement of the parties").

Petitioners identify no basis for second-guessing the court of appeals' waiver determination. They assert in passing (Pet. 6, 15) that the court invoked the waiver clause "*sua sponte*," apparently suggesting that the FTC had "waive[d] the waiver," *Garza* v. *Idaho*, 586 U.S. 232, 239 (2019). That assertion is incorrect. "[T]he parties briefed the impact of the waiver clause both in district court and on appeal." Pet. App. 4a. The court of appeals therefore committed no error in addressing petitioners' waiver.

Petitioners also observe (Pet. 16) that "Rule 60(b) applies to consent orders just as much as it does to litigated orders." But the court of appeals did not suggest otherwise. In holding that petitioners could not pursue their current challenges to the stipulated judgment, the court relied not simply on the judgment's status as a consent judgment, but on the fact that petitioners had specifically "waived all rights to . . . challenge or contest" the judgment's validity. Pet. App. 3a (brackets

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[3] Petitioners observe that the district court denied a motion by petitioner Martinos to release assets for use in paying petitioners' counsel. See Pet. 3 (citing D. Ct. Doc. 70 (Apr. 5, 2019)). The court did so, however, only after determining that "the release of funds [wa]s unnecessary" because Martinos had access to other funds that he could use to pay for counsel. D. Ct. Doc. 70, at 4.

and citation omitted). None of the decisions that petitioners identify involved such a waiver or suggested that one would be unenforceable. See Pet. 16 (discussing *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992); *City of Duluth* v. *Fond du Lac Band of Lake Superior Chippewa*, 785 F.3d 1207 (8th Cir. 2015); and *Zimmerman* v. *Quinn*, 744 F.2d 81 (10th Cir. 1984)). And petitioners offer no other argument for disregarding their knowing waiver of the right to challenge the stipulated judgment.

2. Because petitioners' waiver independently bars their claim, this case does not provide an appropriate vehicle in which to address the availability of "Rule-60(b)(6) relief based on a post-judgment change in decisional law." Pet. i. In any event, the court of appeals correctly held that, even if petitioners had not waived their right to challenge the stipulated judgment at issue here, they would not be entitled to relief under Rule 60(b)(6). That alternative holding does not conflict with any decision of this Court or another court of appeals.

a. Rule 60(b)(6) allows a district court to relieve a party from a final judgment for "any * * * reason that justifies relief" other than the more specific circumstances set forth in clauses (1) through (5). Fed. R. Civ. P. 60(b)(6); see *Gonzalez* v. *Crosby*, 545 U.S. 524, 528 n.2, 529 (2005); *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988) (explaining that "clause (6) and clauses (1) through (5) are mutually exclusive"). To obtain relief under this "catchall category," *Buck* v. *Davis*, 580 U.S. 100, 112 (2017), a movant must "show 'extraordinary circumstances' justifying the reopening of a final judgment," *Gonzalez*, 545 U.S. at 535 (citation omitted).

In *Gonzalez*, this Court affirmed the denial of a request for Rule 60(b)(6) relief that was based on a change in decisional law, explaining that "[t]he District Court's interpretation was by all appearances correct under the Eleventh Circuit's then-prevailing interpretation" of the relevant statute. 545 U.S. at 536. The Court found it "hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation." *Ibid.* *Gonzalez* thus made clear that a change in decisional law by this Court, standing alone, is generally not an extraordinary circumstance that warrants relief under Rule 60(b)(6). Cf. *Agostini* v. *Felton*, 521 U.S. 203, 239 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6).")

That understanding is consistent with other decisions holding that new judicial decisions generally should not be given retroactive effect in closed cases. When the Court "applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect *in all cases still open on direct review*." *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993) (emphasis added). In "cases already closed," by contrast, "[n]ew legal principles" ordinarily do "not apply." *Reynoldsville Casket Co.* v. *Hyde*, 514 U.S. 749, 758 (1995); see *George* v. *McDonough*, 596 U.S. 740, 751 (2022) (noting the "general rule" that a "'new interpretation of a statute can only retroactively affect decisions still open on direct review'") (brackets and citation omitted). That sharp line reflects the Court's longstanding recognition that "retroactivity in civil cases must be limited by the need for finality." *James B.*

Beam Distilling Co. v. *Georgia*, 501 U.S. 529, 541 (1991) (opinion of Souter, J.). "[P]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 401 (1981) (citation omitted). Accordingly, something more than a change in decisional law is generally needed to justify setting aside a final judgment.

That does not mean that a change in decisional law is never relevant to a Rule 60(b)(6) analysis. Rather, "a change in decisional law may be considered on a Rule 60(b)(6) motion when combined with other factors that might warrant relief, or when the combination of other factors plus the change in decisional law warrant relief." 12 James Wm. Moore et al., *Moore's Federal Practice* § 60.48, at 60-203 (3d ed. 2024) (*Moore's Federal Practice*).

This Court's decision in *Buck* illustrates the kind of factors that may operate in combination with a change in precedent to justify Rule 60(b)(6) relief. Duane Buck was sentenced to death after his attorney called an expert witness who testified that Buck was statistically more likely to act violently because of his race. *Buck*, 580 U.S. at 104, 107-108. After a district court denied Buck's petition for a writ of habeas corpus, Buck sought to reopen the proceeding under Rule 60(b)(6), based on a change in decisional law in combination with other factors. *Id.* at 104-105. In holding that Buck was entitled to that Rule 60(b)(6) relief, this Court treated the relevant change in law as a necessary "precondition," *id.* at 126, while emphasizing that it was the other factors that made the case "extraordinary," *id.* at 124. See *id.* at

123-127. The Court explained that disparate punishments based on race are a "disturbing departure from a basic premise of our criminal justice system" and "'especially pernicious.'" *Id.* at 123-124 (citation omitted). The Court observed that "[r]elying on race to impose a criminal sanction * * * injures not just the defendant, but 'the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts'"—"precisely" the sorts of "concerns" this Court has "identified as supporting relief under Rule 60(b)(6)." *Id.* at 124 (citation omitted). That the State had taken the "remarkable step[]" of confessing error in five other capital cases involving similar testimony by the same expert further showed the extraordinary nature of the case. *Id.* at 125.

The decision below accords with those principles. Consistent with *Gonzalez*, the court of appeals held that a change in decisional law standing alone is generally insufficient to warrant relief under Rule 60(b)(6). Pet. App. 12a. The court recognized the existence of exceptions, however, including when the change in precedent arises in a factually related case. *Ibid.* In that situation, relief under Rule 60(b)(6) may be necessary to "ensure consistency." *Id.* at 13a. But no such concerns were present here. And because petitioners relied solely on the change of law announced in *AMG*, see *id.* at 16a-18a, the court of appeals had no occasion to address what other factors in combination with a change in decisional law might warrant Rule 60(b)(6) relief.

b. Contrary to petitioners' contention (Pet. 7-13), the decision below does not conflict with any decision of another court of appeals.

Only two other courts of appeals—the Fourth and Ninth Circuits—have addressed the precise question at

issue here, *i.e.*, whether this Court's decision in *AMG* warrants Rule 60(b)(6) relief from a prior final judgment imposing monetary sanctions under Section 13(b). Petitioners acknowledge (Pet. 9) that the Fourth Circuit's decision in *FTC* v. *Ross*, 74 F.4th 186, 194-195 (2023), cert. denied, 144 S. Ct. 693 (2024), is consistent with the decision below. They argue (Pet. 13), however, that Ninth Circuit precedent is to the contrary. That is incorrect. The Ninth Circuit has recognized that, standing alone, the change of law announced in *AMG* is an insufficient basis for granting relief from a prior final judgment that awarded monetary relief under Section 13(b). See *FTC* v. *Hewitt*, 68 F.4th 461, 467-470 (2023). That is fully consistent with the decision below.[4]

Nor does the court of appeals' decision here implicate any broader conflict regarding the proper application of Rule 60(b)(6). "[M]ost courts have agreed that changes in decisional law should not, by themselves, be the basis for relief from judgments that have no prospective application." *Moore's Federal Practice* § 60.48, at 60-201; see, *e.g.*, Pet. App. 12a-14a; *Zagorski* v. *Mays*, 907 F.3d 901, 905 (6th Cir.), cert. denied, 139 S. Ct. 450 (2018); *Moses* v. *Joyner*, 815 F.3d 163, 168 (4th Cir. 2016), cert. denied, 580 U.S. 1161 (2017); *Arthur* v.

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[4] Petitioners assert (Pet. 18-19) that the petition for a writ of certiorari in *Hi-Tech Pharmaceuticals, Inc.* v. *FTC*, No. 23-704, which this Court denied on June 3, 2024, presented the same Rule 60(b)(6) question that petitioners raise here. That is incorrect. The Eleventh Circuit's decision in *Hi-Tech* addressed contempt sanctions imposed for violations of an injunction that had been properly entered under the FTC Act. See *FTC* v. *National Urological Grp., Inc.*, 80 F.4th 1236, 1244 (2023), cert. denied, No. 23-704 (June 3, 2024); see also Gov't Br. in Opp. at 15-16, *Hi-Tech Pharms., Inc.* v. *FTC*, No. 23-704 (Apr. 24, 2024). No contempt sanctions are at issue in this case.

Thomas, 739 F.3d 611, 631 (11th Cir.), cert. denied, 574 U.S. 821 (2014); *Adams* v. *Thaler*, 679 F.3d 312, 319 (5th Cir. 2012); *Kramer* v. *Gates*, 481 F.3d 788, 792 (D.C. Cir. 2007); see also Pet. 9-11.

Petitioners identify (Pet. 11-13) other court of appeals decisions that "have not foreclosed the possibility that a change in controlling precedent, even standing alone, might give reason for 60(b)(6) relief." *Cox* v. *Horn*, 757 F.3d 113, 121 (3d Cir. 2014), cert. denied, 575 U.S. 929 (2015). But those courts acknowledge that a change in law would "rarely," if ever, be sufficient by itself to warrant such relief. *Ibid.* (emphasis omitted). In determining whether relief under Rule 60(b)(6) is appropriate in particular cases, they have consequently relied on a "flexible, multifactor approach" that considers post-judgment changes in law along with other relevant factors. *Id.* at 122.[5]

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[5] See *Henson* v. *Fidelity Nat'l Fin., Inc.*, 943 F.3d 434, 444 (9th Cir. 2019) (observing that "a change in the controlling law can—but does not always—provide a sufficient basis for granting relief under Rule 60(b)(6)," and stating that whether such relief is warranted depends on a "'case-by-case inquiry'" in which "'the trial court [must] intensively balance numerous factors'"); *Ramirez* v. *United States*, 799 F.3d 845, 850-851 (7th Cir. 2015) (rejecting "the absolute position * * * that intervening changes in the law can never support relief under Rule 60(b)(6)," while stating that a court must "examine all of the circumstances" in order to determine whether relief is warranted) (emphasis omitted); *City of Duluth* v. *Fond du Lac Band of Lake Superior Chippewa*, 785 F.3d 1207, 1210 (8th Cir. 2015) (pointing to "[a] change in the law" as one of "several factors that the district court should consider" in deciding whether to grant Rule 60(b)(6) relief); *Biggins* v. *Hazen Paper Co.*, 111 F.3d 205, 212 (1st Cir.) ("[A]bsent extraordinary circumstances, we would think it dubious practice to reopen a final judgment under Rule 60(b)(6) solely because of later precedent pointing in a different direction."), cert. denied, 522 U.S. 952 (1997).

Any minor differences among the various circuits' articulations of the Rule 60(b)(6) standard appear to have had no meaningful practical effect on how Rule 60(b)(6) is applied in practice. See *Cox*, 757 F.3d at 121 (acknowledging that "there is not much daylight between the 'never' position * * * and the 'rarely' position"); *Ramirez* v. *United States*, 799 F.3d 845, 851 (7th Cir. 2015) (noting that the Seventh Circuit's position "may not be inconsistent with that of the Fifth Circuit"). In particular, petitioners cite no case in which a court of appeals has actually granted Rule 60(b)(6) relief based solely on a change in decisional law. And conversely, petitioners cite no case in which a court of appeals has held that a change in decisional law may not be considered in combination with other factors as part of a Rule 60(b)(6) analysis. In fact, courts stating that a change in decisional law standing alone is insufficient often have gone on to consider other relevant circumstances. See, *e.g.*, *Ross*, 74 F.4th at 194-195; *Diaz* v. *Stephens*, 731 F.3d 370, 377 (5th Cir.), cert. denied, 570 U.S. 946 (2013). Thus, under both approaches, the analysis is essentially the same: A change in decisional law by itself will not justify Rule 60(b)(6) relief, but it may be sufficient in combination with other equitable factors.

Moreover, even if there were a genuine conflict among the circuits concerning the proper application of Rule 60(b)(6), petitioners identify no court of appeals that would require Rule 60(b)(6) relief in this case. Petitioners assert (Pet. 13) that the Ninth Circuit is one of the courts that have purportedly adopted their preferred view of Rule 60(b)(6). Yet as discussed above, see pp. 12-13, *supra*, the Ninth Circuit has held that the specific change in decisional law at issue here—this Court's decision in *AMG*—does *not* require re-opening

earlier equitable monetary judgments entered under Section 13(b). See *Hewitt*, 68 F.4th at 467-470.

Two additional factors also weigh strongly against Rule 60(b)(6) relief in this case. First, petitioners chose to accept the stipulated judgment here at a time when the circuits were split on the availability of monetary relief under Section 13(b) and a petition for a writ of certiorari in *AMG* was pending before this Court. The stipulated judgment incorporated a substantial concession by the FTC, moreover, because one term of the agreement provided that petitioners' payment obligations would be limited to approximately $355,000 unless the district court subsequently determined that petitioners had misrepresented their financial status. See p. 4, *supra*. Having made the strategic choice to settle notwithstanding the pendency of the issue in this Court, and having obtained a substantial benefit by entering into that agreement, petitioners should not now be permitted to argue that the Court's decision in *AMG* entitles them to withdraw their consent and scuttle the entire settlement.

Second, the Commission asserted claims for monetary relief against petitioners not only under Section 13(b) of the FTC Act, but also under Section 19. See Compl. ¶¶ 72-73. Where it applies, Section 19 authorizes courts to order "the refund of money" or "the payment of damages." 15 U.S.C. 57b(b); see *FTC* v. *Simple Health Plans LLC*, 58 F.4th 1322, 1329-1330 (11th Cir. 2023). In *AMG*, this Court emphasized that "[n]othing [the Court] sa[id]" in that decision "prohibits the Commission from using its authority under * * * [Section] 19 to obtain restitution on behalf of consumers." 593 U.S. at 82. Thus, even if the Court had decided *AMG* before the district court entered final judgment in this

case, the FTC could still have obtained monetary relief under Section 19.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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