No. 23-1742

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

and

MARC-PHILLIP FERZAN,
Receiver-Appellee,

v.

ANDRIS PUKKE; PETER BAKER;
and JOHN USHER,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Maryland
No. 18-cv-3309 (Hon. Peter J. Messitte)

PAGE-PROOF BRIEF OF THE FEDERAL TRADE COMMISSION

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INTRODUCTION

Appellants Andris Pukke, Peter Baker, and John Usher operated a real estate scam that this Court previously described as "dishonest to the core." *FTC v. Pukke*, 53 F.4th 80, 105 (4th Cir. 2022) ("*Pukke I*"). They induced more than a thousand consumers to purchase lots in a purported luxury real estate development in Belize by lying about the project's viability, its finances, and its supposed safety as an investment. They also covered up Pukke's prior conviction for a crime of dishonesty by using pseudonyms to conceal his involvement in the project. Following a multiweek trial, the district court found Appellants liable for deceptive practices in violation of the Federal Trade Commission Act ("FTC Act") and held them in contempt for violating a prior injunction stemming from Pukke's operation of an earlier scam. The court ordered Appellants to pay $120.2 million in consumer redress and appointed a receiver to manage the corporate entities involved in the scam and liquidate their assets, including the Belizean property.

In a prior appeal, this Court affirmed the liability findings and held that the $120.2 million judgment was proper as a contempt sanction. It also affirmed the receivership and a freeze on certain of

Appellant's assets. On remand, the district court entered a new order that reaffirmed these provisions. That is the order at issue in this appeal. Stripped to its essence, Appellants' argument is that the district court should have terminated the receivership and transferred the receivership assets—principally the 14,000-acre Belizean property—to Appellants for Appellants to sell. They claim that the Court should trust them to use the resulting proceeds to pay the contempt judgment.

Appellants' arguments must be rejected for multiple reasons. First, they lack standing to pursue this appeal because they have no direct ownership interest in the Belizean property or the other assets in the Receiver's possession, and they have not shown that they possess any personal assets subject to the freeze. Second, their arguments are barred by the law-of-the-case doctrine because this Court has already affirmed the receivership and the asset freeze. Finally, their arguments fail on the merits. Given Appellants' well-documented history of fraud and asset concealment, the district court did not abuse its discretion by maintaining the receivership and asset freeze, which are critical to ensuring that Appellants' victims receive the monetary redress they deserve.

JURISDICTION

The district court had subject matter jurisdiction over the Commission's claims under 28 U.S.C. §§ 1331, 1337(a), and 1345. The district court orders under review (DE 1446 and 1447 (JA __ and __)) were entered on June 15, 2023. Appellants timely appealed on July 12, 2023. This Court has appellate jurisdiction under 28 U.S.C. § 1291, but as discussed below, Appellants lack Article III standing to bring this appeal.

QUESTIONS PRESENTED

1. Do Appellants have Article III standing to bring this appeal?

2. Are Appellants' claims barred by the law of the case doctrine and the mandate rule given this Court's decision in *Pukke I*?

3. Did the district court act within the scope of its discretion by maintaining the asset freeze and receivership provisions that this Court affirmed in *Pukke I*?

STATEMENT OF THE CASE

A. Pukke's History of Fraudulent Activity

Pukke is a serial fraudster whose history of misdeeds dates back at least to 1996, when he pleaded guilty to mail fraud stemming from his operation of a loan scam. *See United States v. Pukke*, No. 2:96-cr-137

(W.D. Pa.). Pukke was sentenced to three years probation, fined $5,000, and ordered to pay $38,078 in restitution. *See id.* ECF No. 11. He also entered into a consent judgment in a parallel civil case. *See United States v. Pukke*, 2:96-cv-1172 (W.D. Pa.).

Shortly afterwards, Pukke formed a company called AmeriDebt, which ran a credit counseling scam. The FTC sued Pukke over AmeriDebt in 2003. *See FTC v. AmeriDebt, Inc.*, 373 F. Supp. 2d 558, 561 (D. Md. 2005). Pukke eventually resolved that lawsuit by agreeing to a consent judgment, which required him to pay $172 million in consumer redress, with all but $35 million suspended on the condition that Pukke cooperate fully with the FTC. *Pukke I*, 53 F.4th at 100. The consent order also permanently enjoined Pukke from making false representations in connection with the telemarketing of any goods or services. *Id.* The *AmeriDebt* judgment further directed Pukke and Baker—"who was also involved with AmeriDebt," *id.*—to turn assets over to a receiver, but instead of cooperating they conspired to hide Pukke's assets, leading to a contempt finding and six weeks of incarceration. *Id.*

Meanwhile, in 2011, Pukke pleaded guilty to obstructing justice based on the false statements he made about his assets in the *AmeriDebt* case and a separate bankruptcy. *Id.* at 98; *see United States v. Pukke*, No. 8:10-cr-734 (D. Md.). He was sentenced to 18 months in prison plus another three years of supervised release.[1]

B. The Sanctuary Belize Scam

While the *AmeriDebt* litigation and Pukke's obstruction-of-justice prosecution were ongoing, Pukke was also engaged in the Sanctuary Belize real estate scam with Baker and Usher. The basic facts underlying that scam are set forth in this Court's decision in *Pukke I*. In 2003, Pukke and Baker began developing land in Belize; in 2005, with Usher's help, they began selling lots with the purported "intent to convert this tropical area into a luxury resort for American vacationers." *Pukke I*, 53 F.4th at 97. They called this project Sanctuary Belize, and the district court referred to the various individuals and corporate entities that developed and sold the real estate lots as the Sanctuary Belize Enterprise ("SBE"). *Id.*

[1] Pukke is also currently under indictment for alleged wire fraud and unlawful monetary transactions in connection with the Sanctuary Belize scam. *United States v. Pukke*, No. 1:23-cr-168 (S.D.N.Y.).

Pukke was effectively the CEO of the project and led its sales and marketing efforts. *Id.* Beginning in 2009, he launched "an aggressive advertising campaign" on television, websites, and other media to persuade consumers to buy lots in Sanctuary Belize. *Id.* Consumers who provided contact information would then be called by telemarketers, who were "coached to create a sense of urgency and a fear of loss on the part of prospective purchasers, techniques somewhat reminiscent of those used by Jordan Belfort, aka the 'Wolf of Wall Street.'" *Id.* (internal quotation marks omitted).

SBE's sales pitch relied on a mountain of lies. Telemarketers told prospective purchasers the development was not risky because it had "no debt" and that "every dollar" from the sale of lot purchases would go "right into the progress of the development." *Pukke I*, 53 F.4th at 98. In fact, SBE carried "not insignificant amounts of debt," was a risky investment, and spent "only 14% of sales revenue for development"; Pukke diverted about 12.8% of sales revenue—some $18 million—"for his own benefit and that of his friends and family." *Id.* at 98-99. SBE also promised that the project would boast luxury amenities, most of which "either d[id] not exist, d[id] not exist as promised or ha[d] never

been seriously contemplated to exist." *Id.* (internal quotation marks omitted). Consumers were told that the development would be done in two to five years, even though SBE lacked sufficient funds and had no realistic prospect of finishing the project in that time. *Id.* Additionally, salespersons falsely told prospective purchasers there was a "strong resale market" for Sanctuary Belize lots, even as they were actively working to undermine and impede resales by preventing owners from reselling lots before SBE sold all the lots. *Id.*

Finally, as part of an "overarching falsehood," SBE's salespersons represented to consumers that Pukke had no meaningful involvement in the development. *Pukke I*, 53 F.4th at 99. They knew that disclosure of his felony convictions for deception of trusting consumers would "scare away purchasers." *Id*. To keep consumers in the dark, they disguised Pukke's identity behind various aliases. *Id.* at 98.

All told, Appellants sold more than 1,000 Sanctuary Belize lots—some of them more than once—swindling consumers out of $120.2 million. *Id.* at 98-99.

C. Initial District Court Proceedings

The FTC sued Pukke, Baker, Usher, and various SBE entities in 2018, seeking to shut down the Sanctuary Belize scam and secure redress for its victims. The FTC's complaint alleged violations of the FTC Act's prohibition on deceptive acts or practices, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. The FTC brought its claim under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), which authorizes the FTC to sue in district court for a permanent injunction against violations of the laws under its purview. At the time, courts of appeals had unanimously held that Section 13(b) authorized the FTC to obtain both equitable monetary relief to redress consumer harm and prospective injunctive relief. *See, e.g.*, *FTC v. Ross*, 743 F.3d 886, 890-92 (4th Cir. 2014).

In addition to filing the complaint, the FTC filed several motions to hold Pukke, Baker, and Usher in civil contempt for violating previous court orders. Most relevant here, the FTC alleged that Pukke, Baker, and Usher's operation of the Sanctuary Belize scam violated the *AmeriDebt* consent order's prohibition on deceptive telemarketing

practices.[2] The district court consolidated the existing *AmeriDebt* case with the new Sanctuary Belize case. DE 261 at 1 (JA __). Though they were properly served, Usher and several SBE-affiliated corporations never appeared, and the district court entered default judgments against them. DE 1112 (JA __).

The district court entered a temporary restraining order, which was later superseded by two preliminary injunction orders. *See In re Sanctuary Belize Litigation*, 482 F. Supp. 3d 373 (D.Md. 2020) ("*Sanctuary Belize*"); *see also* DE 615 (JA __). Among other things, those orders appointed a receiver to take control of the corporate defendants' related business entities—including Sittee River Wildlife Reserve ("SRWR"), a corporation that owned SBE's property in Belize. DE 615 at 7, 9, 25-31 (JA __, __, __-__). Pukke, Baker, and Usher were ordered to turn assets over to the Receiver. DE 615 at 31-33 (JA __-__). The orders also froze any assets the defendants had as of the date the TRO was entered (November 5, 2018) and assets obtained afterwards derived from the Sanctuary Belize scam. DE 615 at 12-14 (JA __-__).

[2] Although Usher was not a party in *AmeriDebt*, the consent order also bound Pukke's business associates. *Pukke I*, 53 F.4th at 100.

Following a lengthy bench trial, the district court issued a detailed opinion finding that Pukke, Baker, Usher, and the various SBE entities violated the FTC Act and TSR. *See Sanctuary Belize*, 482 F. Supp. 3d at 429-59. It also held Pukke, Baker, and Usher in contempt for violating the *AmeriDebt* injunction. *Id.* at 476-77. The district court found that the scam caused $120.2 million of consumer harm. *Id.* at 475.

The district court issued three remedial orders: the "De Novo Order" (DE 1194), the "Default Order" (DE 1112), and the "Contempt Order" (DE 1113). The relevant provisions of the De Novo and Default Orders are similar. In addition to permanent injunctive relief, the orders imposed a $120.2 million equitable monetary judgment against the defendants, to be paid to the FTC and used for consumer redress. DE 1194 at 8, 11-12 (JA __, __-__); DE 1112 at 9, 14 (JA __, __). The orders also required Pukke, Baker, and Usher to transfer assets in excess of a nominal amount to either the FTC or the Receiver and stripped them of any rights in assets previously transferred to the Receiver. DE 1194 at 8-10 (JA __-__); DE 1112 at 9-12 (JA __-__). The orders modified the asset freeze to permit these transfers and provided that the freeze would be dissolved upon full satisfaction of the monetary

judgment. DE 1194 at 12 (JA __); DE 1112 at 15 (JA __). Finally, the orders restated the Receiver's authority to control, manage, and liquidate the receivership assets. DE 1194 at 13-16 (JA __-__); DE 1112 at 16-19 (JA __-__).

As relevant here, the Contempt Order required Pukke, Baker, and Usher to pay the FTC the same $120.2 million imposed in the other orders: an amount representing the total amount of consumer loss. DE 1113 at 3 (JA __).[3] Appellants were ordered to transfer assets sufficient to pay the judgment to the FTC within 30 days. *Id.*

D. This Court's Decision On Appeal

Pukke, Baker, Usher, and some of the corporations appealed to this Court, which substantially affirmed the district court's judgment. The Court affirmed the contempt finding as "supported by an abundance of evidence and show[ing] no hint of an abuse of discretion." *Pukke I*, 53 F.4th at 101-02. The Court also found it "clear that Pukke and SBE violated the FTC Act and TSR" through their brazen lies, concluding that "Pukke's Belizean business venture was dishonest to

[3] The district court also ordered Pukke to pay the full $172 million judgment in *AmeriDebt*. DE 1113 at 2-3 (JA __-__).

the core" and that "this sort of deception lies at the heart of what the FTC is empowered to seek out and stop." *Id.* at 105.

The Court vacated the monetary judgment against Pukke and Baker to the extent it relied on Section 13(b) of the FTC Act, which the Supreme Court had recently concluded did not authorize monetary relief.[4] *Pukke I*, 53 F.4th at 105; *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021). But that did not "change the bottom line" because Pukke, Baker, and Usher were still liable for the same $120.2 million as a contempt sanction for violating the *AmeriDebt* consent order. *Id.* at 105-06. The Court held that *AMG* did not affect the validity of the district court's injunctive relief or invalidate the appointment of the Receiver. *Id.* at 106-08. It also rejected Pukke's challenge to the asset freeze, finding the freeze "an appropriate use of the court's discretion, especially given the risk of Pukke diverting funds to his personal accounts." *Id.* at 109.

[4] The parties have disputed whether the Court also vacated the Section 13(b) monetary judgment against Usher, who defaulted, *see Pukke I*, 53 F.4th at 106-07, but that does not matter for present purposes because Usher is plainly subject to the monetary contempt sanction.

Accordingly, the Court affirmed the judgment in part and vacated and remanded for further proceedings in part.[5]

E. Proceedings on Remand

On remand, the FTC filed a motion to reform and reaffirm the district court's prior relief orders in accordance with this Court's mandate. DE 1404 (JA __). Pukke, Baker, and Usher, joined by several of the corporate defendants, opposed (DE 1405 (JA __)), and filed a separate motion for return of property (DE 1435 (JA __)). They argued that the district court should lift the asset freeze and order the return of the assets held by the Receiver, contending there was no longer any basis for the receivership in light of *AMG* and this Court's vacatur of the Section 13(b) monetary relief. DE 1405 at 8 (JA __); DE 1435-1, at 1-2 (JA __-__).

The district court largely granted the FTC's motion and denied the motion for return of property. DE 1441; DE 1447 (JA __, __). The court explained that "[t]he Contempt Order stands in full force and effect" because "[t]he Fourth Circuit clearly upheld the $120.2 million

[5] The Supreme Court denied Appellants' petition for a writ of certiorari on October 2, 2023. *See Pukke v. FTC*, No. 22-958, 2023 WL 6377807 (U.S. Oct. 2, 2023).

judgment against Baker, Pukke, and Usher as set forth in the Contempt Order and separately confirmed the validity of the Receivership and the injunctive relief ordered pursuant to Section 13(b)." DE 1441 at 2 (JA __). That relief, the court explained, "plainly include[d] freezing Defendants['] assets and requiring that they be turned over to the Receiver." *Id.*

The district court rejected the defendants' argument that they were entitled to a return of the assets held by the Receiver. DE 1441 at 5 (JA __). It noted that "[i]n the course of these proceedings many of these assets were in fact long hidden by Defendants" and that they should not now be "rewarded." *Id.* It further noted that this Court had "loudly and clearly" affirmed the Receiver's authority to "manage and liquidate these assets," and that the turnover of assets was appropriate given the "overall conspiratorial scam." *Id.*

The accompanying order—the "Reaffirmation Order" from which Appellants now appeal—confirmed that "[t]he Contempt Order … stands in full force and effect and requires that the Defendants' assets be frozen and otherwise turned over to the Receiver." DE 1447 at 2 (JA __). The Reaffirmation Order also explained that the contempt

judgment "supports all the monetary relief and related provisions directed at or related to the Individual Defendants" in the De Novo and Default Orders. DE 1447 at 3 (JA __-__). The Reaffirmation Order further confirmed that "[t]he injunctive relief and receivership provisions of the De Novo Order … and the Default Order … stand in full force and effect." *Id.* at 2 (JA __). The court reiterated that Pukke, Baker, Usher, and the defaulting corporate defendants remained "obligated to relinquish, transfer, and turn over all assets that they directly or indirectly own or control … until the judgments against them are satisfied in full."[6] *Id.* at 4 (JA __).

Pukke, Baker, and Usher now appeal from the Reaffirmation Order. The corporate defendants who joined the briefing on remand in the district court have not joined the appeal. Although the Receiver has taken possession of the corporate defendants and their assets (including the Sanctuary Belize property), Pukke, Baker, and Usher have never

[6] The district court also issued a separate order implementing the next phase of a consumer redress plan. DE 1446 (JA __). Although Appellants reference this order in their Brief's Statement of the Case (Br. 12, 13), they do not discuss it in the argument section of their brief and it is not relevant to the issues they raise on appeal.

paid a penny of the judgment against them or turned over any individual assets to the Receiver. *See* DE 1217-2 at 4, 9 (JA __, __).

SUMMARY OF ARGUMENT

For starters, Appellants lack standing to bring this appeal. Article III's standing requirements—injury, traceability, and redressability—must be met by anyone seeking appellate review, just as they must be met by anyone filing a complaint. Here, Appellants are complaining about the maintenance of the receivership and asset freeze. But Appellants are not injured by the maintenance of the receivership because they do not directly own the Sanctuary Belize property or any of the other underlying assets they seek to have "returned." Those assets belong to various corporate entities that did not join this appeal. Appellants' status as shareholders or as principals who control (or formerly controlled) those corporate entities does not give them standing to assert injuries on the corporate entities' behalf. To the extent that Appellants are challenging the freeze on their personal assets, they have not shown that they currently possess or control any assets that are subject to the freeze. Accordingly, the appeal should be dismissed.

If the appeal is not dismissed for lack of standing, the Court should affirm because Appellants' arguments are barred by law of the case. This Court already upheld both the asset freeze and the receivership in the prior appeal. This Court also upheld the contempt judgment and explained that the district court's previous "bottom line" had not changed because the contempt judgment justified both the asset freeze and receivership. Appellants offer no explanation for why this Court's decision does not dictate the outcome of the present appeal; they simply ignore it.

Even if the Court had not already resolved these issues, Appellants' arguments would fail on the merits. As the district court explained, the receivership and asset freeze remain necessary to secure consumer redress for the harm associated with Appellants' violation of the *AmeriDebt* injunction. That determination was not an abuse of discretion. Nor was any other aspect of the district court's decision. The court did not prevent Appellants from paying their contempt judgment; its factual findings provide a thorough explanation for the necessity of the receivership; Appellants cannot be trusted to sell the receivership assets themselves; and there is no merit to Appellants' attacks on the

trustworthiness and qualifications of the Receiver. Appellants forfeited any request for an accounting by failing to make such a request until now, but regardless the district court did not abuse its discretion by failing to order an accounting on top of the regular reports the Receiver already files.

STANDARD OF REVIEW

This Court reviews a district court's decision to award equitable relief, such as an asset freeze or an accounting, for abuse of discretion. *Solis v. Malkani*, 638 F.3d 269, 274 (4th Cir. 2011).

ARGUMENT

I. APPELLANTS LACK STANDING TO BRING THIS APPEAL.

This appeal should be dismissed for lack of standing because Appellants have not shown that they suffered any injury from the portions of the Reaffirmation Order they are challenging.

Article III of the Constitution requires that "any person invoking the power of a federal court must demonstrate standing to do so." *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013). The standing requirement "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019)

(internal quotation omitted). To establish standing, the party invoking the appellate court's jurisdiction must "do more than simply allege a nonobvious harm"; it must "explain how the elements essential to standing are met." *Id.* Those elements are "(1) a concrete and particularized injury, that (2) is fairly traceable to the challenged conduct, and (3) is likely to be redressed by a favorable decision." *Id.* at 1950. "As the part[ies] invoking this Court's jurisdiction," Appellants "bear[] the burden" of establishing these elements. *Id.* at 1955.

Appellants have not met this burden. All of their arguments are directed toward what Appellants describe as an "asset freeze and seizure" order.[7] Br. 15, 16, 19-22, 24, 26. As relief, they request that the Sanctuary Belize property and other assets currently under the Receiver's control should be "returned" to them. Br. 13, 14, 20, 24-26. But Appellants have not established that they directly own any of the assets in the Receiver's control, and they fail to identify any personal assets they are seeking to have unfrozen. Accordingly, Appellants have

[7] The Reaffirmation Order maintains an asset freeze, but the district court never issued any "seizure order." That label appears to refer to the portion of the Reaffirmation Order that keeps the receivership "in full force and effect." DE 1447 at 2 (JA __).

not demonstrated standing to challenge the receivership or the asset freeze.

A. Appellants Lack Standing To Challenge the Receiver's Control Over Corporate Assets.

Appellants lack standing to challenge the portion of the Reaffirmation Order that maintains the receivership because Appellants do not own the Sanctuary Belize property or any other assets that they seek to have "returned." Those assets are owned by corporate entities that are legally distinct from Appellants and that did not join this appeal. Appellants themselves have never turned over any personal assets to the Receiver. And because they do not own the assets in the receivership, Appellants are not directly injured by the Receiver's continued control over those assets. Moreover, those assets cannot be "returned" to Appellants because Appellants did not own them in the first place.

It is well settled that a party lacks standing to appeal portions of a district court's orders that relate solely to another party. *See United States v. Yalincak*, 30 F.4th 115, 132 (2d Cir. 2022) (dismissing appeal challenging codefendant's restitution order because the outcome of the appeal would have "no effect" on appellant's restitution obligations and

he had therefore "suffered no cognizable injury as a result of" the challenged order); *Morrison-Knudsen Co. v. CHG Int'l, Inc.*, 811 F.2d 1209, 1214 (9th Cir. 1987) ("It is hornbook law that a party may only appeal to protect its own interests, and not those of a coparty." (internal quotation omitted)). Just as there is a "general standing doctrine that a litigant may not advance the rights of others," there is a corollary "that a party may not appeal to protect the rights of others." 15A Charles Alan Wright & Arthur Miller, *Fed. Prac. & Proc.* § 3902 (3d ed. 2023). That rule forecloses any argument from Appellants about the assets in the receivership estate.

None of the Appellants have any direct ownership interest in any assets in the receivership estate. The most significant of those assets—and the focus of Appellants' brief—is the Sanctuary Belize property. *See, e.g.*, Br. 20. None of the Appellants have any direct ownership interest in that land. A company called Sittee River Wildlife Reserve ("SRWR") "became the sole owner of the entire Sanctuary Belize development" in 2007. *Sanctuary Belize*, 482 F. Supp. 3d at 390. Although SRWR was a party to the proceedings on remand below and expressly named in the Reaffirmation Order, *see* DE 1447 at 1 & n.1 (JA

__ & n.1), neither SRWR nor any other corporate defendant appealed. The only parties to this appeal are the individual Appellants, who have never contributed any assets to the receivership. *See* DE 1217-2 at 4, 9 (JA __, __) (declaration from Receiver discussing source of the assets in the receivership).

A recent claim by SRWR and several other corporate defendants likewise indicates that the individual Appellants have no constitutionally cognizable interest in the receivership assets. Following the Reaffirmation Order, those companies sued in the United States Court of Federal Claims seeking redress for the "millions of dollars of assets and properties" they claim were "wrongfully seized" in this action—i.e., the receivership assets.[8] Complaint at 1, *Buy Belize et al. v. United States of America*, No. 1:23-cv-1025 (U.S. Ct. Claims July 3, 2023), ECF No. 1. Their theory is that the "seized assets and property" constitute "an illegal exaction" because those belonged to the corporations, who "are separate from Pukke, Baker, and Usher." *Id.* at 2. Each of the entities—represented by the same counsel who represent Appellants here—emphasizes that "[i]t is a separate legal entity from

[8] The estate of Pukke's father is also a party to that action.

its stockholders and members." *Id.* at 3. The corporate entities thus view themselves as both legally distinct from Appellants and as the direct owners of the receivership assets.

To be sure, Appellants did have practical control over the Sanctuary Belize property and other receivership assets through their ownership or control of the various corporate entities that are now managed by the Receiver. That is why those entities and their assets are properly part of the receivership estate. *See, e.g.*, *SEC v. Hickey*, 322 F.3d 1123, 1125, 1131-32 (9th Cir. 2003) (district court's "broad equitable powers" authorized it to freeze assets of corporate entity that was "dominated and controlled" by contemnor).[9] But neither ownership nor control over the corporate entities confers Article III standing to assert those entities' property rights in litigation. "It is considered a fundamental rule that a shareholder—even the sole shareholder—does not have standing to assert claims alleging wrongs to the corporation." *Smith Setzer & Sons, Inc. v. S.C. Procurement Rev. Panel*, 20 F.3d 1311,

[9] Appellants have not disputed, either here or below (*see* DE 1405 (JA __)), that they controlled the corporate entities and that this control requires that those entities and the entities' assets be used to satisfy the contempt judgment. *See* DE 1408 at 2 (JA __) (summarizing evidence of Appellants' control of the corporate entities).

1317 (4th Cir. 1994) (cleaned up). Similarly, "[c]orporate officers … generally lack standing to defend their corporation's property interests." *Prudential Ins. Co. of Am. v. Shenzhen Stone Network Info. Ltd.*, 58 F.4th 785, 792 (4th Cir. 2023). That Pukke, Baker, and Usher may be shareholders or principals of the corporate defendants or otherwise exercised control over them is thus insufficient to confer standing.

Since Pukke, Baker, and Usher have no direct ownership interest in the assets owned by the corporate entities, they suffer no Article III injury from the Receiver's continued control over those assets. And since Appellants have never turned over any personal assets to the Receiver, an order requiring the "return" of the receivership assets would not directly benefit them. Appellants thus lack standing to challenge the maintenance of the receivership.

B. Appellants Have Not Shown That They Possess Any Assets That Are Subject to the Asset Freeze.

To the extent that Appellants are challenging the portion of the Reaffirmation Order that freezes their personal assets, they have not met their burden to demonstrate standing because they have not identified any assets they possess that are subject to the freeze. The freeze applies only to "assets that predate the filing of this case [on

November 6, 2018] or are derived from actions or assets that predate the filing of this case," DE 1447 at 2-3 (JA __-__)"); *see also* DE 615 at 12-14 (JA __-__). It does not apply to assets acquired later on, such as money that Appellants may earn through employment or other legitimate activity.

Appellants' brief focuses on "the Sanctuary Belize assets," *i.e.,* the assets in the receivership. *E.g.* Br. 19, 20. As discussed above, these assets do not belong to Appellants, and the assets under the Receiver's control are not subject to the freeze. Appellants do not identify any assets that they personally own that are still in their possession or control and hence subject to the freeze. Absent such a showing, Appellants have failed to demonstrate that any of them has standing to challenge the asset freeze.

II. APPELLANTS' ARGUMENTS ARE BARRED BY THE LAW OF THE CASE DOCTRINE AND THE MANDATE RULE.

Even if Appellants have standing, their arguments are barred by the law of the case doctrine and the mandate rule. Appellants argue that in light of *AMG* and this Court's vacatur of the Section 13(b) monetary judgment, the district court was also required to lift the asset freeze and "seizure order"—*i.e.*, the receivership provisions of the prior

orders—and transfer the receivership assets to them. Br. 15, 19. But this Court specifically affirmed both the receivership and the asset freeze in its prior decision. *Pukke I*, 53 F.4th at 107-09. Under the mandate rule, the district court had no authority to reconsider those issues, and under the more general law of the case doctrine, this Court is bound by its rulings in the prior appeal.

Under the law of the case doctrine, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case," including "a subsequent appeal in the same litigation." *Fusaro v. Howard*, 19 F.4th 357, 367 (4th Cir. 2021) (internal quotation omitted). The mandate rule is a "more powerful version of the law of the case doctrine" that "prohibits lower courts, with limited exceptions, from considering questions that the mandate of a higher court has laid to rest." *Doe v. Chao*, 511 F.3d 461, 465 (4th Cir. 2007) (internal quotation omitted). Under this rule, "any issue conclusively decided by this court on the first appeal is not remanded," and a district court has no authority to reconsider it. *Id.*

Here, Pukke argued in a prior appeal that *AMG* required nullification of the receivership as well as the Section 13(b) monetary

award. This Court squarely rejected that claim, holding that "*AMG* does nothing of the sort." *Pukke I*, 53 F.4th at 107. The Court explained that "the appointment of a receiver has long been considered an ancillary power that a court can deploy to effectuate its injunctive relief" and that a receivership was appropriate here to "ensur[e] further FTC Act and TSR violations would not occur and that Pukke would not continue to profit from these deceptions." *Id.* at 107-08. The Court likewise rejected Pukke's challenge to the asset freeze, holding that the freeze was "an appropriate use of the court's discretion" to secure payment of a civil contempt sanction, "especially given the risk of Pukke diverting funds to his personal accounts." *Id.* at 109. This Court thus held that the asset freeze was appropriate even though *AMG* rendered monetary relief under Section 13(b) unavailable.

Because this Court affirmed the receivership and the asset freeze provisions of the district court's prior orders, the mandate rule barred the district court from reconsidering those provisions on remand. Indeed, the Court's order constituted only a partial remand. *See Pukke I*, 53 F.4th at 110 ("The judgment is affirmed in part and vacated and remanded in part for such further proceedings as are consistent with

this decision."). Thus, the district court plainly did not err by reaffirming the receivership and asset freeze; it had no authority to do anything else.

Similarly, the law of the case doctrine precludes this Court from revisiting its prior decision affirming the receivership and the asset freeze. There are only three exceptions to the law of the case doctrine: "(1) a subsequent trial produces substantially different evidence, (2) controlling authority has since made a contrary decision of law applicable to the issue, or (3) the prior decision was clearly erroneous and would work manifest injustice." *Fusaro* 19 F.4th at 367. The first two exceptions plainly do not apply. For the third exception to apply, the prior decision "cannot be just maybe or probably wrong; it must strike [the Court] as wrong with the force of a five-week-old, unrefrigerated dead fish." *Id.* (cleaned up). Here, Appellants have not even alleged that the prior decision was wrong, much less shown the kind of extraordinary circumstances that would allow this Court to reconsider it.

III. The District Court Did Not Abuse Its Discretion By Maintaining the Receivership or the Asset Freeze.

Even if the district court had discretion to revisit the receivership and asset freeze provisions this Court had previously affirmed, it did not abuse its discretion by maintaining those provisions in the Reaffirmation Order. The district court made extensive findings about Appellants' history of fraud, diversion of assets for personal and familial gain, failure to follow court orders, and concealment of assets. *Sanctuary Belize*, 482 F. Supp. 3d at 393-96, 409-10.[10] It cited some of this history in the Reaffirmation Order. DE 1441 at 5 (JA __). These findings, which this Court affirmed, are more than sufficient to support the continuation of both the asset freeze and the receivership. None of Appellants' arguments to the contrary holds water.

A. The Contempt Sanction Is a Valid Basis for the Asset Freeze and Receivership.

There is no merit to Appellants' argument that the asset freeze should be lifted because there is "no longer any nexus" between the relief the FTC sought and the assets (if any) subject to the freeze. Br.

[10] For this reason, there is no merit to Appellants' suggestion that "the district court made no … fact findings" that would support an asset freeze and receivership. Br. 21-22.

16. As this Court held in an earlier appeal, vacating the Section 13(b) award "does not in fact change the bottom line" because Appellants are liable for the same amount as a contempt sanction. *Pukke I*, 53 F.4th at 106. Put another way, "the harm from Defendants' contumacious conduct is … the same as the harm caused by their FTC Act violations." DE 1109 at 1 (JA __). Thus, Appellants are still subject to a contempt sanction in the amount of $120.2 million: the "consumer loss caused by their violation of the [*AmeriDebt*] Telemarketing Order." *See* DE 1113 at 3 (JA __). And because that contempt sanction addresses the same harm as the FTC Act violations, the court properly maintained both the receivership and the freeze on Appellants' personal assets.

Appellants misplace their reliance (Br. 16-19) on *FTC v. On Point Capital Partners, LLC*, 17 F.4th 1066 (11th Cir. 2021). *On Point* does not help Appellants because, unlike this case, it did not involve a Section 13(b) case and contempt proceeding consolidated into a single proceeding with a single docket number and caption. *See* DE 261 at 1 (JA ___); *see also Pukke I*, 53 F.4th at 104 (*AmeriDebt* contempt motions consolidated with the Sanctuary Belize case). In *On Point*, the district court had entered an asset freeze and receivership order in place to

secure a monetary judgment under Section 13(b). 17 F.4th at 1075-76. Separately, the defendants there were subject to a contempt sanction—and associated asset freeze and receivership order—for their violation of a consent decree in an earlier case (*Acquinity*). *Id.* at 1076. Following *AMG*, the Eleventh Circuit vacated the *On Point* order asset freeze and receivership, reasoning that with monetary relief off the table, "there is no need to preserve resources for a future judgment" in *On Point*. *Id.* at 1078.

Appellants' suggestion that they should be entitled to the same relief now that the Section 13(b) monetary award against them has been vacated (Br. 18-19) misunderstands the Eleventh Circuit's analysis. Here, the Contempt Order, De Novo Order, and Default Order were all entered on the same docket and are part of the same case. Thus, even though there is no longer any basis for monetary relief under Section 13(b), the Contempt Order remains as a basis for the asset freeze and receivership. Nothing in *On Point* undermines that conclusion. Indeed, the Eleventh Circuit emphasized in *On Point* that "nothing in this opinion should be construed as commenting on or having a legal effect on the separate asset freeze in *Acquinity*," *id.* at

1078, which was entered to facilitate the payment of the contempt sanction there.

Appellants also miss the mark in suggesting that the asset freeze and receivership should be deemed invalid because those provisions were set forth in orders other than the Contempt Order and not expressly incorporated in the Contempt Order. *See* Br. 6-7, 18-19. As discussed above (at 25-28), this Court specifically affirmed the receivership as an appropriate component of the relief ordered by the district court under Section 13(b). *Pukke I*, 53 F.4th at 109. Regardless, Appellants cite no authority requiring that a receivership and asset freeze appear in the same order as the judgment they protect—and the FTC is aware of none. The relevant question is whether there is a legal basis for a receivership and asset freeze, and here there plainly is. As the district court explained, the Contempt Order "stands in full force and effect" and the contempt relief affirmed by this Court "plainly includes freezing Defendants['] assets and requiring that they be turned over to the Receiver." DE 1441 at 2 (JA __); *see also* DE 1447 at 2 (JA __) (same). Accordingly, the district court did not abuse its discretion by maintaining the asset freeze and receivership on remand.

B. The District Court Did Not Refuse To Allow Appellants To Pay The Contempt Sanction.

Appellants misstate the facts in arguing that the district court "abused its discretion by refusing to permit … Appellants to pay the $120.2 million contempt sanction." Br. 19. Nothing prevents Appellants from paying the contempt sanction with any assets that they own or control. Indeed, the district court's orders obligate them to turn over such assets to the FTC or the Receiver to satisfy the contempt sanction. *See, e.g.*, DE 1447 at 2-3 (JA __-__). Furthermore, nothing in the district court's order forbids Appellants from seeking employment or otherwise earning money through legitimate means and using their earnings to pay down the judgment.

Appellants' core complaint is that the district court declined to transfer the receivership assets to them so that they could sell the Belizean property and pay off the judgment. But as the district court explained, "many of these assets were in fact long hidden by Defendants," such that the turnover of assets was necessary to address Appellants' "overall conspiratorial scam." DE 1441 at 5 (JA __). Given Appellants' long and well-documented history of fraud and concealment of assets, the district court did not abuse its discretion in concluding

that Appellants could not be trusted to manage and sell the receivership assets.

The declaration submitted by Appellant Baker in the remand proceeding does not undermine this conclusion.[11] Baker's declaration asserts, without any supporting evidence, that the assets in the receivership estate are more than sufficient to pay the $120.2 million consent judgment in this case.[12] DE 1405-1 (JA __). In particular, he asserts his "belie[f]" that "the funds generated by a sale of the Sanctuary Belize property would far exceed the $120.2 million needed to transfer to the FTC under the Contempt Order." DE 1405-1 at 3. (JA __). The district court considered the Baker declaration, DE 1441 at 4 (JA __), but concluded that Appellants "are not entitled to any return of assets." *Id.* at 5 (JA __).

The district court did not abuse its discretion in declining to credit the Baker declaration. First of all, Baker's assertions are pure hearsay laced with a dollop of speculation. Baker hedges nearly all his claims by

[11] Some of the figures that Appellants cite in their brief (Br. 20) do not actually appear in Baker's declaration.

[12] Baker ignores that Pukke is liable for an additional $172 million under the *AmeriDebt* injunction. *See* DE 1113 at 2-3 (JA __-__).

stating they are what he "believes" or "understands" based on unspecified "reports filed by the Receiver and other information." DE 1405-1 at 2 (JA __). Yet he does not include the Receiver's reports or the "other information" he claims to rely upon. *Id.* Similarly, Baker claims that a "conservative estimate" of the value of the Belize property is $104 million, but he does not provide any actual data to support that claim; instead, he asserts that the property was previously appraised at $87 million at some unspecified time and he arbitrarily increases that figure by 20%. *Id.* The district court did not abuse its discretion by refusing to accept these unsupported claims. *See, e.g.*, *Nat'l Enterprises, Inc. v. Barnes*, 201 F.3d 331, 335 (4th Cir. 2000) (appellant's "self-serving affidavit describing the content of" certain agreements could not defeat summary judgment, especially because appellant failed to produce the agreements in question).

In fact, there is no reliable evidence that the seized assets exceed the value of the contempt judgment. The value of the Belizean property will not be known until the Receiver actually sells the still undeveloped land. If the value of the assets ends up exceeding Appellants' obligations—including both the $120.2 million contempt sanction and

the $172 million plus interest that Pukke owes from *AmeriDebt*—then Appellants will be entitled to receive the excess, "as would be the case in any collections matter." DE 1441 at 4 n.2 (JA __). None of that means that the assets should be turned over to Appellants to sell. Given Appellants' history of deceptive conduct, the district court did not abuse its discretion by assigning that task to the Receiver.

Some of Baker's other claims are, in the district court's words, "pure blather." DE 1441 at 4 (JA __). For example, he claims that Sanctuary Belize consumers have been credited with "$50 million in monthly payments due and owing by them but not collected" and counts as receivership assets another $157 million in "current receivables from lot purchasers at Sanctuary Belize." DE 1405-1 at 1, 2 (JA __, __). In other words, Baker is counting as a receivership asset money that consumers would be required to pay under the terms of their purchase contracts if those contracts were valid. But in fact, consumers do not owe any of this money because the purchase contracts were induced by Appellants' fraud and are void. The $120.2 million represents money that Appellants actually took from consumers. If consumers had paid more, Appellants would owe more.

Nor were Appellants entitled to "credits" for the roughly $21 million the Receiver has spent "managing Sanctuary Belize during the five years of this litigation." Br. 21. A receiver "stands in place of the corporation." *McNulta v. Lochridge*, 141 U.S. 327, 331 (1891). The owners of Sanctuary Belize would have incurred the same costs these last five years to maintain the property that the Receiver has incurred. None of that has contributed to making Appellants' victims whole.

On top of these shortcomings of proof, there is also Baker's lack of credibility. Given Baker's active participation in a scam that swindled consumers out of $120.2 million and his prior actions to conceal assets in *AmeriDebt*, the district court was not required to credit his self-serving testimony.

C. The District Court Properly Held That Appellants Cannot Be Trusted To Sell the Sanctuary Belize Assets Given Their History of Deceptive Conduct.

Appellants miss the point in arguing that their "histories of deceptive conduct" cannot serve as a legitimate reason for maintaining the asset freeze and receivership because they "have already been punished for this 'deceptive conduct'—to the tune of 120.2 million dollars." Br. 23. Asset freezes and receiverships exist to secure the

payment of judgments. As of today, Appellants have not paid a cent of the $120.2 million they owe to their victims, and their history of deceptive conduct shows that they cannot be trusted to manage the Sanctuary Belize assets or repay injured consumers. The district court did not abuse its discretion by leaving the asset freeze and receivership in place to secure consumer redress.

Appellants' argument that they are in a better position than the Receiver to obtain "top dollar" for the Sanctuary Belize property (Br. 23) is wrong for at least two reasons. First, as the district court pointed out, Appellants "remain subject to a full ban on real estate activity and, more specifically, bans preventing any further involvement with, or presence in, Sanctuary Belize." DE 1441 at 3 (JA __); *see also* DE 1194 at 6 (JA __); DE 1112 at 7 (JA __). The terms of that injunction were affirmed on appeal. In light of this prohibition, Appellants cannot legally sell the Sanctuary Belize property.

Second, Appellants' claim that "the only thing they could do (and *would* do) with the Sanctuary Belize assets is sell" those assets and pay the judgment, Br. 22, carries no weight given their extensive history of engaging in consumer scams, enriching themselves and associates, and

hiding assets. Appellants insist they would certainly sell the assets because they "remain subject to the district court's pervasive injunctive decrees," Br. 22, but as this Court noted, "Pukke has repeatedly harmed and deceived people despite direct injunctions forbidding these very acts. Had Pukke obeyed the injunctions, he never would have swindled Sanctuary Belize consumers out of millions of dollars." *Pukke I*, 53 F.4th at 103. Given this history, it is vital that Appellants have no further involvement with the Sanctuary Belize assets. The district court did not abuse its discretion by appointing a neutral third-party receiver to manage and dispose of those assets.

D. Appellants' Attacks on the Receiver Lack Merit.

Appellants' attacks on the Receiver's expertise are unwarranted. They say that their superior knowledge of the Belize market makes them a better option to sell the property than the Receiver, who "has no familiarity with that market," Br. 23. But the Receiver will not personally sell the property. Instead, the district court charged the Receiver with "engag[ing] a reputable international real estate brokerage firm, at commercially reasonable rates and terms" to handle the process. DE 1446 at 3 (JA __). The Receiver fulfilled that obligation

by "select[ing] CBRE, Inc.—one of the largest commercial real estate services and investment firms in the world, with clients in more than 100 countries" following a thorough vetting process. DE 1455 at 17-18 (JA __-__). CBRE will now "serve as the broker for the Belize real estate assets for an initial period of 18 months and help support any and all Court-approved sale(s)." *Id.*

Nor is there any reason to doubt the Receiver's competence to oversee the sale of the Sanctuary Belize assets. Appellants suggest otherwise by quoting, out-of-context, FTC filings focused on a narrow dispute between the Receiver and the FTC concerning "consumer survey materials." DE 1463 at 3 (JA __); *see* Br. 23. Specifically, the FTC was arguing that it should have oversight of these materials, and that the process for surveying consumers should move forward expeditiously to minimize the Receiver's costs and preserve money for consumers. DE 1463 at 3-4 (JA __-__). That has nothing to do with the Receiver's qualifications or capability to sell the Sanctuary Belize property. The FTC remains confident in the Receiver's ability to complete that task and is satisfied with the Receiver's selection of CBRE to handle the process.

IV. APPELLANTS' REQUEST FOR AN "ACCOUNTING" IS FORFEITED AND MERITLESS.

Appellants forfeited their alternative request for an "accounting," Br. 24, by failing to make that argument in the district court. *See Padilla v. Troxell*, 850 F.3d 168, 178 (4th Cir. 2017) ("Petitioner did not raise this argument below, and we similarly consider it forfeited on appeal."). None of their filings below use the word "accounting" or propose that it would be an appropriate alternative remedy. *See* DE 1405, 1417, 1435.

The argument is also meritless. The Receiver in this case files regular reports with the district court, and those reports include "accounting and financial statements." DE 1455 at 20 (JA ___) (title case removed). The district court did not abuse its discretion by declining to order an accounting on top of these reports.

CONCLUSION

The Court should dismiss the appeal for lack of standing, or in the alternative, affirm the district court's judgment.

Respectfully submitted,

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November 17, 2023

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 8278 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and that it complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared using Microsoft Word for Microsoft 365 MSO in 14-point Century Schoolbook type.

November 17, 2023

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