

No. 19-1925

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

ATLANTIC INTERNATIONAL BANK, LTD.,
Defendant-Appellant.

On Appeal from the United States District Court
for the District of Maryland
No. 1:18-cv-3309
Hon. Peter J. Messitte

BRIEF OF THE FEDERAL TRADE COMMISSION

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QUESTION PRESENTED

Whether the district court correctly asserted personal jurisdiction over appellant Atlantic International Bank, Ltd.

STATEMENT OF THE CASE

This case arises from an FTC enforcement action to halt a real-estate development scam known as Sanctuary Belize, which duped Americans looking to retire or invest into spending collectively over \$100 million on empty lots in remote southern Belize. Sanctuary Belize promised consumers that they were making a low-risk investment in a luxury resort community that would soon be completed. In fact, the investment was risky, the promised luxury amenities never materialized, and the development was never close to completion.

Atlantic International Bank, the appellant in this case, played a key role in assisting the Sanctuary Belize scam. Although it is chartered under Belizean law, Atlantic has no Belizean depositors or borrowers—by law it may transact business only with people who do not live in Belize. Atlantic Br. 2 n.1. Most of its customers are in the United States, it transacts business only in U.S. dollars, and it has substantial liquid assets in the United States. *See* App. 255-256; 305; 748; 2379. For years, Atlantic helped Sanctuary Belize sell its worthless plots, in return gaining access to the only customers it was legally entitled to serve.

A. The Sanctuary Belize scam and Atlantic's assistance

Sanctuary Belize lured consumers to buy properties in its phantom resort community through a multi-step process; Atlantic was there the whole time. The pitch began with television ads and internet marketing, followed up with calls from

Sanctuary Belize telemarketers. App. 1087-1088. After making sure the marks could afford a substantial down payment, Sanctuary Belize's California-based telemarketers pitched lots in the Sanctuary Belize development as a low-risk investment that would quickly appreciate in value. *Id.*; App. 1160-1162; 1174-1175. The telemarketers described a host of luxury amenities that would be completed at the resort within 2-5 years, including an airstrip, a championship-caliber golf course, a casino and hotel, a medical center, and high-end boutiques and restaurants. App. 86, 1057-1058, 1075-1076, 1088. The telemarketers urged consumers to the next phase—attending webinars in which other telemarketers reinforced the same promises. App. 87; 1068, 1075-1076. There, telemarketers pressed consumers to “reserve” a property with a substantial deposit, and then to purchase an all-inclusive tour (for \$999) to see the Sanctuary Belize property. App. 87, 1057-1058, 1088-1089.

Atlantic was a key part of the Sanctuary Belize sales pitch. Consumers are unlikely to buy bare land without believing that they can build on it. By partnering with Atlantic, Sanctuary Belize convinced consumers that they would be able to obtain construction financing, which was often essential to closing sales. *See* App. 255. Partnering with a local bank also served to make Sanctuary Belize appear more legitimate to consumers; Sanctuary Belize therefore included Atlantic in its marketing materials and its telemarketers touted Atlantic in their calls. *See* App.

255, 257, 258. For its part, Atlantic benefited from the partnership by gaining access to wealthy American depositors. By law, the bank may serve only those who do *not* live in Belize and thus must find customers elsewhere. Atlantic Br. 2 n.1; App. 254-255. The biggest source of Atlantic’s banking customers is the United States and most of its depositors are U.S. residents. *See* App. 255-256; 748; 2379. By partnering with Sanctuary Belize, Atlantic gained access to affluent U.S. residents who were primed to want a banking relationship in Belize. App. 254-255. To draw them in, Atlantic developed a “special package” for Sanctuary Belize customers, giving them higher interest rates on deposits and offering construction loans with lower interest rates and more favorable loan terms. App. 341-342, 373-374, 610-612; 2399-2405. The latter offer, however, was largely illusory—Atlantic financed very few loans for construction in the doomed development. App. 2382. Nevertheless, it encouraged Sanctuary Belize customers to open multiple accounts, obtain credit cards, and even move their retirement accounts to the bank. *See* App 344-345, 609; 2411-2413.

To help Sanctuary Belize make property sales and sell the bank’s services, a team of Atlantic employees, including its CEO Ricardo Pelayo, traveled to California to personally train Sanctuary Belize’s telemarketers. App. 257; 300-363; 2383. Atlantic explained to the telemarketers:

we really wanted to sit with you guys because we know that you do webinars with your clients before they come down to Belize, and we

wanted to see if we could emphasize to them exactly what we are explaining to you so that when they come to Belize, they are really prepared for what is going to be coming on the banking side.

App. 310-311.

When customers arrived in Belize to tour the lots they had paid to reserve, they were hosted at a resort near the Sanctuary Belize property.¹ Over the course of several days, consumers attended social events, made visits to the property, and attended group and individual sales presentations that reinforced the false promises made by telemarketers. App. 1058-1059, 1069-1070. Representatives from Atlantic attended many of the events—they were there to assist with the Sanctuary Belize property sales and they were there to open banking relationships with Sanctuary Belize customers. App. 255, 257, 301, 1059, 1072, 1429, 1435, 1447. One way that Atlantic helped to close sales was by providing an appraiser to say that Sanctuary Belize lots were worth more than their sales price. App. 258. But the bank refused to rely on those appraisals when consumers sought construction loans to build on their lots. App. 258-259. Given its knowledge of Sanctuary Belize's misrepresentations, it is no surprise that the bank ultimately made only a few construction loans. *See* App. 2382.

Unknown to consumers, Sanctuary Belize often seeded tour groups with plants who were paid to attend and express enthusiasm about the project. App. 88.

¹ Some consumers purchased lots in Sanctuary Belize without visiting the development.

Consumers who asked skeptical questions, meanwhile, were discretely removed from the group. App. 88. Sanctuary Belize customers reported that almost everyone who attended the tours ultimately purchased from Sanctuary Belize—and many of them also opened accounts with Atlantic. App. 91, 1078; 2382; *see* App. 1059-1060, 1448. The relationship was productive for Atlantic, which saw its deposits grow by more than 15% in a single year and opened accounts for more than 100 Sanctuary Belize customers. App. 285. In a whitepaper to the Belizean government, Atlantic’s CEO gushed: “Without a doubt, the success of Sanctuary Belize has contributed to our growth and raised the profile of our bank.” App. 285.

The development that Sanctuary Belize promised never came. Property owners who tried to build on their lots were unable to do so because the electrical, water, and sewer infrastructure was never installed. App. 1061. Almost none of the promised amenities were ever completed. The promised airstrip was never installed. There is no hotel or casino, no golf course, no medical center, and no boutiques or restaurants. One early purchaser noted that when she visited the property 2012, “according to the development timeline we received in 2008 . . . everything in the property should have been complete but almost nothing was complete.” App. 1060. After visiting two years later, the same purchaser stated that “[t]he only difference on the property that we saw from 2012 and 2014 was that there was a guard at the entrance of Sanctuary Belize and the marina was flooded.” App. 1061.

B. Atlantic's additional assistance to Sanctuary Belize.

In addition to the help it provided selling Sanctuary Belize lots, Atlantic assisted Sanctuary Belize by providing extensive banking and financial services to the operation itself. *See* App. 229-233; 259-260; 1046-1047. Atlantic's services were vital to Sanctuary Belize because, as one of the heads of the scam put it, Atlantic was "the single bank that is willing to house our money." App. 849. Through its correspondent banking relationships with U.S. banks, Atlantic facilitated more than 100 transfers for Sanctuary Belize, moving millions of dollars between the U.S. and Belize. App. 260; 1046-1047; *e.g.*, App. 566-567. Further, many of the Sanctuary Belize defendants maintained personal accounts and conducted Sanctuary Belize-related business with the bank. App. 259, 1047-1048.

C. Atlantic's knowledge of the Sanctuary Belize scam

Atlantic understood Sanctuary Belize's sales process and knew about the promises it made to consumers. App. 256. It knew that Sanctuary Belize targeted U.S. residents with advertising and television campaigns. *Id.* It knew that Sanctuary Belize telemarketers promised, over the phone and through webinars, that the resort would soon be finished and that properties were a low-risk investment that would quickly appreciate. App. 256, 301, 310-311. It knew that Sanctuary Belize encouraged consumers to visit Belize. And it knew—because Atlantic's CEO and

other representatives were there—that when consumers came to Belize those same promises were reinforced in person. App. 255-256, 301.

At the same time, Atlantic understood that those promises were false. Atlantic personnel began attending Sanctuary Belize property tours by 2012 and over the next several years gave 126 sales presentations to potential Sanctuary Belize customers. *See* App. 256, 471, 550-554, 1684; 2380. As months and years went by, Atlantic could not have avoided noticing that the rapid development of Sanctuary Belize was always a promise but never a reality. As the bank admits, its employees “saw first-hand” the development during that period. App. 2381.²

Further, in January 2014, a Sanctuary Belize customer published an article online titled *Retiring in Sanctuary Belize: Tarnished Dreams*, which detailed the sorry state of the development, noted “the amount of self-dealing and dishonesty” in the project, and criticized the lack of progress. App. 426-439. Within a day, Atlantic’s CEO Ricardo Pelayo emailed the article to Luke Chadwick, a principal of Sanctuary Belize. App. 259-260, 442. Without disputing the content of the article, Pelayo instructed Chadwick to “Please get back to me and let me know what steps are being taken to address this very negative article.” App. 442. Pelayo also offered

² The declaration reproduced at pages 2378-2387 of the Appendix was unsealed by the Court at a hearing on Feb. 1, 2019, subject to redactions immaterial to the quoted text. *See* Feb. 1, 2019 Tr. at 155-156; Docket No. 81-2 64-73 (proposed redactions).

to send an email expressing Atlantic's support for the Sanctuary Belize project.

App. 260, 440-441.

D. Atlantic's contacts with the United States

As described above, Atlantic may transact business only with non-residents of Belize, and it does business only in U.S. dollars. App. 369. In addition, most of Atlantic's deposit customers are U.S. residents, and more than 100 of those customers came from Atlantic's involvement with Sanctuary Belize. Sanctuary Belize customers were important enough to Atlantic that once their deposits exceeded \$1 million in the aggregate, Atlantic gave them a higher deposit interest rate and also extended that rate to new Sanctuary Belize customers. App. 381; *see* App. 341.

Although Atlantic's customers opened their accounts while they were in Belize, Atlantic maintained a continuous banking relationship with them when they returned to the United States. Through its online banking services, Atlantic's U.S. customers could see their account balances and statements, make transfers, and send other instructions to the bank from the United States. App. 345; 373; 2420. To facilitate those transactions, Atlantic gave customers a token displaying a continually-updated numeric code to take back to the United States, which helped ensure that transactions between the U.S. and Belize were secure. App. 345-346. In addi-

tion, Atlantic's U.S. customers could use credit and debit cards issued by Atlantic to obtain cash and make purchases in the United States. App 344; 2419.³

Atlantic also maintained correspondent relationships with banks in the United States, which it relied on to do business with its U.S. customers, with Sanctuary Belize, and with other customers. "A correspondent bank account is a domestic bank account held by a foreign bank, similar to a personal checking account used for deposits, payments and transfers of funds." *SEC v. Receiver for Rex Ventures Grp., LLC*, 730 F. App'x 133, 135 (4th Cir. 2018) (quoting *Licci ex rel. Licci v. Lebanese Canadian Bank*, 732 F.3d 161, 165 n.3 (2d Cir. 2013)) (internal quotation marks omitted). Foreign banks like Atlantic must have correspondent accounts with U.S.-based financial institutions to transfer money to and from the United States. *See id.* As the bank's representative put it, "if we can't have a corresponding relationship here in the United States, we can't survive." App. 316-317. From 2012-2018, Atlantic used correspondent banks to make more than 100 wire transfers between the United States and Belize for the Sanctuary Belize development. App. 1046-1047.

³ Atlantic also maintained investment accounts in the United States (with Wells Fargo Advisors in Miami) for its U.S. customers. App. 374-376, 2411. Atlantic opened these accounts in its own name and then executed trades on behalf of its customers. App. 376, 2411.

E. The Telemarketing Sales Rule

In 1994, Congress passed the Telemarketing Act to help protect consumers from “deceptive and abusive” telemarketing practices, 15 U.S.C. §§ 6101–6109, and it directed the Commission to issue regulations that define and prohibit such practices. *Id.* Congress was concerned not only with the direct perpetrators of abusive telemarketing practices, but also with third parties who assist or facilitate telemarketing fraud. 15 U.S.C. § 6102(a). The Commission promulgated the Telemarketing Sales Rule (TSR) in 1995, *see* 60 Fed. Reg. 43842 (Aug. 23, 1995), and revised it in 2003, 68 Fed. Reg. 4580 (Jan. 29, 2003).

The Telemarketing Sales Rule defines and prohibits a range of deceptive and abusive telemarketing practices, such as misrepresenting material facts about offered goods or services, or investment opportunities. *See* 16 C.F.R. § 310.3(a)(2). In addition to prohibiting such practices outright, the Rule also forbids third parties from assisting and facilitating others who are violating the Rule: “It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 3.10.3(a) or (c), or § 3.10.4 of this Rule.” 16 C.F.R. § 310.3 (the three cited sections define a wide range of prohibited practices).

F. Procedural History

To bring a halt to the Sanctuary Belize scam, the FTC sought a permanent injunction and other equitable relief against numerous companies and individual defendants involved in the enterprise. App. 65-107. The complaint charged that Sanctuary Belize's false representations violated section 5 of the FTC Act, 15 U.S.C. § 45(a), and that its telemarketers' false representations violated the TSR. App. 95-104. The complaint separately charged Atlantic International Bank with violating the TSR by providing "substantial assistance or support" to the Sanctuary Belize scam while knowing or consciously avoiding knowledge that the operation was engaged in acts that violate the TSR. 16 C.F.R. § 310.3(b).

To prevent the dissipation of assets, the FTC sought an ex-parte temporary restraining order, an asset freeze, and the appointment of a receiver, all of which the district court granted on November 5, 2018. App. 1959-2006. On Atlantic's emergency motion, the court modified the TRO on November 12, App. 2042-2046, and held a telephonic hearing on Atlantic's opposition to the entry of a preliminary injunction on November 19, 2018. App. 719-782.

At the conclusion of the hearing, the court rejected Atlantic's argument that the court should deny the injunction because it lacked personal jurisdiction. The court explained that "there are allegations that there was extensive involvement of the bank in the United States that would bestow specific jurisdiction on the Court."

App. 775. The court further noted that Atlantic “used domestic correspondent banks” and “marketed with [Sanctuary Belize] to create continued relationships with American consumers,” and that “the facilitation of the claim arises out of those activities that were directed to the United States.” App. 777. The court concluded: “So the argument that the FTC lacks jurisdiction over the bank, rejected.” App. 775. The following day, the court entered an “interim” preliminary injunction based on the telephone hearing. App. 117-118. Atlantic filed this appeal from that order. App. 207.

In the same order, the district court scheduled an evidentiary hearing on the FTC’s request for a preliminary injunction. App. 117-118. That hearing began March 11, 2019, and lasted more than two weeks. Post-hearing briefing was completed May 17, 2019. Accordingly, the FTC’s request for a preliminary injunction remains under advisement before the district court.

SUMMARY OF THE ARGUMENT

Atlantic may not transact business with residents of Belize, so it must look outside its own country to do any business at all. It looked mainly to the United States, which was its biggest market. The sole issue on appeal is whether the district court correctly asserted specific personal jurisdiction over Atlantic based on its contacts with the United States. Under the three-part test adopted by this Court, the court had jurisdiction if (1) Atlantic purposefully availed itself of the privilege

of conducting activities in the United States; (2) the claim against Atlantic arises from its contacts with the United States; and (3) exercising jurisdiction is constitutionally reasonable. As the district court correctly found, all three requirements are met here.

1. Atlantic purposefully availed itself of the privilege of conducting business here in multiple ways. In order to “capture” American customers, it sent a team that included its CEO to Sanctuary Belize’s California headquarters, where they met with telemarketers in an effort to help them sell the bank’s services as part of their sales pitch to consumers in the United States. App. 301. Atlantic attempts to downplay the meeting as a generic presentation, but the transcript shows that Atlantic knew that the telemarketers were developing a “captive market” that Atlantic hoped to capture too. *Id.* Moreover, the meeting was only one of numerous contacts through which the bank directed its activities toward the United States.

Atlantic’s banking relationships with customers in the United States also created continuing obligations between itself and U.S. residents. Among other things, it developed an online banking system that enabled U.S. customers to conduct business over the internet and it took steps to ensure the security of those transactions. Those activities alone are sufficient to show that the bank purposefully availed itself of the privilege of doing business in the United States. *Purdue*

Foods LLC v. BRF S.A., 814 F.3d 185, 190 (4th Cir. 2016); *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 713-714 (4th Cir. 2002).

Atlantic's reliance on *Walden v. Fiore*, 571 U.S. 277 (2014), is misplaced. Unlike that case, the claim here does not involve discrete events in which U.S. residents happened to be involved while they were in Belize. The accounts themselves may have been opened in Belize, but most of Atlantic's business with its U.S. customers occurred after they returned home. The customers also suffered harm from the Sanctuary Belize scam (which Atlantic aided and abetted) in the United States. Atlantic's contacts were thus with the United States itself, not merely with people who happened to live here.

Atlantic also availed itself of the privilege of doing business in the United States by using correspondent banking relationships with U.S. banks to access the U.S. financial system. That alone establishes its domestic contacts. *Licci ex rel Licci v. Lebanese Canadian Bank, SAL*, 734 F.3d 161, 173 (2d Cir. 2013).

2. The FTC's claim against Atlantic arises from its contacts with the U.S. The FTC charges that Atlantic violated the Telemarketing Sales Rule by providing substantial assistance or support to Sanctuary Belize while knowing (or avoiding knowledge) that it was engaged in activity that violates the Rule. In particular, the bank carried out international transactions for the Sanctuary Belize enterprise through U.S. correspondent banks, its CEO and others went to California to help

Sanctuary Belize telemarketers, and it formed banking relationships with U.S. customers through its collaboration with (and in support of) the scam. The FTC's claim thus involves "substantial correspondence and collaboration" between Atlantic in Belize and the California-based Sanctuary Belize operation. *Tire Eng'g & Distrib., LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 303 (4th Cir. 2012).

Atlantic is wrong that its U.S. contacts are not germane to the FTC's claims because the claims involve Sanctuary Belize's false representations to consumers, but the bank did not assist the representations themselves. The Telemarketing Sales Rule applies to "substantial assistance" provided to a person who is violating the rule; the assistance need not be "directly connected to the misrepresentations made to consumers." *FTC v. Chapman*, 714 F.3d 1211, 1216 (10th Cir. 2013). Atlantic assisted the Sanctuary Belize scam, and its contacts with the United States played an important role in that assistance.

3. Exercising jurisdiction over Atlantic in this case is constitutionally reasonable. Atlantic has not met its burden to show that litigating in Maryland would put it at a severe disadvantage, nor has it proposed any alternative forum where the FTC's claim may be heard. It contends that a single, generic presentation made in the U.S. is constitutionally insufficient, but it ignores the many extensive contacts described above, which amply justify jurisdiction in this country. The United

States and the federal courts have a strong interest in providing a forum to enforce U.S. laws that protect U.S. consumers.

STANDARD OF REVIEW

A district court's determination that it may exercise personal jurisdiction over a defendant is reviewed de novo. *Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 188 (4th Cir. 2016).

ARGUMENT

THE DISTRICT COURT CORRECTLY EXERCISED JURISDICTION OVER ATLANTIC INTERNATIONAL BANK.

In a case brought under a federal statute that authorizes nationwide service of process, a district court has personal jurisdiction over the defendant if it “has minimum contacts with the United States and maintenance of the suit would not offend fair play and substantial justice.” 4 Wright & Miller, *Fed. Prac. & Proc. Civ.* § 1068.1 (4th ed.); *Trs. of the Plumbers & Pipefitters Nat’l Pension Fund v. Plumbing Servs.*, 791 F.3d 436, 443 (4th Cir. 2015); *Hogue v. Milodon Eng’g, Inc.*, 736 F.2d 989, 991 (4th Cir. 1984). Section 13(b) of the FTC Act provides for nationwide service of process, stating: “In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.” 15 U.S.C. § 53(b). The district court’s exercise of jurisdiction over Atlantic was there-

fore proper so long as Atlantic has minimum contacts with the United States and maintaining the suit would not offend due process.⁴

The degree of contacts necessary to support jurisdiction varies depending on whether “general” or “specific” jurisdiction is asserted. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711 (4th Cir. 2002). General jurisdiction requires such substantial contacts that the defendant is “essentially at home in the forum.” *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (cleaned up). Here, the FTC argued that the district court had specific jurisdiction over Atlantic.⁵ The quantum of contacts that support specific jurisdiction is lower, but the claims in the suit must also arise out of those contacts. *Id.* This Court “has synthesized the due process requirements for asserting specific personal jurisdiction in a three part test.” *Consulting Eng’rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009). The Court considers “(1) the extent to which the defendant ‘purposefully availed’ itself of the privilege of conducting activities in the [United States]; (2) whether the plaintiffs’ claims arise out of those activities directed at the [United

⁴ Where there is no statute authorizing nationwide service of process, the jurisdictional analysis focuses on contacts with the forum state; national service of process “requires only that a defendant in a federal suit have minimum contacts with the United States.” *FTC v. Jim Walter Corp.*, 651 F.2d 251, 256 (5th Cir. 1981); *Sec. Investor Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315-1316 (9th Cir. 1985); Fed. R. Civ. P. 4(k)(1)(C).

⁵ The FTC does not assert that the district court had general jurisdiction over Atlantic.

States]; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Id.* (quoting *ALS Scan*, 293 F.3d at 712). All three requirements are met here.

A. Atlantic purposefully availed itself of the privilege of conducting business in the United States.

“Minimum contacts exist where the defendant ‘purposefully directs’ its activities toward the residents of the forum.” *Ellicott Mach. Corp. v. John Holland Party Ltd.*, 995 F.2d 474, 477 (4th Cir. 1993) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (cleaned up)).⁶ If a defendant “has created a substantial connection to the forum, then [it] has purposefully availed [itself] of the privilege of conducting business there.” *Id.* (cleaned up).

Atlantic’s contacts with the United States show that it purposefully availed itself of the privilege of doing business here in three ways. Atlantic: (1) came to the United States to help telemarketers sell its banking services along with lots in Sanctuary Belize to U.S. consumers; (2) established long-term banking relationships with U.S. residents and provided an online banking system to maintain those relationships and do business with those consumers while they were in the United

⁶ To evaluate a defendant’s contacts with the United States, courts regularly apply minimum-contacts principles developed with regard to state law. *See Plumbers & Pipefitters*, 791 F.3d at 443; 4 Wright & Miller, *Fed. Prac. & Proc. Civ.* § 1068.1 n.31 (collecting cases).

States; and (3) made extensive use of U.S. correspondent banks to facilitate monetary transfers between Belize and the United States for Sanctuary Belize.

First, Atlantic purposefully directed its activity toward the United States when it sent its CEO and others to California for a prep session with Sanctuary Belize telemarketers. *See* App. 255, 300-363. Atlantic's goal in traveling to the United States was clear: It sought to enlist Sanctuary Belize telemarketers to grow Atlantic's business with American consumers who purchased Sanctuary Belize lots. App. 300-301. Atlantic knew that the telemarketers were selling Sanctuary Belize properties to U.S. residents, it knew that potential purchasers would travel to Belize, and it knew they would then return to the United States. As Atlantic's representative explained during the meeting, when Sanctuary Belize brought consumers to Belize, it had a "captive market . . . and we're trying to capture these people." App. 301. The bank did capture them. It opened accounts for more than 100 consumers, who together deposited over a million dollars with Atlantic.

Atlantic attempts to minimize its trip to the United States, arguing (Br. 9) that it is equivalent to the single meeting that did not support personal jurisdiction in *Sneha Media & Entertainment, LLC v. Associated Broadcasting Co. P Ltd.*, 911 F.3d 192 (4th Cir. 2018). There, however, the foreign defendant had no contracts with any resident of the forum, no assets in the forum, and no bank accounts in the forum. *Id.* at 195. None of that is true here—most of Atlantic's customers are in

the United States, many of its liquid assets are in the United States, it conducts business through U.S. correspondent banks, and it holds U.S. bank accounts on behalf of its U.S. customers. Moreover, in *Sneha*, there was no allegation “that the meeting led to any agreement or arrangement.” 911 F.3d at 199. Here, by contrast, the stated purpose of Atlantic’s visit was to “capture” the business of American consumers, which it did.

Second, Atlantic’s ongoing relationships with customers in the United States and the business it transacts with them over the internet show that it purposefully availed itself of contacts in the United States. Specific personal jurisdiction may be established where a defendant “deliberately has engaged in significant activities” within the forum, “or has created continuing obligations between itself and residents of the forum.” *Purdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 190 (4th Cir. 2016) (cleaned up). Here, Atlantic did both: it deliberately established banking relationships with U.S. consumers, creating continuing obligations between itself and U.S. residents. That business is unquestionably significant—most of Atlantic’s depositors are in the United States and many of its liquid assets are here.

Atlantic has also directed its activities to the United States over the internet. This Court applies a “sliding scale” to evaluate whether internet contacts are sufficient to support jurisdiction over a foreign defendant. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 713-714 (2002). At one end of the scale, “a

person who simply places information on the Internet does not subject himself to jurisdiction in each State into which the electronic signal is transmitted and received.” *Id.* at 714. Atlantic sits at the opposite end of scale, “where a defendant clearly does business over the Internet,” such as by “enter[ing] into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet.” *Id.* at 713 (quoting *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). At that end of the spectrum, “personal jurisdiction is proper.” *Id.* By maintaining accounts with U.S. residents and offering online banking to facilitate their transactions from the United States, Atlantic “clearly does business” over the internet. *Id.*

Atlantic claims, however, that its business with U.S. citizens is irrelevant under *Walden v. Fiore*, 571 U.S. 277, 289-90 (2014), because the minimum contacts analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” Br. 9 (quoting *Walden*, 571 U.S. at 289-290) (emphasis removed)). In *Walden*, a Georgia police officer was accused of unlawfully seizing Nevada residents’ property while they were in Georgia. The Court held that Nevada could not exercise jurisdiction over the officer because all of the alleged tortious conduct and its effects occurred in Georgia; his only connection to Nevada was that the victims of the tort happened to reside there. 571 U.S. at 288-289.

This case is different. Unlike in *Walden*, neither Atlantic's contacts with U.S. citizens nor the effect of its violations occurred solely in Belize. Unlike the police officer in *Walden*, Atlantic was not a bank operating only in Belize catering to residents of that country that by happenstance served U.S. consumers who were in Belize. To the contrary, it was not even allowed to serve Belize residents and it actively sought out U.S. customers, who provided most of its business. And although the accounts usually were opened while the customers were in Belize, they then returned home to the United States and conducted their banking activities with Atlantic from there. Because Atlantic knew its customers would return to the United States, it created systems to more easily conduct business with them in the United States. Its online banking system allowed customers to check balances, transfer money, and conduct other banking activities from the U.S. App. 345; 373; 2420. Atlantic even provided customers with a token to secure their international transactions. App. 345-346.

In addition, the *effects* of Atlantic's assistance to Sanctuary Belize were felt not merely by U.S. residents, but in the United States. *See Calder v. Jones*, 465 U.S. 783 (1984); *Walden*, 571 U.S. at 287 ("The crux of *Calder* was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff."). Atlantic helped Sanctuary Belize defraud U.S. consumers through false claims about the Sanctuary Belize development. The victims were

harmful in the United States: some sent money from the United States to reserve Sanctuary Belize lots; some purchased lots from the United States *without* visiting Belize; and many others signed the contract in Belize but made payments from the United States.

Atlantic's actions thus establish contacts with the United States itself. They are nothing like the conduct in *Walden*, where a person with no connection to the forum was alleged to have committed a tort outside the forum against people who happened to reside in the forum. Atlantic's contacts with its customers more closely resemble the agreement in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), where a Michigan citizen negotiated a franchise agreement with Burger King in Florida. *Id.* at 464-465. The agreement required franchisees to follow Burger King's standards for operating their business and to pay monthly fees and to submit reports and notices to Burger King in Florida. *Id.* at 465-466. Although the franchisee had no other contacts with Florida, the Supreme Court held that the agreement "envisioned continuing and wide-reaching contacts" with Florida which supported jurisdiction there for a lawsuit against the Michigan franchisee. *Id.* at 479-480. Here, Atlantic similarly created banking relationships that envisaged monthly statements to the U.S. and monetary transactions with its U.S. consumers.

Third, Atlantic's use of correspondent banks in the United States and the United States banking system to assist Sanctuary Belize provides yet another basis

for specific personal jurisdiction. Although a foreign defendant's use of correspondent banks does not confer general jurisdiction, a defendant's "repeated use" of correspondent banks in the United States "as an instrument to achieve the wrong complained of . . . satisfies the minimum contacts component of the due process inquiry" for specific jurisdiction. *Licci*, 732 F.3d at 173. Here, Atlantic used U.S. correspondent banks to conduct business for multiple Sanctuary Belize defendants as well as its other U.S. customers. *See* App. 260; 1046-1047; *e.g.*, App. 566-567.

Atlantic's argument that its contacts are insufficient to support jurisdiction relies heavily (Br. 7-8) on a list of factors from *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273 (4th Cir. 2009). It claims those eight factors "are the centerpiece of the required analysis." Br. 8. In that very case, however, this Court emphasized that the analysis of a defendant's contacts "is not susceptible of mechanical application." *Consulting Eng'rs*, 561 F.3d at 278. It provided eight of the "various nonexclusive factors" that courts have applied in "the business context," but did not suggest that those factors were the centerpiece of the minimum contacts analysis beyond that case. *Id.* As shown above, Atlantic came to the U.S. to further its effort to get U.S. customers, it formed long-term relationships with U.S. citizens, and it used U.S. correspondent banks to conduct business in the United States, including with Sanctuary Belize. Those contacts are sufficient to show that it purposefully directed its activities toward to United States.

B. The FTC’s complaint against Atlantic arises out of its contacts with the United States.

The second requirement to establish specific personal jurisdiction—that a claim arise out of a defendant’s contacts with the forum—“is generally not complicated.” *Tire Eng’g & Distrib., LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 303 (4th Cir. 2012). It is “easily satisfied” where “activity in the forum state is the genesis of the dispute.” *Id.* And “[a] plaintiff’s claims similarly arise out of activities directed at the forum state if substantial correspondence and collaboration between the parties, one of which is based in the forum state, forms an important part of the claim.” *Id.* Here, the forum “state,” for jurisdictional purposes, is the United States as a whole.

The FTC charges in this case that Atlantic violated the Telemarketing Sales Rule by providing substantial assistance or support to Sanctuary Belize while knowing that it was engaged in activity prohibited by the Rule. *See* App. 104 (Complaint); 16 C.F.R. § 310.3(b). To provide “substantial assistance” under the Rule, a defendant must give more than “casual or incidental” help to the telemarketer. *FTC v. Chapman*, 714 F.3d 1211, 1216 (10th Cir. 2013). Thus, “cleaning a telemarketer’s office or delivering lunches to the telemarketer’s premises” does not subject a person to liability under the Rule. *Id.* The assistance need not, however, be “directly connected to the misrepresentations made to consumers.” *Id.* For example a credit card processor that provides merchant accounts to a fraudulent tel-

emarketing operation may be liable for providing substantial assistance where it ignored a slew of red flags indicating that the operation would be a fraud. *See FTC v. WV Universal Mgmt., LLC*, 877 F.3d 1234, 1239 (11th Cir. 2017).

Atlantic went well beyond “casual or incidental” assistance to Sanctuary Belize. By providing financial and banking services, Atlantic played a key role in enabling the operation to remain in business and to funnel the proceeds of its fraud from the United States to Belize. By collaborating with Sanctuary Belize to have its telemarketers sell Atlantic’s services, the bank contributed to (and benefited from) the very telemarketing calls in which Sanctuary Belize misrepresented the value of the investment and the future development of the resort. And by helping Sanctuary Belize close property sales in Belize, it assisted with the illegal object of the scheme. Under this Court’s decision in *Tire Engineering*, Atlantic’s violation arises from the bank’s activities directed at the United States because an important part of the claim involves “substantial correspondence and collaboration” between Atlantic and the Sanctuary Belize defendants, nearly all of which were based in the United States. 682 F.3d at 303; *see App. 68-78*.⁷

⁷ The complaint defines nine “core” Sanctuary Belize corporate defendants, seven of which were organized in the United States; the other two were operated from the United States. App. 68; *see App. 69-78*. For simplicity’s sake, this brief refers to the Sanctuary Belize defendants collectively as “Sanctuary Belize.”

Indeed, Atlantic's banking and business services to the Sanctuary Belize defendants, its joint marketing with Sanctuary Belize, and its sales assistance in Belize all involved contacts with the United States: Atlantic used correspondent banks in the United States to provide banking services to the Sanctuary Belize defendants. It sent its CEO and others to California to facilitate its joint marketing agreement (and telemarketing) with Sanctuary Belize. Even the support that Atlantic provided in Belize assisted transactions between U.S. consumers and the U.S. companies that made up the Sanctuary Belize scam. Moreover, Atlantic formed long-term banking relationships with more than 100 U.S. residents and gained more than \$1 million in deposits from its collaboration with Sanctuary Belize. The confluence of contacts between Atlantic, Sanctuary Belize, and U.S. consumers thus form the "relationship among the defendant, the forum, and the litigation" that is "the essential foundation of in personam jurisdiction." *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408, 414 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

Atlantic's argument that the violation in this case does not arise from its contacts with the United States rests on a misunderstanding of the Telemarketing Sales Rule. Atlantic argues that to prove that the bank "substantially assisted" Sanctuary Belize, the FTC must show that Atlantic helped Sanctuary Belize make false telemarketing claims. Br. 10-14. That is incorrect. The Telemarketing Sales Rule pro-

hibits providing “substantial assistance or support to any seller or telemarketer” while knowing or consciously avoiding knowledge that the person is engaged in conduct that violates the rule. 16 C.F.R. § 310.3(b). Critically, the Rule requires that a person provide assistance or support to the *telemarketer*, not that the person assist in the telemarketer’s *misrepresentations*. *See id.* That is why courts have rejected Atlantic’s argument that the TSR is not violated when the “assistance was not directly connected to the misrepresentations made to consumers.” *Chapman*, 714 F.3d at 1216. Because Atlantic provided assistance to Sanctuary Belize through its contacts with the United States, its violation of the TSR arises from those contacts.⁸

C. Exercising jurisdiction over Atlantic is constitutionally reasonable.

The requirement that a court’s exercise of specific jurisdiction over a foreign defendant meet the standard of constitutional reasonableness ensures “that defending a suit is not ‘so gravely difficult and inconvenient that a party unfairly is at a severe disadvantage in comparison to his opponent.’” *United States v. Batato*, 833 F.3d 413, 425 (4th Cir. 2016) (quoting *Burger King*, 471 U.S. at 478). To decide whether an exercise of jurisdiction is constitutionally reasonable, the Court consid-

⁸ Atlantic’s reliance (Br. 11-12) on *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993), is even further afield. That case involved the interpretation of the phrase “based upon a commercial activity” in the Foreign Sovereign Immunities Act. *Id.* at 351. It had nothing to do with the due process requirements for asserting jurisdiction over a foreign defendant.

ers “the burden on the defendant, the [forum’s] interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.” *Id.* (quoting *Burger King*, 471 U.S. at 477). “The burden is on the defendant to show that the burden of distant litigation is so great as to put him at a severe disadvantage.” *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 627 (4th Cir. 1997) (cleaned up).

These factors favor jurisdiction here. The United States plainly has a strong interest in providing a forum for the government to litigate actions to enforce federal laws designed to protect American consumers. The judicial system’s interest in the efficient resolution of controversies is likewise served by exercising jurisdiction here. Because the FTC cannot sue Atlantic in Belize, denying jurisdiction here would leave the FTC without *any* forum to litigate its claim. Exercising jurisdiction would also further the social policies embodied in federal consumer protection law such as the Federal Trade Commission Act and the Telemarketing Sales Rule, whereas denying jurisdiction would hamper those policies.

For its part, Atlantic fails to show that litigating in the United States is so gravely difficult and inconvenient that the FTC should be denied any opportunity to enforce the law. Atlantic has hired attorneys in New York, and flying from Be-

lize City (Atlantic's headquarters) to BWI is roughly equivalent to flying across the U.S. with a stopover. Courts routinely reject more significant "burden" claims. In *Tire Engineering*, for example, this Court found constitutionally reasonable the assertion of jurisdiction over defendant in the United Arab Emirates, far more distant from American shores than Belize. 682 F.3d at 305. Similarly in *CFA Institute v. Institute of Chartered Financial Analysts of India*, 551 F.3d 285, 296 (4th Cir. 2009), the Court held that a defendant "is not shielded from civil liability in Virginia because it is headquartered in India." Finally, in *Batato*, this Court found the exercise of jurisdiction constitutionally reasonable where the defendant could not show that the forum was "less convenient than any other available forum" and there is "no evidence that the government filed where it did for any untoward purpose." 833 F.3d at 425. There is no allegation that the FTC filed suit in Maryland for any untoward purpose here, and there is no other available forum.

Atlantic's constitutional unfairness argument rests almost entirely on the false premise that its "only jurisdictional contact with the United States was the presentation it made in California." Br. 15. The claim is that a single presentation does not justify haling the bank into U.S. court. For all the reasons shown above, that is incorrect. Atlantic had extensive contacts with the United States that amply justify holding it to account for its conduct here. Moreover, Atlantic's reliance (Br. 14-15) on *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S.

102 (1987) and *Ellicott Machine Corp. v. John Holland Party, Ltd.*, 995 F.2d 474 (4th Cir. 1993), is misplaced. While the Supreme Court acknowledged in *Ashai* that litigating in a foreign country can be a burden, it noted that the interests of the plaintiff and the forum will often justify that burden when minimum contacts have been established. 480 U.S. at 114. Unlike in *Ashai*, which involved a Taiwanese corporation's claim against a Japanese company, the interests of the United States and the FTC here are not "slight." *Id.* Nor is this a case like *Ellicott*, where U.S. citizens sought "their fortune away from home" and can seek relief in a foreign court. 995 F.2d at 479. This is a case in which a scam targeted consumers in the United States and took more than \$100 million from them in violation of U.S. consumer protection law, and there is no other forum that can hear it.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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June 12, 2019

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with Federal Rule of Appellate Procedure 32(a)(7), in that it contains 7307 words.

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CERTIFICATE OF SERVICE

I certify that on June 12, 2019, the foregoing was served on all parties or their counsel of record through the CM/ECF system. Counsel of record for all parties are registered users.

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