Record No. 17-1222

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JANET HODGIN, *et al.*,
on behalf of a class of all persons and entities similarly situated;

Plaintiffs-Appellants,

—v.—

UTC FIRE & SECURITY AMERICAS CORP., INC.;
HONEYWELL INTERNATIONAL, INCORPORATED,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA AT CLARKSBURG

BRIEF *AMICI CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND THE SECURITY INDUSTRY ASSOCIATION IN SUPPORT OF APPELLEES

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INTEREST OF THE *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest federation of businesses and business associations. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the nation. The Chamber advocates for its members' interests before Congress, the executive branch, and the courts, and it regularly files *amicus curiae* briefs in cases raising issues of vital importance to the business community.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all fifty states. Manufacturing employs more than twelve million men and women, contributes $2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the powerful voice of the manufacturing

[1] In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission. All parties have consented to the filing of this brief.

community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Security Industry Association ("SIA") is a non-profit, international trade association representing more than 750 security and life safety solutions providers, and thousands of security professionals. Among other products, SIA's member companies develop, manufacture, and integrate home-security systems that help keep people and property safe from fire, theft, and other hazards.

Amici have an interest in this appeal because the availability of vicarious liability against third parties based on a ratification theory of agency is an issue of importance to the business community. This case will have a substantial impact on the sales model for home-security systems specifically, but also may affect all industries involving equipment manufacturers, distributors, service providers, and third-party dealers.

SUMMARY OF ARGUMENT

It is undisputed that Appellants UTC Fire & Security Americas Corp., Inc. ("UTCFS") and Honeywell International, Inc. ("Honeywell"), which manufacture and sell home-security equipment, did not themselves violate the Telephone Consumer Protection Act ("TCPA"). The issue is whether they can nonetheless be held liable for the actions of downstream purchasers and dealers of their products. The court below held that UTCFS and Honeywell could not be vicariously liable

under the TCPA for the complained-of calls placed by or for those dealers. JA1321-25. Appellants now argue that the district court erred in rejecting their ratification theory of agency. According to Appellants, equipment manufacturers can be vicariously liable for calls placed by third-party telemarketers for independent, downstream resellers—even though the manufacturers had no agency relationship with those resellers or telemarketers.

This Court should reject Appellants' argument. For context, the TCPA does not expressly authorize vicarious liability for violations of its provisions. Appellants therefore rely on a declaratory ruling of the Federal Communications Commission ("FCC") that authorizes vicarious liability. And that ruling, in turn, relies on the Restatement of Agency for guidance on the scope of such liability.

The Restatement makes clear that Appellants' position is untenable. Among other principles of vicarious liability, the Restatement provides that a principal can be liable for an agent's unauthorized acts if the principal "ratifies" those acts after the fact. A principal can accept an agent's actions when that agent acts on behalf of the principal but outside the scope of its authority to do so. The act of ratifying, then, requires that there be an agency relationship with the principal. "When an actor is not an agent and does not purport to be one, the agency-law doctrine of ratification is not a basis on which another person may become subject to the legal consequences of the actor's conduct." Restatement (Third) of Agency § 4.03 cmt. b

(2006). The weight of authority addressing ratification confirms that an agency relationship is an essential limitation on the reach of vicarious liability. *See, e.g.*, *Johansen v. HomeAdvisor, Inc.*, 218 F. Supp. 3d 577, 586 (S.D. Ohio 2016). Otherwise, a manufacturer could be held liable for the actions of any third party, no matter how tenuous the legal relationship between the two may be.

In the face of this authority, Appellants' arguments for ratification are unpersuasive. When read in context, Appellants' selective quotations from the Restatement actually prove the point that an agency relationship is required before vicarious liability by ratification can attach. Appellants try to bolster their interpretation with a handful of cases, but those cases either expressly undermine Appellants' position or misread the Restatement. This lack of support is not surprising because Appellants' position would undermine the FCC's reasons for extending vicarious liability for violations of the TCPA in the first place. The FCC limited the reach of such liability to situations in which a principal can monitor and control compliance with the TCPA by those making the unlawful calls. It would be difficult for manufacturers to ensure such compliance indirectly without an agency relationship with the reseller, much less without an agency relationship with telemarketers making calls for the reseller. Thus, Appellants' position is wrong as a matter of agency law.

Adopting Appellants' view also would have serious economic consequences. It could punish manufacturers for a wide range of unlawful conduct by third parties that they do not control. It is undisputed, for example, that UTCFS and Honeywell had no agency relationship with the independent dealers that arranged the phone calls in this case. Those dealers purchased products from distributors (who initially purchased from UTCFS and Honeywell) and then resold the products as part of the home-security systems they offered to their customers. UTCFS and Honeywell did not control the business operations or sales activities of the dealers, from whom they were at least two steps removed. Nor did UTCFS or Honeywell receive any additional benefit from the resale or installation of their products or have any relationship with the end customers. Imposing vicarious liability on UTCFS and Honeywell under these circumstances would drastically expand the reach of the TCPA, which already imposes significant costs on businesses engaged in telephone sales.

The parties in the best position to prevent violations of the TCPA are the companies that actually sell or offer the products to purchasers of home-security systems. Holding manufacturers vicariously liable by ratification would add little to the already substantial deterrent value of the TCPA for resellers. Meanwhile, such an expansion of potential liability under the TCPA would inject uncertainty

into manufacturer-dealer relationships, increase the costs of doing business, and ultimately raise prices to consumers.

For all of these reasons, *amici* respectfully submit that the decision below should be affirmed.

ARGUMENT

I. The District Court Correctly Rejected Appellants' Broad View of "Ratification" Under the TCPA.

The TCPA makes it unlawful to "*initiate* any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party." 47 U.S.C. § 227(b)(1)(B) (emphasis added). Congress did not define "initiate," and the statute "does not contain a provision that specifically mandates … vicarious liability." *In the Matter of the Joint Petition Filed by Dish Network, LLC, et al.*, 28 F.C.C. Rcd. 6574, 6583 ¶ 26, 6587 ¶ 35 (2013) ("FCC Order"). The Court should therefore be skeptical of any attempt to expand TCPA liability beyond the terms of the statute.

A. An Agency Relationship Is a Prerequisite for Ratification

For its part, the FCC has issued a declaratory ruling that outlines its reading of Section 227(b)(1)(B). *See generally id.* In that ruling, the FCC made clear that "a seller does not generally 'initiate' calls made through a third-party telemarketer within the meaning of the TCPA." *Id.* at 6574 ¶ 1. Such a reading of "initiate" is "too broad" because "it would logically encompass a host of activities which have

only a tenuous connection with the making of a telephone call." *Id.* at 6583 ¶ 26. "[T]he mere fact that a company produces and sells a product does not mean that it initiates telephone calls that may be made by resellers retailing that product." *Id.* And it is not enough that a company "have some role, however minor, in the causal chain that results in making a telephone call." *Id.* The FCC thus recognizes that the TCPA's express terms do not impose liability on manufacturers for the acts of third-party resellers.

But as the court below acknowledged, the FCC extended TCPA liability beyond the language of the statute. The FCC noted that the TCPA "incorporate[s] the federal common law of agency and that such vicarious liability principles reasonably advance the goals of the TCPA." *Id.* at 6587 ¶ 35. The FCC therefore "conclude[d] that [companies] may be held vicariously liable for certain third-party telemarketing calls." *Id.* at 6584 ¶ 28. To articulate the boundaries of this expanded liability, the FCC looked to the Restatement for guidance on federal common law, *id.* at 6586-87, ¶ 34 nn.100-104, as does the Supreme Court and this Court in similar contexts, *see Am. Soc'y of Mech. Eng'rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 566-67 (1982); *Cilecek v. Inova Health Sys. Servs.*, 115 F.3d 256, 260 (4th Cir. 1997).

The Restatement provides that a principal can be responsible for another's actions in several ways. Foremost, a principal is responsible when his agent has

"actual authority" to bind the principal. *See* Restatement (Third) of Agency § 2.01 (2006). A principal is also responsible for an agent who acts with "apparent authority," *i.e.*, when a "third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." *Id.* § 2.03. In other words, if the principal holds a person out as having authority to act on the principal's behalf, the principal is liable for that person's acts. Neither of these theories of vicarious liability is at issue here. Appellants' Br. 23-29. Rather, Appellants rely on the narrow theory of "ratification" to impose TCPA liability on UTCFS and Honeywell. *See* FCC Order, 28 F.C.C. Rcd. at 6587 ¶ 34 (explaining that "ratification" can be a basis for TCPA liability).

Even accepting that companies can be liable under a theory of ratification, there is no basis for reversing the district court's decision. "Ratification is the affirmance of a prior act done by another." Restatement (Third) of Agency § 4.01(1) (2006). But a person cannot "ratify" the acts of *any* third party. Ratification is available only "if the actor acted or purported to act *as an agent* on the person's behalf." *Id.* § 4.03 (emphasis added). The Restatement is clear: "When an actor is not an agent and does not purport to be one, the agency-law doctrine of ratification is not a basis on which another person may become subject to the legal consequences of the actor's conduct." *Id.* cmt. b. Said differently, ratification can

apply only when there is an underlying agency relationship where the agent arguably operated outside the scope of approved conduct. Then, the "principal's ratification confirms or validates an *agent*'s right to have acted as the *agent* did." *Id.* § 4.01 cmt. b (emphasis added). Indeed, the entire discussion of ratification in the Restatement presupposes the existence of an agency relationship.[2] The district court therefore correctly held that an agency relationship is necessary for vicarious liability by ratification. *See* JA1321-25.

Other courts have confirmed that agency law "limits the range of ratifiable acts." Restatement (Third) of Agency § 4.01 cmt. b (2006); *see, e.g.*, *Perry v. Scruggs*, 17 F. App'x 81, 91 n.1 (4th Cir. 2001) (explaining under Virginia law "that 'a principal may ratify the voidable acts of *his agent*'") (emphasis added). And conversely, when "there is no evidence that [the alleged agents] acted on behalf of [the principal] … the doctrine of ratification does not apply." *Id.*; *see also*

[2] *See, e.g.*, Restatement (Third) of Agency § 4.01 cmt. b (2006) "([A]n agent's action may have been effective to bind the principal to the third party, and the third party to the principal, because the agent acted with apparent authority. If the principal ratifies the agent's act, it is thereafter not necessary to establish that the agent acted with apparent authority."); *id.* ("The principal's ratification may also eliminate claims that third parties could assert against the agent when the agent has purported to be authorized to bind the principal but the principal is not bound."); *id.* ("Ratification is effective even when the third party knew that the agent lacked authority to bind the principal but nonetheless dealt with the agent."); *id.* ("Although ratification creates the legal effects of actual authority, it reverses in time the sequence between an agent's conduct and the principal's manifestation of assent."); *id.* ("If the principal ratifies, the relevant time for determining legal consequences is the time of the agent's act."); *see also id.* § 4.03 cmt. b.

Batzel v. Smith, 333 F.3d 1018, 1036 (9th Cir. 2003) ("Although a principal is liable when it ratifies an originally unauthorized tort, the principal-agent relationship is still a requisite, and ratification can have no meaning without it."). Numerous courts have applied the Restatement in this manner. *See, e.g.*, *Johansen v. HomeAdvisor, Inc.*, 218 F. Supp. 3d 577, 586 (S.D. Ohio 2016) ("In the absence of a real or purported principal-agent relationship, HomeAdvisor could not have ratified Lead House's conduct."); *Golan v. Veritas Entm't, LLC*, No. 14-cv-69, 2016 WL 880402, at *6 n.1 (E.D. Mo. Mar. 8, 2016) ("Ratification requires a principal-agent relationship."); *Makaron v. GE Sec. Mfg., Inc.*, No. 14-cv-1274, 2015 WL 3526253, at *10 (C.D. Cal. May 18, 2015) (requiring "an applicable principal-agent relationship" for ratification); *Murray v. Choice Energy, LLC*, No. 15-cv-60, 2015 WL 4204398, at *6 (S.D. Ohio July 10, 2015) (holding that "an agency relationship … is another necessary element for ratification"). In short, these courts recognize that this rule is a "critical restriction on what *type* of acts may be ratified." *Johansen*, 218 F. Supp. 3d at 586.

Here, there is no evidence that the dealers had an agency relationship with UTCFS or Honeywell, much less that any third-party telemarketers—who made calls for the dealers—had an agency relationship with UTCFS or Honeywell. *See* Appellants' Br. 30 (noting that the dealers "held themselves out as UTC and

Honeywell's authorized dealers" and not as actual agents acting on behalf of the two principals). The district court's decision was therefore correct.

B. Appellants' Theory of Ratification Is Misguided

Appellants' theory of ratification misreads the Restatement and overstates the support they claim to find in the case law. They start by pointing to the Restatement's definition of ratification as dispositive. Appellants' Br. 25. This definition states that "[r]atification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority." Restatement (Third) of Agency § 4.01(1) (2006). In other words, ratification validates an otherwise invalid act as if the actor had the authority in the first place. Nothing in the definition says that ratification can apply even when there is no agency relationship. On the contrary, the Restatement's other provisions and comments expressly state the opposite. *See supra* 8-9 & n.2.

Appellants next turn to the Restatement's commentary that "ratification may create a relationship of agency where none existed between the actor and the ratifier at the time of the act." Appellants' Br. 25 (quoting Restatement (Third) of Agency § 4.01 cmt. b (2006)). But Appellants omit the very next two sentences of the commentary, which expressly limit the reach of such ratification. Those sentences provide that "[i]t is necessary that the actor have acted or purported to act on behalf of the ratifier," which "limits the range of ratifiable acts to those done

by an actor who is an agent or who is not an agent but pretends to be." *Id*. Appellants do not even attempt to reconcile these express statements cabining the applicability of ratification.

Appellants' other authority fares no better. In fact, three of the four cases they cite do not even support their position. *See* Appellants' Br. 26 n.5. They start with a case that actually agrees that ratification applies "only if 'the actor has acted or purported to act on behalf of the ratifier.'" *Kern v. VIP Travel Servs.*, No. 1:16-CV-8, 2017 WL 1905868, at *9 (W.D. Mich. May 10, 2017) (citation omitted). Appellants also quote a discovery decision *in this case* for the unremarkable proposition that "a plaintiff may use principles of apparent authority and ratification to establish [vicarious] liability." *In re Monitronics Int'l, Inc., Tel. Consumer Prot. Act Litig.*, No. 11-CV-90, 2014 WL 316476, at *6 (N.D. W. Va. Jan. 28, 2014). The parties do not dispute that point. Appellants' third case incorrectly states that the FCC's Order—not the Restatement—"recognized that an agency relationship could arise by ratification." *Kristensen v. Credit Payment Servs.*, 12 F. Supp. 3d 1292, 1301 (D. Nev. 2014). But the FCC's Order did no such thing. It merely pointed to the Restatement for guidance on ratification. FCC Order, 28 F.C.C. Rcd. at 6586-87 ¶ 34 & nn.101-04. In any event, *Kristensen* otherwise required an agency relationship for ratification to apply. *See* 12 F. Supp. 3d at 1301 (explaining that "the principal's assent need not be communicated *to the*

agent or to third parties whose legal relations will be affected by the ratification") (emphasis added).

Appellants' primary authority is a single case: *Mey v. Venture Data, LLC*, --- F. Supp. 3d ---, 2017 WL 1193072 (N.D. W. Va. Mar. 29, 2017). Contrary to Appellants' claims, however, the court there did not "address[] ratification in great detail." Appellants' Br. 26. It merely asserted in a single sentence, without any analysis and in a *dictum*, that "ratification does not require the existence of an agency relationship." *Mey*, 2017 WL1193072, at *14. For support, the decision points only to the Restatement's definition of ratification, which again, does not support that proposition. *Amici curiae* respectfully submit that this part of *Mey* was wrongly decided.

Appellants' reading of the Restatement also undermines the FCC's carefully limited extension of vicarious liability in TCPA cases. It is clear that "the FCC guidance vastly expands the wording of 47 U.S.C. § 227." *Golan*, 2016 WL 880402, at *3. The FCC's basis for this expansion of liability was that sellers may be in a "position to monitor and police TCPA compliance by third-party telemarketers." FCC Order, 28 F.C.C. Rcd. at 6588 ¶ 37. "Sellers can simultaneously employ third-party telemarketers and protect their legitimate commercial interests by exercising reasonable diligence in selecting and monitoring reputable telemarketers." *Id.* at 6591 ¶ 44. Vicarious liability will also

provide "an incentive to carefully choose their telemarketers to ensure compliance and to force consistent violators out of the marketplace." *Id*. A manufacturer cannot, however, meaningfully "monitor and police" an independent third party with which it has no agency relationship. The FCC did not intend to impose liability on a manufacturer who sells its product to a distributor, who in turn sells the product to thousands of dealers, one of whom might use a third-party telemarketer who makes unlawful calls.

There is a reason that Appellants have minimal authority to support their position: it would impose an expansive view of vicarious liability where the TCPA is silent on whether vicarious liability is even available at all. While that silence may "permit[] an inference that Congress intended to apply *ordinary* background tort principles," it "cannot show that it intended to apply an unusual modification of those rules." *Meyer v. Holley*, 537 U.S. 280, 286 (2003). This Court should reject Appellants' attempt to do so.

II. Adopting Appellants' Theory of Ratification Would Harm Businesses That Are Not Culpable and Have Perverse Economic Consequences.

Adopting Appellants' theory of vicarious liability would also penalize manufacturers like UTCFS and Honeywell with potentially crippling liability for the actions of downstream resellers. Such a result would have harmful economic consequences because it would (1) unfairly punish manufacturers for the actions of those who are not their agents; and (2) disrupt the settled expectations of

businesses and discourage manufacturers from entering into dealer agreements for fear of vicarious liability.

First, adopting Appellants' position would expose manufacturers in a wide variety of industries to potentially crushing liability when those companies are at least two significant steps removed from the conduct that allegedly violates the TCPA. Here, it is undisputed that there is no agency relationship between UTCFS and Honeywell, which manufacture security equipment, and the independent dealers that purchase those products and resell or install them in home-security systems. The manufacturers receive no subsequent profits following their initial sales and have no relationship with the ultimate consumers. JA264, ¶¶ 38-39; JA308, 437.

Moreover, Appellees do not control the dealers' business operations or marketing decisions. JA265, ¶ 46; JA328, 332-33, 453. They had no involvement in deciding who would make telemarketing calls and, by extension, no relationship with those actually making the calls. *Id*. Contracts governed the dealers' relationships with the manufacturers and stated that the dealers were neither spokespersons nor agents. The contracts also prohibited dealers from representing themselves, in any manner, to be UTCFS or Honeywell. *See* JA640, § 10 ("The parties acknowledge that they are independent contractors and no other relationship, including … principal/agent is intended by this Agreement. Neither

party shall have the right to bind or obligate the other or represent themselves in any manner … as the other party."); JA272. Thus, expanding TCPA liability to manufacturers based on Appellants' ratification theory would unfairly harm businesses that have not engaged in any culpable conduct.

It bears noting that the TCPA's broad scope already imposes significant costs on businesses that are engaged in telephone sales. Plaintiffs filed about 5,000 TCPA cases in 2016 alone. *See TCPA Cases Approach Milestone for 2016*, ACA News (Nov. 17, 2016), goo.gl/3qpHRS. "The filing of these suits is likely driven by the promise of lucrative settlements or verdicts." Institute for Legal Reform, *TCPA Litigation Sprawl* 4 (Aug. 2017), goo.gl/zwGYS4 ("TCPA Study"). Plaintiffs have much to gain from such suits due the availability of statutory damages, which provide for $1,500 in damages *per violation*. *See* 47 U.S.C. § 227(b)(3). Indeed, a third of TCPA lawsuits are brought as nationwide class actions, while the remaining suits are not geographically limited in any way. TCPA Study 3, 16-17.

TCPA cases are rarely litigated on the merits even when a defendant has reasonable defenses due to their broad scope and outsized liability.[3] As the

[3] These *in terrorem* settlements impose substantial costs on businesses. In 2014, for example, Capital One settled a TCPA case for $75.5 million; Bank of America for $32 million; Metropolitan Life Insurance for $23 million; and Discover Financial Services for $8.7 million. *See* Institute for Legal Reform, *Lawsuit Ecosystem II: New Trends, Targets and Players* 87 (Dec. 2014),

Supreme Court has recognized, "when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable. Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). Expanding TCPA liability to manufacturers of equipment that is resold by other companies would only exacerbate this problem. UTCFS alone could face $450 million in liability for the allegedly unlawful calls in this case. *See* UTCFS Br. 10.

Second, adopting Appellants' ratification theory could have perverse economic consequences by disrupting settled expectations regarding the vicarious liability of product manufacturers. If manufacturers can be held liable for the sales practices of downstream retailers, then large businesses that drive the national economy would face the risk of being sued under the TPCA whenever and wherever their dealers sell products—even if the manufacturers have no involvement in the customer-facing side of the sale. *Cf., e.g.*, *Quill Corp. v. N. Dakota By & Through Heitkamp*, 504 U.S. 298, 316 (1992) (noting the value of a rule that "encourages settled expectations and, in doing so, fosters investment by businesses and individuals"). Under Appellants' theory, this risk would extend not

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only to the actions of dealers, but also to anyone whose actions the manufacturers could be alleged to have ratified.

That risk is incalculable. UTCFS, for example, has at least 28,000 downstream resellers that purchase its security equipment from distributors, and not from UTCFS itself. JA259, ¶ 10; JA262-63, ¶¶ 30-31, 34, 36. The identities of many resellers are unknown to UTCFS because it cannot track every product resold through its distributors once title has passed and the products enter the stream of commerce. JA260, ¶ 12; JA263, ¶ 36. It would therefore be not only burdensome, but actually impossible for UTCFS to account for its potential TCPA liability if it could be penalized for every misstep by any downstream reseller. And this is true for *any* manufacturer in an industry making products ultimately used by consumers who are contacted by telephone, not just those selling home-security equipment. Indeed, in recent years "TCPA lawsuits have been filed against companies in approximately 40 different industries." TCPA Study 3, 6-8.

Such a legal regime could also introduce substantial business inefficiencies by increasing uncertainty and cost. Attempts by manufacturers to monitor the resale process would be cumbersome and impair dealer agreements. The additional costs of manufacturers wading into marketing processes in which they are not as proficient as dealers would likely increase the costs of doing business. Those costs, and the additional costs of TCPA liability, would likely be passed on to consumers.

In addition, without direct control over dealers, manufacturers would face difficulties predicting or accounting for potential liabilities.

For example, in this case, it is the dealers who sell and install home-security systems—not the manufacturers of the equipment two steps away from that transaction—that are in the best position to ensure compliance with the TCPA. Finding manufacturers to be vicariously liable by ratification would essentially require manufacturers to monitor and oversee sales decisions of dealers. Such an ongoing post-sale duty would impose substantial costs and burdens on both manufacturers and dealers, which would indirectly harm consumers of home-security systems.

These potential policy impacts highlight why extending vicarious liability to manufacturers under Appellants' ratification theory would be dangerous. As a result, the Court should not expand the liability of upstream manufacturers for the actions of dealers who are not agents of the manufacturers.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the district court.

Dated: September 1, 2017

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify the following:

This brief complies with the page limitations of Fed. R. App. P. 29(a)(5) because it contains 4,480 words, which is more than one-half the maximum length authorized by this Court's rules for a party's principal brief, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2017, a true and correct copy of the foregoing was filed with the Clerk of the United States Court of Appeals for the Fourth Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

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