No. 19-20799

In the United States Court of Appeals
For the Fifth Circuit

HEWLETT-PACKARD COMPANY,

Plaintiff–Appellee

v.

QUANTA STORAGE, INCORPORATED,

Defendant–Appellant

Appeal from the United States District Court for the
Southern District of Texas, Houston Division; No. 4:18-CV-00762

BRIEF OF APPELLEE

BECK REDDEN LLP
Russell S. Post
Alistair B. Dawson
Alex Roberts
Parth S. Gejji
Garrett S. Brawley
1221 McKinney, Suite 4500
Houston, TX 77010
(713) 951-3700
(713) 951-3720 (Fax)

COUNSEL FOR APPELLEE HEWLETT-PACKARD COMPANY

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

The Certificate of Interested Persons in the Brief of Appellant is accurate. Additionally, please note the appearance of Parth S. Gejji as counsel for Appellee.

/s/ *Russell S. Post*
Russell S. Post
Attorney of Record for Appellee

STATEMENT REGARDING ORAL ARGUMENT

Appellant has waived argument and Appellee Hewlett-Packard Company, now known as HP Inc. ("HP"),[1] agrees to submission of the appeal on the briefs.

Although the sheer size of this antitrust judgment makes it appear important, the legal issues on appeal are straightforward. Quanta Storage, Inc. ("Quanta") essentially limits its appeal to a single evidentiary challenge concerning damages. Quanta does not deny its participation in an international price-fixing conspiracy, nor does it deny that HP was damaged. It simply contests the amount of damages. For two reasons, oral argument is not necessary to affirm the damage award.

First, Quanta failed to preserve its legal argument in a Rule 50(a) motion, restricting its appeal to plain error. Moreover, Quanta's sufficiency challenge fails to view all the evidence in the light most favorable to the verdict. The judgment should be affirmed on this straightforward basis; oral argument is unnecessary.

Second, even if Quanta's sufficiency challenge were well-founded, there is an alternative basis to affirm under the Foreign Trade Antitrust Improvements Act ("FTAIA"). *See In re Optical Disk Drive Antitrust Litig.*, No. 10-MD-02143-RS, 2017 WL 11513316 (N.D. Cal. Dec. 18, 2017) (RE 5). Quanta does not address that theory, which provides another basis for affirmance without argument.

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[1] For convenience, this brief refers to HP Inc. as "HP" except when it is substantively important to refer to "HP Inc." for clarity and precision with respect to the evidence and jury findings.

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STATEMENT OF THE ISSUES

1. Whether the award of damages to HP is supported by sufficient evidence—under either the "plain error" or "substantial evidence" standards of review.
2. Alternatively, to the extent the judgment also includes damages suffered by HP's subsidiaries—which HP denies—whether it is legally correct under the "import exclusion" to the FTAIA.
3. Whether a new trial is required because—
    a. the district court abused its discretion in overruling Quanta's objection to one question posed to HP's damages expert; or
    b. the district court abused its discretion by overruling Quanta's motion for new trial based on the "great weight of the evidence."

STATEMENT OF THE CASE

Quanta Engaged in Price Fixing of Optical Disk Drives Sold to HP

Quanta and its co-conspirators engaged in a price-fixing conspiracy through which they rigged the prices of optical disk drives ("ODDs") purchased by HP. During the conspiracy period (2003-2009), HP and its subsidiaries spent $7 billion on ODDs globally, nearly $2 billion of which ended up in the U.S. ROA.5626-27. $510 million in ODDs were purchased from Quanta entities. ROA.5627-28.

Several conspirators pled guilty to a price-fixing conspiracy. ROA.5633-39. Quanta participated in the conspiracy. ROA.11396-98, 10785 (PX396). At trial, the jury heard three Quanta employees invoke the Fifth Amendment in response to every question they were asked—warranting an adverse inference jury instruction. ROA.11060-147, 11164-217, 11344-69; *see also* ROA.3837-38 (instruction).

HP's damages expert, Dr. Debra Aron, described two paths for ODDs that were included in her damage model:

1) ODDs purchased by HP, shipped to U.S. manufacturing hubs, and incorporated into computers sold in the U.S.

2) ODDs purchased by HP, shipped to overseas manufacturing hubs, and incorporated into computers sold in the U.S.

ROA.5952, 5960-62, 5712. Dr. Aron's damage model excluded ODDs shipped to overseas manufacturing hubs and then incorporated into computers sold overseas (which Quanta's brief refers to as "Category 3"). ROA.5960.

HP's ODD Procurement Was Based in the U.S.

ODDs were important because they were used in almost all HP computers. ROA.5601. HP employed three types of procurement events: bilateral negotiations (*i.e.*, between HP and a supplier), eAuctions, and eRFQs. ROA.5603-06.

In eAuctions, competing suppliers used an HP platform to participate in "reverse auctions" in which bidders would drive purchase prices down by bidding. ROA.5606-08. An HP procurement team, including an ODD commodity manager, monitored the reverse auction from a war room in Houston, Texas. ROA.5610. Bidders were told the type of ODD and quantity sought by HP, the starting price, their bidding history, and their rank. ROA.5611-14. HP used rankings to allocate the total available market for the event to the best bidders with the lowest prices. ROA.5613-14. HP did not share bids, ranks, or identities of other participants, which promoted competition. ROA.5614-15. eRFQs were similar to eAuctions with minor differences. ROA.5618-21.

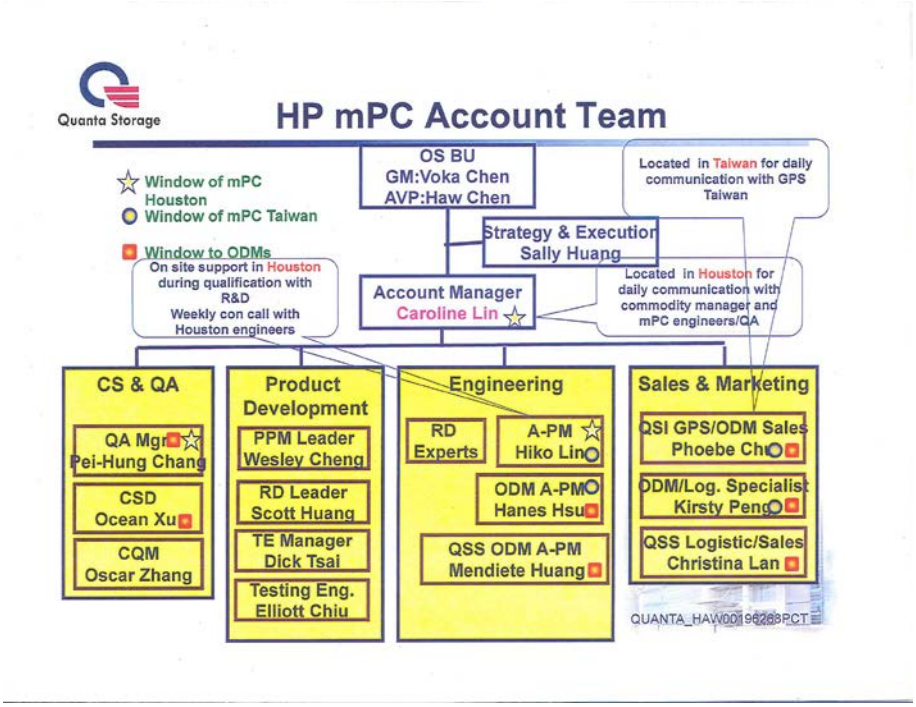
HP conducted these procurement events through three business units: cPC (consumer PC), bPC (business PC), and mPC (mobile PC). ROA.5622-23. Although they occasionally coordinated, the units generally conducted their own procurement events. ROA.5623, 5685. Still, the procurement events were linked because the winning price in one event became the starting price in the next event for the same type of ODD. ROA.5686-87.

Each unit had its own procurement teams and ODD commodity managers, who were the "main focal point for the procurement activity." ROA.5623-24. Commodity managers were responsible for procurement strategy and allocation of the total available market among suppliers. ROA.5623-25. Most of the managers were "located in the United States at various HP locations, primarily in Houston." ROA.5625; *see also* ROA.5748 ("That primarily happened in the United States."). HP invitation letters advised suppliers about procurement events. ROA.8201-03 (PX243). At the conclusion of procurement events conducted by HP in the U.S., "these suppliers would then produce drives and place them into what [HP] called hubs or warehouses at different locations around the world for our factories." ROA.5712. HP then shipped the ODDs to its factories as needed. ROA.5716-17.

The Price-Fixing Conspiracy

Russell Hudson, HP's procurement director, testified extensively about the price-fixing conspiracy. ROA.5589, 5673-745. The conspirators exchanged a variety of information, including pricing information, to achieve a collusive price. ROA.5744-45. They agreed in advance on the price that would be submitted to HP and which conspirator would "win" the business. *E.g.*, ROA.5733-35, 5718-19; ROA.9320 (PX98A); ROA.10515 (PX371). Because liability is uncontested, it is unnecessary to detail all of the voluminous evidence establishing the conspiracy. But it is useful to appreciate how the conspiracy targeted HP.

The "primary contacts with respect to pricing at HP . . . were all located in the United States." ROA.11058, 11336-37. Many of the conspirators located their HP account managers in the U.S. "so they could be closer to HP." ROA.11334. Sally Huang, a Quanta/QSA employee, was an HP account manager in Houston; she was followed by Caroline Lin. ROA.11165-69, 11143-45.



ROA.7350 (PX185A), 5706-07.

The conspirators' account managers were the key conduits of the conspiracy, meeting with their competitors to discuss fixing prices. *E.g.*, ROA.11057, 11148. For example, Sally Huang exchanged pricing information and reached agreements with competitors while working in Houston. ROA.11169, 11199-200, 11210. Caroline Lin did the same. ROA.11215-17, 11206-10. Quanta's telephone records document price-fixing using Houston area-code phones. ROA.8831-34 (PX76).

These account managers were instructed by their corporate headquarters to contact a "local contact" at a competitor to facilitate price-fixing. ROA.11050. Indeed, part of their job in the U.S was the "[e]xchange [of] pricing information." ROA.11312. For Sally Huang, "[p]art of [her] job duties and responsibilities as an account manager . . . included contacting . . . competitors and obtaining competitively sensitive nonpublic business information." ROA.11177.

The account managers often introduced their replacements to their contacts at competitors before returning to Asia. ROA.11308. In cloak-and-dagger style, they suggested safe meeting places around Houston and the use of burner phones. *See* ROA.5693-95, 6311 (PX13A) ("With personal meetings, choose a venue where HP people are least likely to see you. We usually met at the Starbucks on Jones and 1960 during the day, but there is no guarantee that it would be safe."), ROA.6326 (PX16A) (noting that Houston office had bought burner phones); ROA.11231-32 (same); ROA.11169 (Lin took over Huang's cell phone number).

These U.S.-based account managers were essential to the conspiracy because they relayed information to their headquarter offices in Asia. ROA.11381, 11148. Caroline Lin sent such information back to Quanta. ROA.5713-15, 8786 (PX69A) ("[TOP]Infor. from PLDS Sales in Houston"); ROA.5735-39, 6232-35 (PX1). These communications allowed account managers and headquarters to formulate a pricing strategy and implement the price-fixing scheme. ROA.11148.

Eventually, this price-fixing conspiracy was exposed and one ODD supplier (HLDS) and four of its employees pled guilty to federal crimes. ROA.5633-39. Those guilty pleas included conduct that originated in Houston. ROA.11253-54. One event covered by the guilty pleas was an HP October 2008 procurement event. ROA.5729-30, 8891 (PX268); ROA.10785 (PX396). Caroline Lin met one of the HLDS account managers for dinner during that period to "get . . . consensus on . . . price protection." ROA.8822 (PX74); ROA.5729-35, 9320 (PX98A). That HLDS account manager subsequently confirmed that he had communicated with Quanta, and this conduct formed a basis for his guilty plea. ROA.11397-98.

HP was one of the world's largest computer manufacturers and one of the conspirators' largest customers—a fact they knew well. ROA.11337-38, 11370. During the conspiracy period, HP expended nearly $2 billion on ODDs that were imported to the U.S. ROA.5626-27, 5976-77.

HP Sues Quanta and the MDL Court Rules on the FTAIA

HP sued Quanta, QSA, and the other co-conspirators for violating Section 1 of the Sherman Act in the Southern District of Texas. ROA.59-123, 1464-519. HP notified the Judicial Panel on Multidistrict Litigation ("JPML") that the case qualified as a tag-along action to MDL No. 2143, No. 3:10-CV-2143, *In re Optical Disk Drive Products Antitrust Litigation*, in the Northern District of California. ROA.167-71. The JPML transferred this case to the MDL court. ROA.247-52.

In the MDL court, Quanta filed a motion to dismiss. It argued *inter alia* that (1) HP lacked antitrust standing to prosecute any price-fixing claims for purchases by its foreign subsidiaries under *Illinois Brick Co. v. Illinois*, 431 U.S. 72 (1977), and alternatively, (2) HP could not satisfy the requirements of the Foreign Trade Antitrust Improvements Act ("FTAIA"). ROA.711-27.

HP responded, arguing that (1) *Illinois Brick* did not bar any of its claims because HP was seeking to recover only as a direct purchaser and as an assignee of claims for any purchases by its foreign subsidiaries, and (2) the FTAIA did not bar HP's claims related to any purchases by foreign subsidiaries because such claims satisfied both the FTAIA's "import exclusion" and "domestic effects exception." ROA.766-86. The MDL court denied the motion. ROA.817.

As the MDL court later explained, Quanta remained a party to the case but "effectively ceased participating in the litigation." ROA.3237. It apparently relied on the other conspirators to carry the defense. The other defendants moved for partial summary judgment under the FTAIA, arguing that it barred damage claims related to ODD shipments delivered to HP's foreign subsidiaries, which all fell into Categories 2 and 3. ROA.13796-830.[2]

There was no dispute that Category 1 damages are recoverable.

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[2] In the MDL proceedings, the parties and the MDL court referred to the categories of damages in reverse order from Quanta's appellate brief. For purposes of clarity, HP refers to the damages in the same way as Quanta's appellate brief.

Again, HP argued that damages for any ODDs purchased by HP subsidiaries but delivered to its foreign manufacturing hubs would be recoverable under the import exclusion and domestic effects exception. ROA.20716-58. The MDL court concluded that, with respect to all such ODDs, a material factual dispute existed as to whether defendants' conduct fell within the import exclusion and the domestic effects exception. The court further concluded that damages were unrecoverable for foreign sales of ODDs to foreign subsidiaries for incorporation into computers that were sold to foreign consumers. *See In re Optical Disk Drive Antitrust Litig.*, No. 10-MD-02143-RS, 2017 WL 11513316 (N.D. Cal. Dec. 18, 2017) (RE 5).[3]

Eventually, HP settled its claims against all other conspirators. ROA.3181. Given Quanta's lack of participation in the case, the MDL court directed HP to "proceed expeditiously to dispose of its claims against Quanta [and QSA]" by seeking either a default judgment or remand for trial. ROA.3237-38. At this point, Quanta, QSA, and HP sought a remand, ROA.3239-43, and the JPML remanded this case (and another) to the Southern District of Texas. ROA.3247-52.

[3] This order (MDL Doc. No. 2706) was designated for the record on remand but appears to have been omitted by mistake. *See* Stipulation Regarding Designation of Record on Remand at Attachment E, *In re Optical Disk Drive Prods. Antitrust Litig.* (No. 3:10-MD-02143), 2018 WL 10689592; Stipulation Regarding Designation of Record on Remand at Attachment E, *Hewlett-Packard Co. v. Toshiba Corp.* (No. 3:13-CV-05370), 2018 WL 10689593; JPML Rule 10.4.

After Remand, HP Prevails at Trial and the Court Enters Judgment

On remand, the district court (Hon. David Hittner) issued a series of orders regarding the joint pretrial conference and trial. ROA.3293, 3300, 3320-21, 3341. Pretrial proceedings were over, so there were no dispositive motions. ROA.3248.

In the joint pretrial order, Quanta did nothing to apprise the district court of the grounds for its complaints on appeal. The parties submitted a joint jury charge, and Quanta's only objection regarding damages was a request for separate findings on the federal and state antitrust claims. ROA.3570, 3573. HP ultimately dropped its state-law claim. ROA.3799. HP apprised the court that it planned to prove $176 million in damages. Quanta responded that HP's damages "were much less than $176 million," but did not give the court notice of its eventual line of attack—making no reference to the arguments it now asserts on appeal. ROA.3358-59.

At trial, the jury heard three Quanta employees invoke the Fifth Amendment to every question they were asked. ROA.11060-147, 11164-217, 11344-69.

Quanta's Rule 50(a) motion for judgment as a matter of law consisted of just a sentence fragment relating to the testimony of one fact witness. ROA.6051-52. It made no reference to Dr. Aron's damage analysis or any legal barrier to recovery of damages based on foreign purchases. The motion was denied. ROA.6051-52.

Quanta's charge objections did not raise these issues either. ROA.5854-68. The jury was given a proper adverse inference instruction. ROA.3837-38.

The jury found for HP and the district court entered judgment in HP's favor. ROA.3833-54.

HP moved for treble damages pursuant to the Clayton Act. ROA.3856-61. Quanta moved for judgment as a matter of law under Rule 50(b) and for new trial. ROA.3896-918, 3920-41. The Rule 50(b) motion went well beyond the grounds set forth in the Rule 50(a) motion, so HP objected to consideration of new grounds in violation of Rule 50. ROA.5294-98. The district court granted HP's motion, denied Quanta's motions, and entered an amended final judgment. ROA.5336-42. Quanta re-urged its motions, to no avail. ROA.5348-53. Quanta appealed.[4]

Meanwhile, Quanta has defied the judgment. In an exercise of its discretion, the district court mercifully allowed Quanta to supersede the judgment by posting an $85 million bond—a fraction of the judgment, less than 25% of its total assets, and approximately 50% of its cash. Doc. No. 418. When Quanta refused to do so, the court ordered it to turn over all non-exempt property and related information. Doc. No. 424, 434. Again, Quanta failed to comply, prompting the court to issue a show-cause order with a threat of daily sanctions. Doc. No. 430. Yet even today, Quanta remains out of compliance. It defies the U.S. courts as it defied U.S. law.[5]

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[4] After remand, QSA stopped participating in this litigation. ROA.3357, 5436-43. HP chose to get jury findings against QSA to assure that it had all the findings needed to support a judgment, ROA.3851, and QSA is bound in judgment. ROA.5342. QSA has not appealed.

[5] A supplemental record will include the relevant docket entries reflecting these events.

SUMMARY OF THE ARGUMENT

Quanta does not deny that it engaged in a criminal price-fixing conspiracy—but on appeal, it hopes to evade liability with a technical argument about damages. For two independent reasons, Quanta cannot escape this judgment.

I. The distinguished attorneys who appeared for Quanta after the verdict have worked diligently to fashion a basis for appeal, but their appellate complaint was not preserved by Quanta's trial counsel in a Rule 50(a) motion so it is subject only to review for "plain error." Furthermore, the evidence is sufficient under any standard of review. The jury heard direct testimony sufficient to support a finding that HP Inc. suffered the full $176 million in damages, and Quanta's challenges to that testimony are not grounds for judgment as a matter of law but jury arguments. Quanta made all those arguments to the jury, and it lost the verdict.

II. Even if it were well-founded factually, Quanta's appellate complaint would be legally immaterial; the MDL court ruled that HP could recover damages, regardless of who purchased the ODDs, under the import exclusion to the FTAIA. Quanta does not challenge that ruling, and it failed to request jury findings at trial to avoid the import exclusion. Thus, the district court is deemed to have made the necessary findings in support of the judgment. Those findings are amply supported by the evidence and independently support affirmance.

III. Quanta has not shown any abuse of discretion warranting a new trial.

STANDARD OF REVIEW

Although the stakes are high, this appeal is subject to the standards of review that apply to every judgment entered after trial: the substantial evidence standard (for issues that were properly preserved under Rule 50) and the plain error standard (for those that were not). Those standards are augmented in this case by the rules governing implied findings in support of a judgment in certain circumstances.

First, if a challenge to the sufficiency of the evidence supporting a verdict has been properly preserved in accordance with Rule 50, the Seventh Amendment requires this Court to consider all the evidence in the light most favorable to the plaintiff and to draw all reasonable inferences in its favor. *Boeing Co. v. Shipman*, 411 F.2d 365, 374 (5th Cir. 1969) (en banc), *overruled in part on other grounds*, *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331 (5th Cir. 1997) (en banc). Judgment as a matter of law is appropriate only if the facts and inferences point so strongly and overwhelmingly in favor of one conclusion that reasonable jurors could not disagree. *Id.* So long as there is "evidence of such quality and weight that reasonable and fair-minded [jurors] in the exercise of impartial judgment might reach different conclusions," judgment as a matter of law is inappropriate. *Id.* This basic standard "'with respect to a jury verdict is especially deferential.'" *Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 874 (5th Cir. 2013).

Second, if a challenge to the sufficiency of the evidence supporting a verdict has not been properly preserved in a pre-verdict Rule 50(a) motion, the appellant is limited to plain error. "Where a party failed to raise a Rule 50 motion for JMOL before the case went to a jury, this court considers the sufficiency of the evidence under a plain error standard of review." *Seibert v. Jackson Cty.*, 851 F.3d 430, 435 (5th Cir. 2017). This is because—for reasons rooted in the Seventh Amendment—"a Rule 50(b) motion is technically only a renewal of the Rule 50(a) motion" and "the movant cannot assert a ground that was not included in the original motion." *Universal Truckload, Inc. v. Dalton Logistics, Inc.*, 946 F.3d 689 (5th Cir. 2020) (internal quotation marks omitted).

Under plain error review, the question "is not whether there was substantial evidence to support the jury verdict, but whether there was *any* evidence to support the jury verdict." *Seibert*, 851 F.3d at 436 (internal quotation marks omitted). Even then, reversal is not mandatory; this Court has "discretion" to remedy such an error but it "ought to be exercised only if the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Puckett v. United States*, 556 U.S. 129, 135 (2009) (internal quotation marks omitted). Satisfying this test is "difficult, as it should be." *Id.* (same). In civil appeals, it is virtually impossible. And if such mercy is shown, "appellate relief is limited to ordering a new trial." *McCann v. Tex. City Refining, Inc.*, 984 F.2d 667, 673 (5th Cir. 1993) (per curiam).

ARGUMENT

I. There Is Sufficient Evidence to Support the Judgment Based on the Jury's Finding of Damages to HP Inc.

Quanta contends that no evidence supports the award of damages to HP Inc. Quanta Br. at 26-49. But Quanta does not dispute that HP Inc. suffered damages; it simply disputes the amount. *Id*. at 16-17, 32, 48. Accordingly, the greatest relief Quanta could secure would be a new trial on damages.

The jury found $176 million in losses to the "plaintiff," which was defined to mean Hewlett-Packard Company (now HP Inc.). ROA.3852, 3840, 3847, 1281. Quanta notes that this $176 million finding included damages related to Category 1 (*i.e.*, ODDs shipped to the U.S.) and Category 2 (*i.e.*, ODDs shipped abroad for incorporation into computers destined for the U.S.), and asserts that ODDs *shipped* to HP's subsidiaries were also *purchased* by the subsidiaries. Quanta Br. at 32-33. But at trial, Quanta did nothing to establish that factual assertion conclusively.

Quanta's appeal is founded on the proposition that under antitrust principles, HP could not recover damages for purchases by its subsidiaries. Quanta Br. at 27. In truth, the FTAIA *does* allow recovery of such damages in certain circumstances, and HP proved all the prerequisites for such recovery at trial. *See* pp. 37-46, *infra*. But it is unnecessary to reach that question because, on this record, the jury could reasonably find that HP Inc. was entitled to recover the full $176 million in losses. The judgment may be affirmed on this straightforward basis.

A. Quanta's Sufficiency Challenge Is Subject to Plain Error Review.

As a threshold matter, Quanta has not preserved its right to Rule 50 review. "Federal Rule of Civil Procedure 50 sets forth the procedural requirements for challenging the sufficiency of the evidence in a civil jury trial and establishes two stages for such challenges—prior to submission of the case to the jury, and after the verdict and entry of judgment." *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 399 (2006).

First, a party must move for judgment as a matter of law prior to submission of the case to the jury. Fed. R. Civ. P. 50(a)(2). Second, after the jury's verdict, the movant may renew its original motion. Fed. R. Civ. P. 50(b).

To preserve error, a Rule 50(a) motion "shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment." Fed. R. Civ. P. 50(a)(2). Requiring specificity "serves both to make the trial court aware of the movant's position and to give the opposing party an opportunity to mend its case" before the evidence closes. *McCann*, 984 F.2d at 672 n.6. "A party may not base a motion for JNOV on a ground that was not included in a prior motion for a directed verdict." *Id.* at 672.[6]

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[6] For examples, *see, e.g.*, *Roman v. Western Mfg., Inc.*, 691 F.3d 686, 699-700 (5th Cir. 2012); *Taylor Pub. Co. v. Jostens, Inc.*, 216 F.3d 465, 473 (5th Cir. 2000); *Morante v. Am. Gen. Fin. Ctr.*, 157 F.3d 1006, 1010 (5th Cir. 1998); *U.S. ex rel. Wallace v. Flintco Inc.*, 143 F.3d 955, 960 (5th Cir. 1998).

A party that fails to comply with the timing and specificity requirements of Rule 50(a) waives both its right to file a renewed post-verdict Rule 50(b) motion and its right to challenge the sufficiency of the evidence on that issue on appeal. *See Maryland Casualty Co. v. Acceptance Indem. Ins. Co.*, 639 F.3d 701, 707-08 (5th Cir. 2011); *Flowers v. S. Reg'l Phys. Serv.*, 247 F.3d 229, 238 (5th Cir. 2001). Appellate review is limited to plain error. *Wallace*, 143 F.3d at 963-64; *McCann*, 984 F.2d at 673.

Quanta's appeal runs afoul of Rule 50 and a long line of circuit precedent. At the close of evidence, Quanta asked the district court to take judicial notice that HP has subsidiaries. ROA.6049-51. In presenting that motion, Quanta's counsel embedded a fleeting Rule 50(a) motion within a single sentence:

> When Dr. Hudson testified on cross-examination about procurement events, he testified that it was sometimes HP subsidiaries that were procuring these ODDs, that he didn't know in each instance for each procurement event what the entity was that was purchasing the ODDs.
>
> And that's the reason why it's relevant, and that's also the reason why *we would ask for a motion for judgment as a matter of law in that the jury does not have sufficient evidentiary basis to determine with reasonable certainty the amount of damages Hewlett-Packard Company has suffered* because –

ROA.6051 (emphasis added). This motion was literally just a sentence fragment, limited to an assertion that the cross-examination of a witness who did not testify on damages (Hudson) made it impossible "to determine with reasonable certainty the amount of damages Hewlett-Packard Company has suffered." *Id*.

Notably, Quanta did not say one word about the damage testimony given by HP's expert economist (Dr. Aron). Nor did Quanta argue that HP is barred from recovering damages for purchases by foreign subsidiaries—the basis of its appeal. The district court denied Quanta's one-sentence motion. ROA.6051-52.

In its post-verdict Rule 50(b) motion, Quanta greatly expanded its challenge and attempted to argue that the damage testimony given by HP's expert economist (Dr. Aron) was legally insufficient to quantify its damages. According to Quanta, Hudson's inability to segregate sales somehow meant Dr. Aron could not do so—barring any recovery. ROA.3896-917.

In response, HP correctly noted that Quanta could not assert new arguments in its Rule 50(b) motion. ROA.5294-98. Quanta was attempting to expand upon "the law and facts" underlying its Rule 50 motion, Fed. R. Civ. P. 50(a)(2), contrary to the unambiguous text of the rule and settled Fifth Circuit precedent. Because HP properly invoked the safeguards of Rule 50, Quanta's waiver of any grounds for relief that were not raised in the Rule 50(a) motion remains unexcused. *See Montano v. Orange Cty.*, 842 F.3d 865, 877 (5th Cir. 2016) (citing cases); *DeCorte v. Jordan*, 497 F.3d 433, 438 (5th Cir. 2007) (discussing this rule in the context of an insufficiently specific Rule 50(a) motion).

The district court denied the Rule 50(b) motion. ROA.5336-41. Therefore, Quanta's appeal is subject to plain error review. *Seibert*, 851 F.3d at 435.

B. Sufficient Evidence Supports the Damages Awarded to HP Inc.

1. The jury was entitled to find that Dr. Aron's calculation included only purchases by HP Inc.

Under any standard of review, Dr. Aron's expert testimony was sufficient to support a finding that the full $176 million in damages was incurred by HP Inc. Contrary to Quanta's assertion, the trial evidence did not conclusively establish that Dr. Aron's calculation included purchases by HP's foreign subsidiaries.

Dr. Aron testified that HP Inc. suffered damages of at least $176.3 million. ROA.6040, 5959-62, 6032. This total included both ODDs purchased by HP Inc. and "directly shipped to the United States" as well as ODDs "included in PCs that were shipped to the United States." ROA.5959-62; *see also* ROA.6039-43 (same).[7] It excluded ODDs that "weren't shipped to the United States or incorporated in computers that were shipped to the United States." ROA.5960-61.

Quanta's appeal is based on the premise that Dr. Aron's calculation of the Category 2 damages necessarily included purchases by HP's foreign subsidiaries. But Dr. Aron's testimony refuted that premise. When asked whether the purchases in her analysis were made by HP Inc., Dr. Aron testified that the purchases were made by "HP, Inc." and the damages were suffered by "HP, Inc." ROA.5961-62; *see also* ROA.6042-43 (same). This direct evidence supports the verdict.

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[7] This calculation was not limited to Quanta sales, which was proper because conspirators are jointly and severally liable for all damages caused by the price-fixing conspiracy. ROA.3847.

Further, Dr. Aron excluded "intra-company" transactions from her analysis. ROA.5962-64. The data she had received included transactions in which HP Inc. received ODDs from a foreign subsidiary, such as HP Korea. She excluded such transactions from her damage calculations. ROA.5962-64. This testimony directly refutes the factual premise of Quanta's appeal.

Dr. Aron's testimony was perfectly credible. Her calculation included only a small fraction of the ODDs purchased by HP. "HP spent about $1.79 billion on those products [included in her model] during the conspiracy period," ROA.5959, while in total $7 billion was spent on ODDs worldwide. ROA.5626-27. As such, it was reasonable for the jury to find that some ODD purchases were made by both HP Inc. and HP's foreign subsidiaries, but that purchases by HP's subsidiaries were excluded from the damage model—leaving only purchases by HP Inc.

Because this Court is duty-bound to consider all the evidence in the light most favorable to the plaintiff and to draw all reasonable inferences in its favor, *Boeing*, 411 F.2d at 374, this interpretation of the testimony supports the verdict. Quanta had a fair trial, a chance to cross-examine Dr. Aron and present evidence, and an opportunity to argue the weight of the evidence. Quanta made this precise argument to the jury in closing argument, ROA.6113-15, and it lost. It cannot now ask this Court to second-guess the jury's verdict.

2. Quanta's challenge to Dr. Aron's damage calculation affects only its weight, but does not defeat it as a matter of law.

Quanta's challenge to the damage calculation is based on one key premise: that Dr. Aron's damage model included purchases by HP's foreign subsidiaries. Quanta Br. at 31-33. But that crucial premise is *not* established as a matter of law; on the contrary, the evidence at trial proved the purchases were made by HP Inc. When the evidence is viewed in the light most favorable to the verdict, as required, reasonable jurors could find that all the purchases in dispute were made by HP Inc. Thus, this Court cannot second-guess the jury's verdict. *Boeing*, 411 F.2d at 374.

As a preliminary matter, Dr. Aron's damage model was highly sophisticated. Quanta did not dispute Dr. Aron's qualifications as an expert on antitrust damages. ROA.5945-46. Her analysis required four years and involved 8,000 hours of work, at a cost of $4 million. ROA.5945. The analysis included 400 million ODDs and 600,000 transactions "from different parts of HP, from different geographic areas, different time periods, and different product types." ROA.5948-49, 5953; *see also* ROA.5949 (describing the data set). Dr. Aron used multiple regression analysis to analyze this data and calculate the overcharges. ROA.5954-55, 5998, 6032-35. This is not a case in which one expert based her opinions entirely on the testimony of another witness without any independent foundation. Dr. Aron's damage model represented a first-rate economic study based on years of sophisticated work and voluminous underlying data.

Crucially, Dr. Aron testified that she relied on *the data itself* to conclude that the purchases underlying her damage model were made by HP Inc.:

> A. As I mentioned earlier, *we did quite a lot of work to understand the data that we received; and it was my understanding, based on that work, that the data was purchases by the plaintiff HP, Inc. formerly known as Hewlett-Packard Company*.
>
> . . . .
>
> Q. And is your conclusion with respect to the damages, *are those damages that were suffered by the plaintiff HP, Inc.*?
>
> A. *Correct*.

ROA.5962 (emphasis added); *see also* ROA.6042-43 (same).

This testimony was reinforced by Dr. Aron's explanation that she excluded intra-company transactions from her analysis, including only HP Inc. purchases. ROA.5962-64. As Dr. Aron explained:

> A. In the data files I received, the transactions identified the supplier; and in any cases in which the supplier was identified as an HP entity, I excluded those because I understood those to be intra-company transactions.
>
> . . . .
>
> Q. What intra-company transactions did you exclude from your damage model?
>
> A. Any transactions in the data where the supplier was identified as an HP entity. And so an example I just gave was HP Korea. There were a handful of others as well, and they appeared to be HP-related entities. So I excluded them from the whole analysis.

ROA.5962-64. The jury was entitled to credit this testimony.

Given this evidence, Quanta's contention that it conclusively disproved the foundation for Dr. Aron's damage model by relying on its own cross-examination of an entirely different witness (Hudson) is invalid. Dr. Aron never claimed that she was relying on Hudson's testimony or information received from him as the basis for her opinion that the damages in question were suffered by HP Inc.

Quanta touts its cross-examination of Hudson and his concession that he lacked knowledge about the identity of all the HP entities that purchased ODDs, ROA.5748-49, 5754-55, but a concession by *Hudson* cannot conclusively disprove the testimony of *Dr. Aron*. Hudson's cross-examination simply provided a basis for closing arguments. Quanta made this very argument, ROA.6113-15, and it lost.

Furthermore, Hudson's testimony was not incompatible with Dr. Aron's conclusion that the purchases included in her damage model were made by HP Inc. Hudson's testimony was equivocal. *See* ROA.5749 ("It could well have been"). Yet Quanta's arguments repeatedly trace back to this one inconclusive exchange. *See* Quanta Br. at 10-11, 28-29, 31-33, 34-36. Evidence that some ODD purchases "could well have been" made by HP's foreign subsidiaries, ROA.5749, does not conclusively prove that Dr. Aron's damage model included such purchases.[8]

[8] Quanta's citation of European Commission findings, Quanta Br. at 29-30, is even less material. The European purchases were either Category 2 purchases excluded as intra-company transfers, ROA.5962-64, or Category 3 purchases excluded from the damage model. ROA.5960-61.

Nor does Hudson's statement that HP does not "track procurement spend by legal entities" for its own internal reporting, ROA.5755, conclusively prove that Dr. Aron lacked the identity of purchasers for purposes of her damage analysis—which included 45 complex data sets. ROA.5953. Dr. Aron testified that the data she was given included the name of the supplier and when it was an HP subsidiary, she excluded that transaction. ROA.5962-64. Furthermore, the fact that Dr. Aron was able to exclude non-U.S. sales, ROA.5960-61, supports a reasonable inference that she had access to the information necessary to distinguish among purchasers.

The jury was not obligated to accept Quanta's suggestion that Dr. Aron had no way to distinguish among the purchasers for purposes of her damage model, and she testified to the contrary. ROA.5962, 6042-43. It makes no difference that Hudson "can't speak for how much was purchased by any legal entity." ROA.5755. Dr. Aron was the damage expert, and the question is whether Dr. Aron could speak to that question—and she did. ROA.5961-64.

In summary, Hudson's cross-examination does not conclusively disprove Dr. Aron's testimony, both because there is no conclusive evidence that Dr. Aron relied on Hudson for information and because Hudson's testimony was not mutually exclusive with Dr. Aron's testimony. Weighing the competing inferences to be drawn from all the testimony and resolving inconsistencies, if there were any, was the exclusive province of the fact-finder. *Boeing*, 411 F.2d at 374.

3. Quanta forfeited its right to introduce the factual basis for the damage model.

If it wanted greater certainty about the basis for Dr. Aron's damage model, Quanta had a fair opportunity to demand it. Rule 705 addresses this precise issue: "[A]n expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. *But the expert may be required to disclose those facts or data on cross-examination*." Fed. R. Evid. 705 (emphasis added). Dr. Aron was entitled to present her damage calculation and express her conclusion that those damages were all suffered by HP Inc. Quanta had a fair opportunity—and ample financial incentive—to "require" Dr. Aron to "disclose" the facts or data upon which she based that conclusion in cross-examination. But it failed to do so.

Quanta's cross-examination of Dr. Aron cannot be described as "thorough." It takes up just *seven pages* of the trial record. ROA.6041-47. In that examination, Quanta established only that Dr. Aron understood that the data she had been given involved purchases by HP Inc. ROA.6041-45. But Quanta never asked Dr. Aron to identify the source of her understanding, forfeiting its right to require Dr. Aron "to disclose those facts or data." Fed. R. Evid. 705. Quanta now complains that Dr. Aron relied on a "mystery speaker." Quanta Br. at 44. If there is a "mystery," it is one of Quanta's making. Whether the failure to pursue this critical question was an oversight (which is unlikely, given the stakes) or a matter of trial strategy (because Quanta did not want the jury to hear the answer) is immaterial.

Similarly, Quanta argues that Dr. Aron could not have relied on the data itself to conclude that her Category 2 calculation included only HP Inc. purchases. Quanta Br. at 42-44. But that data was produced to Quanta, and had it wished, Quanta could have confronted Dr. Aron with the data itself in cross-examination. *See* ROA.6011-12 ("It was produced to Quanta, as well as to me. . . . They had my papers and all of my underlying programs and data, yes."); ROA.6042-43 (same). Quanta did not do so, *see* ROA.6041-47, nor did it admit the data into evidence. Accordingly, Quanta cannot argue that the underlying data conclusively forecloses Dr. Aron's testimony that all of the purchases in question were made by HP Inc. Instead, Quanta is left to rely on its inconclusive cross-examination of Dr. Aron and to criticize the level of detail provided by her testimony. Quanta Br. at 42-44. As we have explained, these criticisms simply affect the weight of the testimony, and Quanta lost that battle with the jury. *Boeing*, 411 F.2d at 374.

Whatever the reason, the bottom line is that Quanta did not require Dr. Aron to identify the foundation for her understanding that all of the ODD purchases in her damage calculation were made by HP Inc. and did not introduce the data itself. Thus, Quanta cannot establish that her testimony on this key fact was unsupported or contrary to conclusive facts, foreclosing judgment as a matter of law. *Boeing*, 411 F.2d at 374. To the extent the record lacks greater specificity on this question, Quanta has only itself to blame. The judgment should be affirmed.

C. Quanta's Reliability Challenge Is Unpreserved and Unpersuasive.

In truth, Quanta realizes it cannot hope to prevail on its sufficiency challenge in the face of Dr. Aron's testimony—so it hopes to exclude Dr. Aron's testimony. Quanta Br. at 38-50. Unless Quanta can prevail on this admissibility challenge, affirmance is inescapable. But its complaint is unpreserved and unpersuasive.

1. Quanta failed to preserve its reliability objection.

Quanta failed to preserve its complaint that Dr. Aron lacked a reliable basis for her conclusion that the purchases in her damage model were made by HP Inc. It failed to file any motion to exclude the testimony. *See* ROA.1636-37, 1646-47 (referencing MDL deadlines for *Daubert* motions). So its preservation depends on a single *pro forma* "hearsay and no foundation" objection in the middle of trial. ROA.5961. Here is the sum total of Quanta's preservation, in all its glory:

> Q. From the data that you looked at, was it your understanding that the purchases of the DVDs were by the plaintiff HP, Inc.?
>
> Mr. CARMAN: Objection. Calls for hearsay and no foundation.

ROA.5961. That is all. There is nothing else.

HP argued the expert could "rely on information that she received as a result of the data that she looked at and all the documents that she looked at in this case." ROA.5961. The district court agreed: "Overrule the objection." ROA.5962. Quanta did not object elsewhere, despite Dr. Aron's repeated assertions of this fact. *See* ROA.6042-45; *see also* ROA.5959-60, 6039-40.

From this one humble seed, Quanta hopes to grow a reliability challenge—complete with robust references to the law governing experts and the illusion of a gatekeeper proceeding that never occurred. Citations to Dr. Aron's *trial testimony* give the impression that the district court was being asked to evaluate the reliability of Dr. Aron's expert opinion, Quanta Br. at 38-45, but that is emphatically not true. All those citations concern Dr. Aron's testimony *to the jury*, which was introduced *after* the district court had overruled Quanta's solitary objection. This is not a case involving a district court's gatekeeper ruling about the reliability of expert opinions based on evidence presented in response to a proper Rule 702/*Daubert* objection; it is simply a case involving one isolated objection of "hearsay and no foundation." Everything else in the brief was manufactured after the fact for purposes of appeal. Judge Hittner never had any opportunity to consider and rule on those arguments, so they are not preserved. *See* Fed. R. Evid. 103(a)(1).

Throughout this discussion, Quanta cites to a line of expert reliability cases. Quanta Br. at 39-40. But none of those cases stands for the proposition that a party can lie behind the log, fail to make any pre-trial reliability challenge to an expert, fail to state a reliability objection at the time the witness testifies, yet then succeed in demonstrating an abuse of discretion by raising a reliability challenge on appeal. Quanta's cases all involved (1) a *reliability* inquiry—either before or during trial—and (2) *affirmance* of the court's discretionary ruling. They do not assist Quanta.

Quanta never objected to the reliability of the data upon which Dr. Aron based her conclusion that the purchases in her analysis were all made by HP Inc., either before or during trial. Its "hearsay" and "no foundation" objections did not notify Judge Hittner that Quanta was trying to make a last-minute *Daubert* motion requiring a gatekeeper analysis of reliability. Had Quanta made such an objection, the district court would have had discretion to entertain it or deny it as untimely. *United States v. Wen Chyu Liu*, 716 F.3d 159, 167 n.19 (5th Cir. 2013). Instead, Quanta did not give Judge Hittner a chance to consider that issue. HP is not aware of any decision from this Court holding that a barebones "no foundation" objection is enough to preserve a *Daubert* challenge. *See* 21 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 5036.7 (2d ed. Westlaw 2020) (objecting to "no foundation" is insufficiently specific to preserve error).

Quanta cannot save its appeal by citing Rule 103(b). Quanta Br. at 46-48. Although a party may preserve a "claim of error" by seeking a definitive ruling, Fed. R. Evid. 103(b), that is true only for "the specific ground" of the objection. Fed. R. Evid. 103(a)(1)(B). "Fed. R. Evid. 103(a)(1) and the cases interpreting that rule establish that when the objection is not specific as to the legal basis for the objection, the error is not preserved and can only be reviewed for plain error." *United States v. Seale*, 600 F.3d 473, 485 (5th Cir. 2010). A party cannot make one objection at trial and change horses to another objection on appeal. *Id*.

The specificity requirement of Rule 103 is devastating to Quanta's argument (Quanta Br. at 41-45) in three distinct ways.

First, because Quanta failed to make a specific reliability objection at trial, there was no definitive ruling. Rule 103 requires that "'the nature of the error [be] called to the attention of the judge.'" *United States v. Lewis*, 796 F.3d 543, 546 (5th Cir. 2015). "'A loosely formulated and imprecise objection will not preserve error. Rather, a trial judge must be fully apprised of the grounds of an objection.'" *Id*. (citation omitted).[9] Thus, the reliability complaint is waived.

Second, Quanta's counsel elicited the same testimony on cross-examination. ROA.6042-45. Because Quanta had not preserved its reliability objection initially, "further development of any impermissible expert testimony on cross-examination invited error" on this issue. *United States v. Breland*, 366 F. App'x 548, 553 n.1 (5th Cir. 2010) (per curiam). For precisely this reason, *Breland* distinguished *United States v. Marshall*, 762 F.2d 419 (5th Cir. 1985)—the case cited by Quanta. Quanta cannot raise new objections, Quanta Br. at 41-45, to testimony it elicited.

Third, Dr. Aron was allowed to offer similar testimony without objection. *See* ROA.5959-60, 5962-64, 6039-40. Without a definitive ruling, this testimony independently reinforces the reasonableness of the jury's verdict.

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[9] For examples, *see, e.g., United States v. Biyiklioglu*, 652 F. App'x 274, 288 (5th Cir. 2016) (per curiam); *United States v. Browning*, 533 F. App'x 401, 404-05 (5th Cir. 2013) (per curiam); *United States v. Jones*, 664 F.3d 966, 976 n.1 (5th Cir. 2011).

In sum, Quanta has preserved only "hearsay" and "no foundation" objections to one question—not a challenge to an expert's opinion on the basis that it was not "based on sufficient facts or data," Fed. R. Evid. 702(b), the complaint on appeal. Any other conclusion would make a mockery of the preservation requirement and would do a disservice to Judge Hittner, who had no opportunity consider this issue. Circuit precedent is firm: "if a litigant desires to preserve an argument for appeal," this Court holds that "the litigant must *press and not merely intimate* the argument during the proceedings before the district court. If an argument is not raised to such a degree that the district court has an opportunity to rule on it, we will not address it on appeal." *F.D.I.C. v. Mijalis*, 15 F.3d 1314, 1327 (5th Cir. 1994) (emphasis added). The *Mijalis* rule is applied by this Court consistently and in a wide variety of contexts; if there were ever a case in which it should be dispositive, this is it. Quanta's after-the-fact reliability complaint is unpreserved.

2. The district court did not abuse its discretion in admitting Dr. Aron's testimony.

"The admission of expert testimony is reviewed for an abuse of discretion." *Hodges v. Mack Trucks Inc.*, 474 F.3d 188, 194 (5th Cir. 2006). Under this test, the district court possesses "wide latitude" and it "will not be disturbed on appeal *unless manifestly erroneous*." *Id.* (internal quotations omitted). This test applies fully to antitrust damage experts. *See, e.g*, *MM Steel, L.P. v. JSW Steel (USA) Inc.*, 806 F.3d 835, 850-52 (5th Cir. 2015) (upholding admissibility of expert).

First, the hearsay objection was futile. Facts or data relied upon by experts "need not be admissible for the opinion to be admitted." Fed. R. Evid. 703. Thus, Quanta's hearsay objection was unfounded. "Rule 703 allows an expert to base his testimony on otherwise inadmissible hearsay evidence." *United States v. Lockhart*, 844 F.3d 501, 511 (5th Cir. 2016); *see also Factory Mut. Ins. Co. v. Alon USA LP*, 705 F.3d 518, 525 (5th Cir. 2013) (rejecting a similar complaint on appeal due to "the deferential standard on appeal").[10]

Quanta complains that Dr. Aron supposedly relied on a "mystery speaker." Quanta Br. at 41-42. As noted above, Dr. Aron did *not* say that her understanding was based on the representations of some "mystery speaker," and even if it was, Dr. Aron did not attempt to parrot the statements of others. This is not a case about an expert who was misused as a "mouthpiece" for hearsay. *Factory Mut. Ins. Co.*, 705 F.3d at 524. Dr. Aron conducted a very sophisticated analysis of copious data and testified to her understanding about the purchaser of the ODDs in her analysis, without purporting to parrot statements from anyone else. *See* pp. 19-24, *supra*. "[T]he district court was best placed to evaluate whether [Dr. Aron] uncritically relied upon" the statements of others in formulating her opinions. *Id*. at 526.

[10] Quanta cannot expand its "hearsay" objection into a complaint that Dr. Aron failed to establish that any hearsay upon which she relied was the sort experts reasonably rely upon in her field. Quanta Br. at 40-42. Quanta did not make that specific objection at trial and cannot do so now. This argument simply recasts Quanta's unpreserved reliability challenge. *See* pp. 27-31, *supra*.

The "no foundation" objection was no stronger. As HP's counsel argued, Dr. Aron was entitled to "rely on information that she received as a result of the data that she looked at and all the documents that she looked at in this case." ROA.5961. Dr. Aron's testimony confirmed that these were precisely the sources for her conclusion that the purchases in her damage model were made by HP Inc. *See* pp. 21-24, *supra*. The district court correctly overruled the objection as stated.

Finally, even if Quanta were allowed to transform its minimalist objection into a full-fledged reliability complaint, the result would not change. As explained, Dr. Aron had a reliable foundation for her opinion. *See* pp. 19-24, *supra*. Thus, this is not a case in which an expert lacked any underlying data, but simply one in which an opposing party disputed the data and had a fair chance to fight it at trial. "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993). For its own reasons, Quanta did not avail itself of those "traditional and appropriate means" to contest Dr. Aron's expert opinion at trial—but it cannot transform the admission of that opinion into an abuse of discretion. As this Court recently held in rejecting a challenge to an antitrust damages expert, "[t]he defendants had the opportunity to show whether the [basis of the opinion] was correct on cross examination." *MM Steel*, 806 F.3d at 852. So too here.

D. There Is No Plain Error.

For the reasons set forth above, the damage award should be upheld under either the "substantial evidence" or "plain error" standards. Because this case is subject to plain error review, there is no room for debate: "On plain error review, the question for this court is not whether there was substantial evidence to support the jury verdict, but whether there was *any* evidence to support the jury verdict." *Maryland Cas.*, 639 F.3d at 708. "If any evidence exists that supports the verdict, it will be upheld." *Id.*; *accord Seibert*, 851 F.3d at 436; *Flowers*, 247 F.3d at 238; *Wallace*, 143 F.3d at 963-64; *McCann*, 984 F.2d at 673. HP easily meets that test.

Moreover, reversal for plain error is warranted only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings. *Puckett*, 556 U.S. at 135. This Court follows a "longstanding rule that reversal for plain error is an extreme remedy and will occur only to avoid a miscarriage of justice." *McKenzie v. Lee*, 259 F.3d 372, 374 (5th Cir. 2001); *see also Rizzo v. Children's World Learning Centers, Inc.*, 213 F.3d 209, 213 (5th Cir. 2000) (en banc) (same). Quanta tried to ambush HP and the district court, springing a sufficiency challenge after trial when it was too late for HP to clarify the record and for the district court to make a reasoned decision. This judgment is no "miscarriage of justice."

In any event, plain error relief would be restricted to a new trial. *McCann*, 984 F.2d at 673. But that would be unjust; the judgment should be affirmed.

II. Alternatively, There Is Sufficient Evidence to Support the Judgment Based on Implied Findings Under the FTAIA.

Because there is sufficient evidence to support the jury finding that HP Inc. incurred $176 million in damages, there is no need to consider the legal effect of a contrary conclusion. But even if the Court assumed for purposes of argument that Quanta is correct and the damage model included purchases by HP's subsidiaries, that fact would be immaterial: there is no legal barrier to recovery of such damages under the facts of this case. Either way, therefore, affirmance is appropriate.

To be explicit, HP presented its case at trial based on Dr. Aron's testimony that her damage model included only purchases by HP Inc., which should have eliminated any debate over the recoverability of the damages at issue in this case. But because Quanta contests Dr. Aron's testimony and persists in arguing that she included purchases by foreign subsidiaries, Quanta has provoked that debate.

Even if Quanta's challenge to HP's damage evidence were factually correct, it would be legally immaterial; the damages are still recoverable under the FTAIA. This is an alternative basis to affirm. *See Sobranes Recovery Pool I, LLC v. Todd & Hughes Const. Corp.*, 509 F.3d 216, 221 (5th Cir. 2007) ("It is an elementary proposition, and the supporting cases too numerous to cite, that this court may 'affirm the district court's judgment on any grounds supported by the record'"); *see also* Fed. R. Civ. P. 61 ("the court must disregard all errors and defects that do not affect any party's substantial rights").

Prior to remand, the MDL court determined that HP could recover damages with respect to ODDs shipped to the U.S. (either directly or in an HP computer)—without regard to whether HP Inc. or its foreign subsidiary purchased the ODD—under the import exclusion of the FTAIA. That ruling is the law of the case and Quanta does not challenge it on appeal. HP proved the "import exclusion" at trial, and because Quanta did not request submission of this defensive theory to the jury, findings of fact are implied in support of the judgment. Fed. R. Civ. P. 49(a)(3).

As this Court recently reaffirmed, it is unnecessary to decide complaints that could not alter the outcome of a case and thus affect a party's substantial rights—and the burden of proving harm is on the appellant. *MultiPlan, Inc. v. Holland*, 937 F.3d 487, 501-02 (5th Cir. 2019). This case is a perfect example of that rule: whether the evidence establishes that $176 million in damages was suffered by HP *alone* or *in combination* with its foreign subsidiaries is purely an academic issue. Either way, the judgment is correct and it should be affirmed. *See Mays v. Bowen*, 837 F.2d 1362, 1364 (5th Cir. 1988) (per curiam) ("The major policy underlying the harmless error rule is to preserve judgments and avoid waste of time.").

Correct analysis of this alternative path to affirmance requires examination of the MDL court's ruling, the law of the case doctrine, and the rule concerning implied findings in support of a judgment. Once all those principles are applied, Quanta cannot demonstrate a basis for reversal—and it has not even tried.

A. The MDL Court's Construction of the FTAIA Is Law of the Case, and Quanta Does Not Challenge It.

Prior to remand, the MDL court ruled that damages would be recoverable under U.S. antitrust law without regard to whether HP Inc. or a foreign subsidiary purchased the ODDs if HP satisfied either the FTAIA's "import exclusion" or the "domestic effects exception." *In re Optical Disk Drive Antitrust Litig.*, No. 10-MD-02143-RS, 2017 WL 11513316, at *1-6 (N.D. Cal. Dec. 18, 2017) (RE 5). The MDL court's ruling is law of the case. *See McKay v. Novartis Pharm. Corp.*, 751 F.3d 694, 703-05 (5th Cir. 2014); *In re Ford Motor Co.*, 591 F.3d 406, 411 (5th Cir. 2009).

As this Court has explained, "[t]he law of the case doctrine requires attention to the special authority granted to the multidistrict transferee judge and ensures that transferor courts respect the transferee court's decisions." *In re Ford*, 591 F.3d at 411 (internal quotation marks omitted). "[W]idespread overturning of transferee court decisions would frustrate the principle aims of the MDL process and lessen the system's effectiveness," *id.*, so this Court holds that district courts may not revisit an MDL ruling unless "(i) the evidence on a subsequent trial was substantially different, (ii) controlling authority has since made a contrary decision of the law applicable to such issues, or (iii) the decision was clearly erroneous and would work . . . manifest injustice." *Id.* at 411-12 (internal quotation marks omitted).

In this case, Quanta does not even acknowledge the MDL court's ruling—much less attempt to satisfy the narrow exceptions to the law of the case doctrine. *See* Quanta Br. at 3-4 (Issues Presented).[11] Thus, Quanta has waived any challenge to the MDL ruling. *Diaz v. Kaplan Higher Educ., L.L.C.*, 820 F.3d 172, 175 n.1 (5th Cir. 2016) (stating that "issues not raised or argued *in the brief* of the appellant may be considered waived and thus will not be noticed or entertained by the court of appeals") (internal quotations omitted); *T.L. James & Co. v. Traylor Bros. Inc.*, 294 F.3d 743, 750 (5th Cir. 2002) ("It is well-settled that when a party fails to brief an issue, it cannot be considered on appeal."). And Quanta cannot correct this waiver in its reply brief. *United States v. Myers*, 772 F.3d 213, 218 (5th Cir. 2014) ("We generally do not consider arguments made for the first time in a reply brief and deem those arguments waived."). Consequently, the MDL ruling remains the law of the case—and in any event, that ruling was legally correct.

B. The MDL Court Ruled that Foreign Transactions May Support Damages Under the FTAIA.

Construing the FTAIA, the MDL court ruled that under the facts of this case foreign transactions may support damages under the Sherman Act.

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[11] Quanta may contend it did not file its own summary judgment motion in the MDL proceeding, but that is immaterial. Quanta was a party to the MDL proceeding, ROA.882-915, 1597-605, and the summary judgment motion raising this issue was filed under the docket number for this very case. ROA.13796. Allowing a litigant to evade the law of the case doctrine by sitting on the sidelines during a contested stage of MDL proceedings "would frustrate the principle aims of the MDL process and lessen the system's effectiveness." *In re Ford*, 591 F.3d at 411.

The Sherman Act codifies a broad prohibition on anticompetitive conduct, facially reaching acts "in restraint of trade or commerce . . . with foreign nations." 15 U.S.C. § 1. To address "confusing and unsettled" extraterritoriality concerns, *Den Norske Stats Oljeselskap v. HeereMac Vof*, 241 F.3d 420, 424 (5th Cir. 2001), the FTAIA was enacted "to clarify the application of United States antitrust laws to foreign conduct." *Id*. at 421.

Specifically, the FTAIA provides as follows:

> Sections 1 to 7 of this title [the Sherman Act] shall not apply to conduct involving trade or commerce (*other than import trade or import commerce*) with foreign nations unless—
>
> (1) such conduct has a *direct, substantial, and reasonably foreseeable effect*—
>
> > (A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; . . . [and]
>
> (2) *such effect gives rise to a claim* under the provisions of sections 1 to 7 of this title, other than this section.

15 U.S.C. § 6a (emphasis added).

This language "boils down to two principles." *United States v. Hui Hsiung*, 778 F.3d 738, 751 (9th Cir. 2015).

First, by its express terms, "the FTAIA does not alter the Sherman Act's coverage of import trade; import trade is excluded from the FTAIA altogether." *Id.* This is the "import exclusion," and it is the key provision in this case.

Critically, the import exclusion "should not be labeled an FTAIA exception. Rather, more accurately, import trade, as referenced in the parenthetical statement, does not fall within the FTAIA at all. It falls within the Sherman Act without further clarification or pleading." *Id*. at 754. "Under its plain terms, the FTAIA does not affect import trade." *Id*. Thus, a defendant that wishes to deny liability under the Sherman Act by invoking the FTAIA (as Quanta is attempting to do) must show that the conduct in question involves "nonimport trade."

Second, "the Sherman Act does not apply to nonimport trade or commerce with foreign nations, unless the domestic effects exception is met." *Id.* at 751. "Unlike import trade, which is exempted from the FTAIA altogether," a party that asserts the domestic effects exception "must plead and prove the requirements for the domestic effects exception." *Id*. at 756.

The Supreme Court has explained the interaction of these two provisions:

> This technical language initially lays down a general rule placing *all* (nonimport) activity involving foreign commerce outside the Sherman Act's reach. It then brings such conduct back within the Sherman Act's reach *provided that* the conduct *both* (1) sufficiently affects American commerce, *i.e.*, it has a "direct, substantial, and reasonably foreseeable effect" on American domestic, import, or (certain) export commerce, *and* (2) has an effect of a kind that antitrust law considers harmful, *i.e.*, the "effect" must "giv[e] rise to a [Sherman Act] claim."

F. Hoffmann-La Roche Ltd. v. Empagran S.A., 542 U.S. 155, 162 (2004).

The MDL court found both provisions are applicable to the facts of this case, but it is only necessary to consider the import exclusion as a basis for affirmance.

The FTAIA does not apply to antitrust actions related to "import trade or import commerce." 15 U.S.C. § 6a. "[T]his phrase means precisely what it says." *Hsiung*, 778 F.3d at 755. The MDL court recognized that under Ninth Circuit law, a defendant need not be the "importer." *In re Optical Disk Drive Antitrust Litig.*, 2017 WL 11513316, at *2; *id.* at *4 (same); *Hsiung*, 778 F.3d at 755-56 (same). Liability may attach even if another party imports the goods in question. *Id.*

This is important because the MDL court was bound by Ninth Circuit law: "when reviewing federal claims, a transferee court in [the Ninth Circuit] is bound only by [the Ninth Circuit's] precedent." *Newton v. Thomason*, 22 F.3d 1455, 1460 (9th Cir. 1994). This decision followed a path laid by Judge Ruth Bader Ginsburg on behalf of the D.C. Circuit. *See In re Korean Air Lines Disaster of Sept. 1, 1983*, 829 F.2d 1171, 1176 (D.C. Cir. 1987) ("Binding precedent for all is set only by the Supreme Court, and for the district courts within a circuit, only by the court of appeals for that circuit."), *aff'd on another issue sub nom. Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122 (1989). Anticipating this Court's ruling in *In re Ford*, then-Judge Ginsburg predicted such a ruling should receive law-of-the-case effect; "if it did not, transfers under 28 U.S.C. § 1407 could be counterproductive, *i.e.*, capable of generating rather than reducing the duplication and protraction Congress sought to check." *Id.*; *see also In re Ford*, 591 F.3d at 411 (same); *In re Korean Air Lines Co.*, 642 F.3d 685, 699 n.12 (9th Cir. 2011) (same).

This rule is not controversial; it is a common feature of federal practice. "[T]he transferee court applies its own interpretation of federal law," and it owes "no obeisance" to the transferor circuit's rulings. 15 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 3867 (4th ed. Westlaw 2020). Thus, the MDL court correctly followed the Ninth Circuit's precedent in *Hsiung*.[12]

Under the rationale of *Hsiung*, "'[i]t is sufficient that a conspiring defendant negotiated to set the price of a good that was imported into the United States,'" which triggers the exclusion even if the good was "'imported by someone else.'" *In re Optical Disk Drive Antitrust Litig.*, 2017 WL 11513316, at *2. Furthermore, when price-fixing involves "'the primary component of a finished product,'" it is "'sufficient that the [plaintiffs] imported finished products *containing* price-fixed' component parts." *Id.* at *2, 4. Any other conclusion "misses the point." *Hsiung*, 778 F.3d at 756. The price-fixed components "were sold into the United States, falling squarely within the scope of the Sherman Act." *Id.*

In this respect, *Hsiung* takes a different view than the decision Quanta cites, *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015), which declined to apply the exclusion when a plaintiff's foreign subsidiaries made purchases before the plaintiff imported the price-fixed goods. *Id.* at 818.

[12] The rule is different for "non-uniform" federal law, which is governed by the transferor circuit. *In re Ford*, 591 F.3d at 413 n.15. But the FTAIA is "uniform" federal law.

The dismissive resolution of this issue in *Motorola Mobility* was unsound. The plain text of the FTAIA does not restrict "import trade or import commerce," nor does it state that the exclusion applies only if the defendant is the "importer." 15 U.S.C. § 6a. There is no reason to believe that Congress intended to extend the reach of U.S. antitrust laws to one category of imported goods but not another. Regardless, the merits are not at issue; the MDL court was bound by *Hsiung*.

Quanta challenges neither the MDL ruling itself nor the procedural doctrine that the MDL court was bound to apply Ninth Circuit precedent. For that matter, Quanta does not even contest the rationale of *Hsiung*. It cites *Motorola Mobility*, Quanta Br. at 6, 16, 22, 27, 31-33, but never discloses that the MDL court made a contrary ruling under binding Ninth Circuit precedent. Thus, this appeal cannot be a vehicle to resolve the tension between *Hsiung* and *Motorola Mobility*.

Independently, the domestic effects exception allows recovery for purchases by HP's foreign subsidiaries if "the defendant's anticompetitive conduct caused 'direct, substantial, and reasonably foreseeable' domestic effects, 15 U.S.C. § 6a, which proximately caused plaintiff's alleged injury." *In re Optical Disk Drive Antitrust Litig.*, 2017 WL 11513316, at *3. The MDL court found that exception applies to this case as well, *id*. at *5, and Quanta has not challenged that ruling. Indeed, Quanta *stipulated* that the ODDs in question were in interstate commerce. ROA.6048-49. Regardless, the import exclusion is an independent basis to affirm.

C. Implied Findings Support the Import Exclusion.

Because the MDL court denied summary judgment on the import exclusion and the domestic effects exception, *id*. at *4-6, those theories were still live at trial. *See* ROA.1468, 1485, 1511-12, 1515 (HP's trial pleadings). As explained above, if Quanta wanted to defend by arguing that the FTAIA restricted the Sherman Act from reaching the conduct at issue, it had the burden to prove the case concerned "nonimport" trade or commerce. *See Hsiung*, 778 F.3d at 754. But Quanta did not request jury findings on this issue; neither did HP. *See* ROA.3542-73, 5854-68. Therefore, the parties "waive[d] the right to a jury trial." Fed. R. Civ. P. 49(a)(3). If any facts needed to be found, the issue was tried to the bench under Rule 49.

The rules contemplate this precise scenario. When a party fails to demand submission of an issue to the jury, "the court may make a finding on the issue." *Id*. If the court does not do so, "it is considered to have made a finding consistent with its judgment on the special verdict." *Id.* This procedure exists to guarantee that, one way or another, all pending factual disputes are decided by trial and judgment. To achieve this end, the court is "deemed to have made the required finding" in support of its judgment and "[t]he court's imputed factual findings under Rule 49 are reviewed for clear error." *Heck v. Triche*, 775 F.3d 265, 282 (5th Cir. 2014); *see also Universal Truckload, Inc. v. Dalton Logistics, Inc.*, 946 F.3d 689, 698-99 (5th Cir. 2020) (applying this procedure).

In its summary judgment order, the MDL court outlined the evidence that would establish the import exclusion. *See In re Optical Disk Drive Antitrust Litig.*, 2017 WL 11513316, at *4-5. HP introduced all of this evidence at trial.

- Most HP ODD commodity managers were "located in the United States at various HP locations, primarily in Houston." ROA.5625; *see also* ROA.5748 (similar).

- The conspirators knew that their "primary contacts with respect to pricing at HP . . . were all located in the United States." ROA.11058; *see also* ROA.11336-37 (similar).

- Quanta and other conspirators stationed account managers to be close to HP's procurement teams. ROA.11334, ROA.7350 (PX185A), 5706-07.

- Their U.S.-based account managers engaged in repeated acts in furtherance of the conspiracy and worked as conduits for the conspiracy: exchanging information, coming to agreements, and helping with setting the prices. ROA.11057, 11148, 11169, 11199-200, 11210, 11215-17, 11206-10.

- Crucially, the conspirators knew price-fixed ODDs would be incorporated into computers that would be imported into the U.S. ROA.11297, 11321-22, 11338, 11397.

- In fact, HP expended nearly $2 billion on price-fixed ODDs imported into the U.S. ROA.5626-27, 5976-77.

"This evidence shows that Defendants' products did not arbitrarily happen to end up in the United States without any foresight on their part; despite the complicated global manufacturing supply chain, Defendants acted with the knowledge that their products would arrive in this country's market." *In re Optical Disk Drive Antitrust Litig.*, 2017 WL 11513316, at *4.

The evidence establishes an intentional price-fixing conspiracy involving ODDs that were imported into the United States. Under *Hsiung* and the ruling of the MDL court, this conduct satisfies the import exclusion regardless of the party that imported the ODDs. *Id*. at *4-5. The district court did not clearly err in finding that the import exclusion is satisfied. Quanta does not even challenge this finding, so it has waived any challenge to this theory. *See* p. 38, *supra*.

D. There Is No Serious Dispute About the Damage Award Under the Import Exclusion.

Once it is established that HP was entitled to recover damages regardless of whether HP Inc. or its foreign subsidiaries made the purchases that constituted "import trade or import commerce," the damage analysis is essentially undisputed. After all, Quanta's complaint is that the damage model included purchases by both HP Inc. and its subsidiaries—but it does not deny that those purchases support an award of $176 million.

Again, HP firmly rejects Quanta's characterization of the damage model, which disregards the testimony of Dr. Aron. But if the Court agreed with Quanta, then Quanta would be in no position to dispute that the damage model supports a judgment for $176 million in damages suffered by HP Inc. and its subsidiaries. Question 7 can fairly be understood to encompass all damages that HP Inc. had a right to recover, and if necessary, Rule 49 dictates an implied finding on that issue in support of the judgment.

1. Question 7 included all damage claims owned by HP Inc.

First, HP Inc. was assigned the antitrust claims of its foreign subsidiaries. ROA.8118-21, 8185-88.[13] Quanta concedes this fact. Quanta Br. at 30-31. Because the "plaintiff" referenced in Question 7 (HP Inc.) owned all of the claims, the jury's answer encompassed all possible damage claims at issue in this case.

"It is well settled in the federal courts that antitrust claims are assignable," so HP Inc. stands in the shoes of its assignors. *Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 603 n.3 (5th Cir. Unit A Jan. 1982); *accord* 1 CALLMANN ON UNFAIR COMPETITION, TRADEMARKS & MONOPOLIES § 4:49 (4th ed. Westlaw 2020). Thus, in calculating the overcharges paid by "plaintiff," ROA.3852, the jury was entitled to consider all the damage claims owned by HP Inc.

Quanta places all its weight on the definition of Hewlett-Packard Company as the "plaintiff" in the jury instructions, suggesting that it precluded the jury from giving any weight to the assignments. Quanta Br. at 27-28, 30-31. But its position is unsound and unsupported by legal authority. "The court must interpret verdicts in the light of the instructions, evidence, and other surrounding circumstances." *Geosearch, Inc. v. Howell Petroleum Corp.*, 819 F.2d 521, 527 (5th Cir. 1987). Quanta hopes to ignore the "evidence" and "surrounding circumstances."

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[13] For this reason, the indirect-purchaser rule of *Illinois Brick Co. v. Illinois*, 431 U.S. 72 (1977) is inapplicable to this case. There are no "indirect" claims at issue, no matter how the evidence is characterized.

Because Hewlett-Packard Company (now HP Inc.) had been assigned the claims of its subsidiaries, the jury was entitled to view Question 7's inquiry about "the amount of the overcharge that plaintiff paid as a result of the conspiracy," ROA.3852, as a reference to all damages that HP Inc. had a legal right to recover. Quanta did not request an instruction that the jury should not award any damages for claims now owned by HP Inc. but arising from purchases by HP's subsidiaries. ROA.3570, 3573, 5854-68. And Quanta cites no legal authority to contradict this commonsense interpretation of the damage verdict.

Indeed, the logic of Quanta's appeal prevents it from resisting this reading. Dr. Aron testified that the damages suffered by HP totaled at least $176.3 million, ROA.5959-60, 6039-40, and the jury awarded $176 million. Quanta's theory that Dr. Aron's damage model included purchases by both HP and its subsidiaries would mean (if true) that the jury awarded damages for nearly all those purchases. Courts must construe verdicts to conform to the evidence, *Nester v. Textron, Inc.*, 888 F.3d 151, 159 (5th Cir. 2018), and they "'must assume that the jury considered all of the evidence in reaching its decision.'" *Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 878 n.4 (5th Cir. 2013) (citation omitted). If Quanta's interpretation of the evidence were correct, the damage award would be construed accordingly—requiring the Court to conclude that the jury awarded $176 million in damages for all claims owned by HP Inc.

2. If Question 7 did not include all damage claims owned by HP Inc., implied findings support the judgment.

In the alternative, even if Quanta were right that—despite the assignments—Question 7 did not include all the claims owned by HP Inc., Quanta Br. at 30-31, that would simply mean that the district court made implied findings on damages. *See* p. 44, *supra*. HP's live trial pleadings asserted its right to recover damages for all claims owned by HP Inc. ROA.1468, 1485, 1511-12, 1515. And even though HP adheres to its position that the damage model did not include such damages, Quanta's appellate theory is that the damage model included ODDs purchased by HP's subsidiaries. Quanta Br. at 31-33. If that were correct, HP would be entitled to an implied finding on that category of damages. Fed. R. Civ. P. 49(a)(3).

As explained above, HP contends there was sufficient evidence for the jury to find all of these damages were incurred by HP Inc. But if the Court disagrees, the necessary result is that the $176.3 million damage model included purchases by both HP Inc. and its subsidiaries—supporting an implied finding of damages based on purchases by HP's subsidiaries in a sufficient amount to uphold the judgment. Quanta does not challenge this implied finding on appeal, waiving any complaint. *See* p. 38, *supra*; *see also* ROA.5959-60, 6039-40, 5977, 9276-78 (PX304) (evidence supporting total damage model of at least $176 million). Consequently, Quanta's appellate challenge is a fruitless academic exercise. One way or another, HP is legally entitled to recover total damages of $176 million.

III. A New Trial is Unwarranted.

Finally, Quanta contends that Dr. Aron's expert testimony was inadmissible, Quanta Br. at 49-50, and the jury's $176 million damage award was contrary to the great weight of the evidence. *Id*. at 50-54. Neither argument is substantial.

A. The District Court Did Not Abuse Its Discretion by Admitting the Expert Testimony of Dr. Aron.

The admissibility of Dr. Aron's testimony has been addressed in great detail. *See* pp. 19-34, *supra*. This Court will not reverse a discretionary decision to admit expert opinion evidence unless it was "manifestly erroneous." *Bear Rach, L.L.C. v. Heartbrand Beef, Inc.*, 885 F.3d 794, 802 (5th Cir. 2018). Manifest error is "'plain and undisputable'" and "'a complete disregard of the controlling law.'" *Id.* Quanta cannot satisfy that strict standard—especially given its failure to preserve a legitimate reliability objection.

Furthermore, the one part of Dr. Aron's testimony to which Quanta objected, ROA.5961, was cumulative. She offered the same testimony in cross-examination. ROA.6042-43. She testified that her analysis excluded intra-company transactions. ROA.5962-64. She also testified that HP suffered damages of $176.3 million. ROA.5959, 6039-43. This testimony was sufficient for the jury to conclude that HP Inc. suffered all the damages proved at trial. Moreover, as explained in Part II, HP is entitled to recover under the FTAIA's import exclusion—in which case the identity of the purchaser is legally immaterial. Fed. R. Civ. P. 61.

B. The District Court Did Not Abuse Its Discretion by Overruling the Great Weight Argument for a New Trial.

The denial of a new trial motion based on the "great weight of the evidence" is reviewed on appeal "only for an abuse of discretion." *Seibert*, 851 F.3d at 438. And because of the inherently discretionary nature of the "great weight inquiry," this test is "far more narrow than that for denials of judgment as a matter of law." *Whitehead v. Food Max of Miss., Inc.*, 163 F.3d 265, 269 n.2 (5th Cir. 1998); *accord Hidden Oaks Ltd. v. City of Austin*, 138 F.3d 1036, 1049 (5th Cir. 1998). Reversal requires a "clear showing" of "*an absolute absence of evidence to support the jury's verdict*." *Whitehead*, 163 F.3d at 269 (internal quotation marks omitted) (emphasis in original). For the reasons stated above, Quanta cannot satisfy this "absolute absence of evidence" burden, so the district court should be affirmed.

Quanta claims "this Court has frequently found new trials to be appropriate." Quanta Br. at 51. But the cited case involved the *affirmance* of a new trial *grant*, not the *reversal* of a *denial*. *Shows v. Jamison Bedding, Inc.*, 671 F.2d 927, 930-34 (5th Cir. 1982). Affirmance of a discretionary new trial grant simply confirms the deference this Court affords to district courts; it hardly supports *reversal* of a discretionary *denial*. In truth, contrary to the impression Quanta attempts to create, "[a]ctual cases of reversal because the verdict is against the weight of the evidence are extremely few." 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 2819 (3rd ed. Westlaw 2020). This case is no exception.

Finally, for the reasons explained above, HP is entitled to judgment even if some of the ODD purchases in Category 2 were made by its foreign subsidiaries. *See* pp. 35-49, *supra*. Thus, even if the jury's damage finding were contrary to the great weight of the evidence, the error would be harmless. Fed. R. Civ. P. 61.

CONCLUSION

The judgment should be affirmed. Alternatively, because Quanta does not contest liability or the existence of some damages, *see* Quanta Br. at 16-17, 32, 48, at most the Court should order a new trial on damages and/or the FTAIA issues. HP requests all other relief to which it is entitled.

Respectfully submitted,

BECK REDDEN LLP

By: /s/ *Russell S. Post*
Russell S. Post
Alistair B. Dawson
Alex Roberts
Parth S. Gejji
Garrett S. Brawley
1221 McKinney, Suite 4500
Houston, TX 77010
(713) 951-3700
(713) 951-3720 (Fax)

ATTORNEYS FOR APPELLEE,
HEWLETT-PACKARD COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2020, a copy of the foregoing Brief of Appellee was filed electronically with the Clerk of the Court using the Court's ECF System. Notice of this filing will be sent electronically by operation of the Court's electronic filing system to all counsel of record:

Harry M. Reasoner
Marie R. Yeates
Michael A. Heidler
Bryan Gividen
Vinson & Elkins LLP
1001 Fannin Street, Suite 2500
Houston, TX 77002

Attorneys for Appellant Quanta Storage, Incorporated

/s/ *Russell S. Post*
Russell S. Post

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 35(b)(2)(A) because it contains 12,772 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. 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 2016 in 14 point font.

Dated: May 1, 2020.

/s/ *Russell S. Post*
Russell S. Post
Attorney of Record for Appellee