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SONAL N. MEHTA (SBN 222086)
sonal.mehta@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
2600 El Camino Real, Suite 400
Palo Alto, CA 94306
Telephone: (650) 858-6000

TAYLOR GOOCH (SBN 294282)
taylor.gooch@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
50 California St.
San Francisco, CA 94111
Telephone: (628) 235-1000

JARED V. GRUBOW (*Pro Hac Vice)*
jared.grubow@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
250 Greenwich St
New York, NY 10007
Telephone: (212) 230-8800

LOUIS W. TOMPROS (*Pro Hac Vice*)
louis.tompros@wilmerhale.com
DISHA PATEL (*Pro Hac Vice*)
disha.patel@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

ARI HOLTZBLATT (SBN 354361)
ari.holtzblatt@wilmerhale.com
ROBIN C. BURRELL (*Pro Hac Vice*)
robin.burrell@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Ave, NW
Washington, DC 20037
Telephone: (202) 663-6000

Attorneys for Defendant
ANTHROPIC PBC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case No. 5:24-cv-03811-EKL-SVK

DEFENDANT'S NOTICE OF MOTION AND MOTION TO EXCLUDE EXPERT TESTIMONY AND OPINIONS OF JOSHUA DENNIS

Hearing Date: July 15, 2026
Time: 10:00 AM
Judge: Hon. Eumi K. Lee

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 15, 2026 at 10:00 AM, Defendant Anthropic PBC will move the Court for an order granting Anthropic's Motion to Exclude the Expert Testimony and Opinions of Publishers' putative expert Joshua Dennis. Anthropic's motion is based on this Notice of Motion, the supporting Memorandum of Points and Authorities, and the Declaration of Robin Burrell filed herewith, along with the accompanying exhibits.[1] In accordance with VIII.A of Judge Lee's Civil Standing Order, the undersigned certifies that counsel for Anthropic met and conferred with Plaintiffs' counsel regarding the bases for this motion on March 24, 2026.

Pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny, Anthropic requests that the Court exclude the testimony of Publishers' proffered expert Joshua Dennis in full and any opinions of Publishers' other experts that rely on those opinions.[2]

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Publishers hired financial consultant Joshua Dennis to support their allegations regarding third-party use of Claude. But like Anthropic, Dennis lacked the data necessary to determine whether the prompts and outputs he reviewed were in fact from third parties, rather than Publishers or their agents. Unlike Anthropic, he did not even try to get that information. Because Dennis's analysis is unreliable, irrelevant, and likely to confuse the jury, it should be excluded in full.

First, Dennis's opinions rely on a critical assumption that he did not bother to verify: that the subset of records counsel provided him for review actually reflect interactions with real third parties and not Publishers or their agents. He acknowledges this is not a concept he tested; he simply assumed it. He admits he did nothing to validate that the subset counsel provided him was not

[1] Unless otherwise noted, 'Ex.' citations reference exhibits to the Burrell Declaration filed herewith. Emphasis is added throughout and deposition objections are omitted.

[2] Three other experts rely on Mr. Dennis. *See* Opening Report of Dr. Shan ¶ 59 (Ex. 1); Opening Report of Mr. Smith ¶¶ 87, 92, 201, 202 (Ex. 8); Supplement to Opening Report of Mr. Smith ¶ 162 (Ex. 10); Rebuttal Report of Mr. Smith ¶ 128 (Ex. 9); Reply Report of Mr. Smith ¶ 125 (Ex. 10); Opening Report of Dr. Zhao ¶ 94. The Opening Report of Dr. Zhao is included as an exhibit to Anthropic's motion to exclude the testimony of Dr. Zhao, filed concurrently with this motion.

skewed by counsel's curation or by inclusion of prompts and outputs from Publishers or their own agents. Publishers asked Dennis to simply take their word for it. And he did. As a result, his opinions and conclusions drawn from those unverified records are not the product of a reliable method reliably applied. This error infects the entirety of Dennis's opinions and warrants exclusion of his testimony under *Daubert*.

Second, even if Dennis had verified counsel's curated subset of prompt/output files ("P/Os") only included real third party interactions, much of his testimony should still be excluded as irrelevant and likely to confuse the jury.[3] Dennis's analysis only answers one question: "What portion of the records Publishers' counsel chose to provide me fall into X category?" The answer to that question is simply irrelevant here. Dennis used a cherry-picked set of P/Os from counsel to generate "counts" of different uses of Claude, which he then expressed as percentages. But the denominator used to calculate those percentages is simply the number of records that Publishers' counsel chose to disclose to Dennis; it is not a denominator that represents any valid set or subset of data. Dennis does not claim otherwise. The percentages are thus entirely arbitrary and irrelevant. Indeed, they appear designed to confuse the jury into thinking they reflect percentages of, or can be extrapolated to, the broader data sets, even though Dennis admitted they do not and cannot. These percentages (and Dennis's related opinions) thus should be excluded.

BACKGROUND

Dennis is a financial consultant. Publishers hired him to assess how Claude users [redacted] Opening Report of Joshua Dennis ¶ 7 (Ex. 2). Dennis reviewed P/Os. But he did not review all of the P/Os in the two large datasets produced by Anthropic in the litigation. Nor did he apply his expertise to identify a methodology to sort through these records for analysis. Instead, he blindly relied on a cherry-picked subset of P/Os from these two datasets—curated sets of records that Publishers' counsel selected through some undisclosed process and provided to Dennis without explanation. Dennis did not actually opine on the question he was hired to answer. Instead he opines only on what portion of the records counsel provided him

[3] These are text files that reflect the conversation each time a user prompts Claude.

fell into certain categories. He then presents his findings about this curated and unverified subset as a (misleading) answer to the question he was hired to answer about the broader population.

Tracing the origins of these counsel-curated "samples" reveals the many problems with them. In discovery, Anthropic produced, pursuant to the court's orders, a random sample of 5 million prompt/output files from a six-month period spanning before and after the lawsuit (the "5M Sample"). Ex. 2 ¶ 214. In addition, Anthropic produced 15,269 P/O files identified by searching for song- and lyric-related terms during the same period (what Dennis calls the "Work-in-Suit Records"). *Id.* ¶ 51; *see* Reply Report of Joshua Dennis ¶ 121 (Ex. 3).

The parties agree that both datasets include P/Os from Publishers' employees, counsel, and investigators. *See* Ex. 2 ¶ 57. To protect user privacy, Anthropic generally redacted names and email addresses in the P/Os. Where Publishers had used known email domains (*i.e.*, the domains of Publishers' counsel or investigative firm), Anthropic was ordered to and did produce those P/Os with Publishers' information unredacted. Order Resolving Discovery Disputes 4-5 (Mar. 25, 2025), Dkt. 318. But where Publishers used personal accounts or accounts tied to email addresses not knowable to Anthropic, Anthropic had no way to determine which P/Os came from Publishers and which did not. Publishers refused to disclose this account information, asserting work-product protection.

In the year since then, Anthropic has repeatedly sought account information that would allow it—and both sides' experts—to disentangle the work of Publishers, their investigators and their agents from genuine third party users of Claude. In April 2025, Anthropic sought "corresponding Claude account information" for Publishers' "undisclosed prompts and outputs . . . obtained from Claude during their legal investigations." Joint Discovery Dispute 1 (Apr. 10, 2025), Dkt. 328. Publishers refused, claiming disclosure "would violate their work product privilege and invade the protected details of their legal investigations." *Id.* And over and over again since then, Publishers have opposed Anthropic's requests for this information. *See* Anthropic's Mot. for Relief from Nondispositive Order (Jan. 2, 2026), Dkt. 563-2; Pls.' Opp. to Mot. (Feb. 4, 2026), Dkt. 579. In fighting disclosure, Publishers represented to the Court that they planned to offer testimony on "ease of use," "frequency of infringements," and the "ratio of infringements" from the 5M Sample. Tr. at

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17:2-18 (Dec. 16, 2025), Dkt. 543. The Court then asked if this "evidence from the sample" will "get[] disclosed under Rule 26." *Id.* at 17:19-18:3 (internal quotation marks omitted). Publishers confirmed that it would. *Id.* Rule 26 disclosures have come and gone, and Publishers still have not disclosed this "evidence from the sample," including their method of supposedly excluding their own P/Os.

Dennis himself took no steps to obtain this information to determine whether he was in fact counting Publishers' and their agents' P/Os. His report states he [redacted] these records were excluded. Ex. 2 ¶ 56. At his deposition, Dennis admitted that he did nothing to reach or verify that understanding. He simply took counsel's word for it. *See e.g.,* [redacted]

Dennis' unquestioning reliance on counsel's say-so is even more troubling given that certain prompts counsel included in its curated set match, verbatim, prompts from Publishers' investigator, cited in Publishers' complaint. Ex. 4 at 266:20-270:10; *Compare* Ex. ANTH_SAMPLE000293475 (Ex. 5), *and* ANTH_SAMPLE000291792 (Ex. 6), *with* First Amended Compl. ¶ 99 (Apr. 25, 2025), Dkt. 337. Dennis did nothing to understand why those P/Os were identical or how that fact could be reconciled with counsel's representation and the resulting assumption that underlies his entire analysis. Instead, he turned a blind eye to this inconsistency and forged ahead. Ex. 4 at 241:20-245:12.

Dennis also made no effort to understand (much less direct) how Publishers' counsel compiled the curated sets of records they provided him or validate their selection methodology. *E.g.* [redacted] When Anthropic sought the criteria they applied, Publishers refused to provide it, again citing work product protection. K. Howell Email to D. Patel (Jan. 22, 2026) (Ex. 7). This is truly extraordinary: Counsel asked their expert, and now Anthropic and this Court, to rely on their self-curated sample without disclosing their selection methodology. Even more extraordinary: Dennis went along.

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Taking the counsel-curated "Sample Song Records" and "Work-in-Suit Records" subsets at face value, Dennis then categorized those P/Os based on [redacted] Ex. 2 ¶ 70. He also categorized the resulting outputs based on [redacted] *Id.* ¶ 71. He tallied the number of P/Os that fell into each category. He then divided those tallies by the total number of records counsel arbitrarily decided to give him to yield a meaningless percentage. *See id.* ¶ 142; Ex. 3 at ¶ 13. He included various charts and graphs to illustrate these arbitrary percentages as if they are relevant to the issues in this case. They are not.

Based on these irrelevant calculations, Dennis misleadingly concludes that [redacted] of the Work-in-Suit Records and that [redacted] *See e.g.,* Ex. 3 ¶ 14, 59. Dennis also concludes that [redacted]

LEGAL STANDARD

The party offering expert testimony bears the burden of proving that it is admissible. *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1048-50 (9th Cir. 2025). The Court must exclude expert testimony under Rule 702(b) if it is not "based on sufficient facts or data." *Id.* at 1055. This includes when the expert "fail[s] to provide sufficient facts and data to 'support . . . every necessary link' in his theory." *Sonneveldt v. Mazda Motor of Am., Inc.*, 2024 WL 5242611, at *2 (9th Cir. Dec. 30, 2024) (citation omitted). The Court must exclude testimony under Rule 702(c) and (d) if it relies on data provided by counsel "without any scientific validation." *See In re: Baby Food Prods. Liab. Litig.*, 2026 WL 559857, at *13 (N.D. Cal. Feb. 27, 2026). Such testimony is not the product of reliable methods reliably applied. *Id.* Courts must also exercise their gatekeeping function to exclude expert testimony that is irrelevant or misleading. To satisfy the relevance standard, the testimony must "logically advance[] a material aspect of the proposing party's case." *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1315 (9th Cir. 1995) (*Daubert II*). And given that scientific expert

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testimony "can be both powerful and quite misleading," courts must exclude such testimony if it will "mislead the jury." *Id.* at 1321 n.17.

ARGUMENT

I. DENNIS FAILED TO VERIFY THAT HIS ANALYSIS CONSIDERED ONLY REAL THIRD PARTY USE OF CLAUDE

Expert testimony must be excluded when "the 'analytical gap' between the data and [the expert's] conclusion is simply too great." *In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1181 (N.D. Cal. 2007) (quoting *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). That is the case here. Dennis bases his opinions on a counsel-curated subset of the records produced by Anthropic—a "sample" counsel selected using a secret and still-undisclosed methodology. And Dennis did so without verifying whether those records were, in fact, what counsel claimed them to be. His testimony should be excluded.

Dennis's testimony rests on an assumption that the records counsel provided him included only real third party P/Os. Ex. 2 ¶ 7. Indeed, he claims his analysis [redacted] *Id.* ¶ 56. But Dennis took no steps to determine whether this was true. Instead, he accepted [redacted] of Publishers' counsel that the records [redacted] Ex. 4 at 241:6-19. Dennis repeatedly insisted that [redacted] *See e.g., id.* at 243:12-17; 243:23-244:10; 249:25-250:7; 250:18-251:18; 254:14-255:1; 262:1-18; 264:19-265:9; 271:3-16.

It was not. Rather, it was a necessary component of any valid analysis and the only way Dennis could even attempt to draw conclusions about third-party use of Claude. Dennis thus "failed to consider or control for" a variable he recognized as a key assumption to his analysis. *Smith v. City of Oakland*, 2025 WL 490474, at *4-5 (N.D. Cal. Feb. 13, 2025). His opinion should be excluded for this reason alone. *Id.* (excluding expert analysis on differences in sales price among buildings because it failed to control for variables expert recognized "necessarily contributed" to such differences).

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Courts regularly exclude expert testimony in these circumstances. For example, a court excluded the testimony of an expert who "failed to verify the underlying data at the core of her expert opinion independently, and instead simply adopted the position of an interested party." *Baker v. FirstCom Music*, 2018 WL 3583237, at *8 (C.D. Cal. Mar. 15, 2018). Likewise, a court found that an expert "did not *reliably apply* the principles and methods" of her process when she "blindly accept[ed] data" from plaintiffs' counsel "without assessing its reliability." *In re: Baby Food Prods.*, 2026 WL 559857, at *13. So too for an expert who analyzed only a subset of records provided by counsel and "did not obtain" the "key items that bear on" his analysis. *Arjangrad v. JPMorgan Chase Bank*, N.A., 2012 WL 1890372, at *6 (D. Ore. May 23, 2012) (excluding expert testimony). An expert must arrive at the assumptions on which his methodology hinges through "the application of professional expertise." *United States ex rel. Lutz v. Lab'y Corp. of Am. Holdings*, 2021 WL 2801736, at *4-5 (D.S.C. July 6, 2021) (excluding expert testimony that categorized data based on assumptions supplied by counsel, with "no independent validation method" to test assumptions). Dennis did not. Instead, he relied entirely on Publishers' counsel's representations that the prompts he reviewed were "actually genuine" and did nothing to "verify the underlying data at the core of [his] expert opinion independently." *Baker*, 2018 WL 3583237, at *8.

To make matters worse, Publishers' selective assertion of work product has prevented Anthropic itself from testing the validity of Dennis's analysis. Throughout the case, Publishers have refused to identify account information used in their investigation or produce all of their P/Os. *Supra* pp. 3-4. As a consequence, Anthropic and its experts have no way to confirm whether all of Publishers' efforts to generate copyrighted lyrics were in fact excluded from Dennis's sample. Publishers thus impermissibly seek to use privilege "both as a sword and a shield." *Columbia Pictures Television, Inc. v. Krypton Broadcast. of Birmingham, Inc.*, 259 F.3d 1186, 1196 (9th Cir. 2001) (citation omitted) (affirming waiver of privilege over communications party relied upon to support defenses); *see also Bittaker v. Woodford*, 331 F.3d 715, 719 (9th Cir. 2003) (en banc) ("[P]arties in litigation may not abuse the privilege by asserting claims the opposing party cannot adequately dispute unless it has access to the privileged materials."); *It's Just Lunch Int'l LLC v. Nichols*, 2009 WL 10674210, at *2 (C.D. Cal. Aug. 31, 2009) (excluding expert testimony because

party "cannot claim a privilege as to his tax returns and yet rely on them when helpful for his expert's testimony").

For these reasons, the Court should exclude Dennis's testimony in full.[4]

II. DENNIS PRESENTS IRRELEVANT AND MISLEADING FIGURES, CHARTS, AND GRAPHS BASED ON CURATED SETS OF RECORDS SELECTED BY COUNSEL

Many of Dennis's opinions suffer from an independent problem. Dennis took curated sets of records he was given by counsel and used them to offer an opinion about a meaningless and admittedly non-representative dataset, complete with percentages, charts, and graphs. Those opinions are not only irrelevant to the issues here but also risk misleading the jury. The Court should exercise its gatekeeper role and exclude them. *Daubert II*, 43 F.3d at 1321 n.17 (courts must exclude expert testimony under Rules 702 and 403 unless the court is "convinced that it speaks clearly and directly to an issue in dispute in the case, and that it will not mislead the jury"); *see also Sonneveldt*, 2024 WL 5242611, at *2 (it is the court's role to "screen[] the jury from unreliable nonsense opinions" cloaked in the authority of scientific expertise); *United States v. Rincon*, 28 F.3d 921, 926 (9th Cir. 1994) ("District courts must strike the appropriate balance between admitting reliable, helpful expert testimony and excluding misleading or confusing testimony . . . .").

Notably, this problem relates to a ***second counsel curation error***. The prior argument concerns Dennis's failure to confirm that all prompts and outputs counsel provided him excluded those attributable to Publishers and their agents. This independent argument concerns Dennis's blind acceptance of two meaningless "subsamples" provided by counsel.

Throughout his report, Dennis presents percentage after percentage purporting to show the [redacted] with which (1) Claude users made various song- and lyric-related requests; (2) Claude produced outputs containing lyrics; and (3) Claude invoked copyright-protective guardrails. *See, e.g.*, Ex. 2 ¶¶ 142-147, 210-219. But Dennis generated the percentages by counting records in the counsel-curated subset and dividing the totals by the arbitrary number of hand-picked records that counsel chose to disclose. The percentages thus provide no relevant information. Instead, they

[4] This motion seeks relief under *Daubert* and does not address the appropriate remedy for Publishers' selective waiver of work-product.

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answer the entirely irrelevant question of what portion of counsel's curated set falls into the aforementioned three categories. Those percentages tell the jury nothing about the broader sample, let alone about how users are actually engaging with Claude. The percentages thus appear designed to confuse the jury into thinking they reflect the frequency at which these events appear in the broader set of prompts and outputs, even though Dennis acknowledged they do not. [redacted] Ex. 3 ¶ 120.

For example, Dennis declares that in the subset of "Work-in-Suit Records" chosen by counsel, [redacted] Ex. 2 ¶ 142. For the counsel-curated Sample Song Records subset, Dennis declares that [redacted] Dennis admits these percentages only describe the counsel-curated subsets, and further acknowledges they are not representative of and cannot be extrapolated to the broader samples or population. *See e.g.*, Ex. 2 ¶ 62; Ex. 4 at 79:19-25; Ex. 3 ¶ 120.

The calculations Dennis presents are arbitrary because Dennis does not know how counsel selected the records they provided him. In fact, the only thing Dennis knows about the denominator (the counsel-selected records) is that those records purportedly share certain vaguely described "characteristics." Ex. 3 ¶¶ 120, 212; *see* Ex. 4 at 79:2-10. For instance, counsel's hand-picked "Work-in-Suit Records" subset supposedly reflects [redacted] Ex. 3 ¶¶ 120, 212. And counsel's biased "Sample Song Records" subset purportedly [redacted] *Id.* ¶ 212. He could not say anything else about those "characteristics." Dennis did not even

know whether any other records from the broader datasets also share those "characteristics." Ex. 4 at 72:24-73:2; 84:3-17.

Simply put, Dennis's percentages "become[] meaningless when viewed in the proper context." *Florida Virtual Sch. v. K12, Inc.*, 2023 WL 4676011, at *4 (M.D. Fla. July 10, 2023) (excluding expert testimony as unreliable based in part on meaningless percentage). Those percentages tell the jury nothing about Claude user prompts or Anthropic's guardrails. They do not "logically advance[] a material aspect" of Publishers' case. *Daubert II*, 43 F.3d at 1315. That alone would warrant exclusion, but exclusion is especially important here because of the very real risk of prejudice that comes from permitting the imprimatur of expert testimony to be placed on analyses or opinions that are both irrelevant and not methodologically sound. *Id.* at 1321 n.17; *In re Baby Food Prods.*, 2026 WL 559857, at *13 (excluding expert testimony as irrelevant and misleading under Rules 702 and 403); *see also United States v. Amaral*, 488 F.2d 1148 (9th Cir. 1973) (explaining that scientific testimony "create[s] a substantial danger of undue prejudice or of confusing the issues or of misleading the jury" because of "its aura of special reliability and trustworthiness").

These opinions (¶¶ 15-16, 76-209, 217-221 of his Opening Report (Ex. 2) and ¶¶ 13-14, 52-141, 149-208, 232-250 of his Reply Report (Ex. 3)) should be excluded.

CONCLUSION

For the foregoing reasons, the Court should exclude the testimony of Joshua Dennis in full.

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Date: March 31, 2026

/s/ Sonal N. Mehta

LOUIS W. TOMPROS (*Pro Hac Vice*)
louis.tompros@wilmerhale.com
DISHA PATEL (*Pro Hac Vice*)
disha.patel@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6220

ARI HOLTZBLATT (SBN 354361)
ari.holtzblatt@wilmerhale.com
ROBIN C. BURRELL (*Pro Hac Vice*)
robin.burrell@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Ave, NW
Washington, DC 20037
Telephone: (202) 663-6000

SONAL N. MEHTA (SBN 222086)
sonal.mehta@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
2600 El Camino Real, Suite 400
Palo Alto, CA 94306
Telephone: (650) 858-6000

TAYLOR GOOCH (SBN 294282)
taylor.gooch@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
50 California St.
San Francisco, CA 94111
Telephone: (628) 235-1000

JARED V. GRUBOW (*Pro Hac Vice)*
jared.grubow@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
250 Greenwich St
New York, NY 10007
Telephone: (212) 230-8800

Attorneys for Defendant
ANTHROPIC PBC

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2026, I did cause this motion to be served on the following listed below and in the manner so indicated.

By Electronic Mail

OPPENHEIM + ZEBRAK, LLP
Matthew J. Oppenheim (*Pro Hac Vice*)
Nicholas C. Hailey (*Pro Hac Vice*)
Audrey Adu-Appiah (*Pro Hac Vice*)
Corey Miller (*Pro Hac Vice*)
Jeffrey M. Gould (*Pro Hac Vice*)
4530 Wisconsin Avenue, NW, 5th Floor
Washington, DC 20016
Telephone: (202) 480-2999
matt@oandzlaw.com
nick@oandzlaw.com
aadu-appiah@oandzlaw.com
corey@oandzlaw.com
jeff@oandzlaw.com

COBLENTZ PATCH DUFFY & BASS LLP
Jeffrey G. Knowles
Christopher J. Weiner
Bina Patel
Thomas A. Harvey
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Telephone: (415) 772-5795
Ef-jgk@cpdb.com
cwiener@coblentzlaw.com
bpatel@coblentzlaw.com
Ef-Tah@cpdb.com

Jennifer Pariser (*Pro Hac Vice*)
Andrew Guerra (*Pro Hac Vice*)
Timothy Chung (*Pro Hac Vice*)
Michelle Gomez-Reichman (*Pro Hac Vice*)
Bret Matera (*Pro Hac Vice*)
Alexander Kaplan (*Pro Hac Vice*)
461 5th Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 951-1156
jpariser@oandzlaw.com
andrew@oandzlaw.com
tchung@oandzlaw.com
mgomez-reichman@oandzlaw.com
bmatera@oandzlaw.com
alex@oandzlaw.com

COWN, LEIBOWITZ & LATMAN, P.C.
Richard S. Mandel (*Pro Hac Vice*)
Jonathan Z. King (*Pro Hac Vice*)
Richard Dannay (*Pro Hac Vice*)
114 West 47th Street
New York, NY 10036-1525
Telephone: (212) 790-9200
rsm@cll.com
jzk@cll.com
rxd@cll.com

Dated: March 31, 2026

By: */s/ Robin C. Burrell*
Robin C. Burrell