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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

vs.

ANTHROPIC PBC et al.,

Defendants.

Case No. 5:26-cv-00880-EKL-SVK

**JOINT DISCOVERY DISPUTE
STATEMENT REGARDING
ANTHROPIC'S PRESERVATION OF
PROMPT AND OUTPUT RECORDS**

Magistrate Judge Susan van Keulen

PUBLIC REDACTED VERSION

Pursuant to Sec. 8 of the Court’s Civil Standing Order, and L.R. 37-1 and 37-2, the Parties respectfully submit this Joint Discovery Dispute Statement to seek the Court’s intervention regarding Anthropic’s obligations to preserve prompt and output data. Counsel for the Parties with authority to negotiate and compromise met and conferred to try to resolve this dispute via videoconference on April 2, 2026 and April 7, 2026, and by email, but have been unable to reach agreement on the issues below. Anthropic respectfully requests that the Court enter an order defining the appropriate scope of preservation consistent with the Court’s ESI Guidelines. Specifically, Anthropic requests an order limiting Anthropic’s preservation obligations for prompt and output records to (1) a deduplicated random sample of 500 million records taken from the ~[REDACTED] prompts and outputs captured from its Claude.ai and first-party Claude API interfaces (“Claude Records”) between January 13, 2026 and March 24, 2026 (the “2-month Window”) and (2) records from within the 2-month Window of Claude Records that contain the terms “song!,” “lyric!,” “verse!,” or “chorus!,”—the Publishers’ proposed search terms. In the alternative, if the Court concludes that additional preservation beyond that which Anthropic proposed is warranted, Anthropic requests the opportunity to present additional information regarding the costs of any additional preservation and propose a cost-sharing order.

Publishers propose that Anthropic either (1) preserve those Claude records containing the terms “song!,” “lyric!,” “verse!,” or “chorus!” (without limiting that preservation to Anthropic’s arbitrary two-month window); or (2) produce a sample of 1 million Claude records so the Parties can evaluate more specific search terms to narrow preservation. Alternatively, if Anthropic wants to limit preservation to two sample sets of records from a two-month window, and not preserve any post-March 24, 2026 records, Publishers propose those sets must be *true samples*: the 500-million-record random sample should be drawn equally from the pre- and post-suit periods, and both the 500-million-record sample and search-term sample must be deemed representative of the broader universe of Claude records from January 13, 2026 forward, so the Parties can extrapolate the findings from the samples across that broader Claude dataset. While not yet before the Court, Publishers intend to oppose any request by Anthropic for cost-shifting as premature and meritless.

I. Anthropic's Position: Anthropic's Preservation Proposal Should Be Adopted

A. Anthropic Has Preserved An Extraordinary Volume Of Claude Records

Anthropic takes seriously its obligation to preserve relevant electronic evidence and has taken significant steps as early as possible to preserve prompt and output data. But that duty is not unlimited. The Federal Rules guide the scope of preservation, balancing relevance and burden. *See* Fed. R. Civ. P. 26(b)(1). The District's ESI Guidelines are consistent, advising that "[t]he proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) should be applied" for ESI. N.D. Cal. ESI Guidelines § 1.03. While the Court "expects cooperation," "[i]f the parties are unable to resolve a preservation issue, then the issue should be raised promptly with the Court." *Id.* §§ 1.02, 2.01. Rule 26(c) permits the Court to circumscribe discovery to protect a party from "undue burden or expense" upon a showing of good cause, *Al Otro Lado, Inc. v. Nielsen*, 328 F.R.D. 408, 415 (S.D. Cal. 2018), and depends on the impact on an entity "to maintain the evidence sought to be preserved[,] including "the physical, spatial and financial burdens" associated with preservation. *Id.* at 416. After Publishers filed suit on January 18, 2026, Anthropic immediately began preserving prompt and output records and contacted Publishers to negotiate a reasonable scope of preservation for its Claude.ai and first party Claude API interfaces ("Claude Records"). Currently, Anthropic is preserving (and continues to do so on a ~14-day cadence until the Court rules) snapshots of Claude Records from the previous 28-day period (its retention window).

Anthropic seeks the Court's assistance because the size of those snapshots is unworkable. The 2-month Window (from January 13 to March 24) comprises over [REDACTED], [REDACTED].¹ This is nearly [REDACTED] times the unique data that was preserved and sampled in *Concord I* across a six-month period. The compute and retrieval costs associated with taking those snapshots was ~\$1.7 million, with an additional ~\$233,300 per month to store the data. *See* Mot. for Leave to File, Ex. 1 ¶ 5 ("Rodriguez Decl."). Claude usage is increasing rapidly. If required to snapshot and preserve records on an ongoing basis, the costs will grow exponentially. Storage costs only account for the raw preserved data that is itself inaccessible and unusable in litigation without necessary processing for actual use.

¹ Anthropic consistently explained the extraordinary size and cost of preservation and has appropriately refined its estimates given the challenges of calculating costs for data of this scale.

1 The cost to process just the data in the 2-month Window will be over \$2,000,000. *Id.* ¶ 6.

2 Publishers propose that Anthropic *indefinitely* preserve records hitting on certain search
3 terms. That is also unworkable. To do so, Anthropic must process all of the data before running
4 those search terms. If required to capture and process snapshots of prompt and output data for
5 even *six* additional months, the projected cost for those six months would be approximately \$72
6 million, accounting for the observed monthly growth in Claude usage. *Id.* ¶ 7. That does not
7 include the storage costs of the records that ultimately hit on the search terms. While search terms
8 could reduce the overall volume of data that ultimately has to be stored, the processing costs to
9 run the search terms is enormous, imposing a burden far out of proportion to the supposed benefit.
10 Publishers’ “alternative” proposal, producing 1 million records now to negotiate different search
11 terms, does not address the fundamental issue: that running any search terms requires Anthropic
12 to process [REDACTED] of records each month—and ignores that Publishers had *Concord I* to work
13 out search terms, revealing the proposal’s true purpose is unnecessary delay and costs.

14 Courts reject requests for the wholesale or indefinite preservation of voluminous data on
15 proportionality grounds. In *Rodriguez v. Google LLC*, plaintiffs sought an order preventing
16 Google from deleting app data after 56 days, Google’s data retention policy. 2021 WL 8085492,
17 at *1 (N.D. Cal. Dec. 1, 2021). There, a day’s worth of data, on average, consisted of 135 billion
18 entries and required 27 petabytes of storage. *Id.* The court refused to order suspension of Google’s
19 deletion policy, finding the millions of dollars in storage it would incur went “above and beyond
20 ordinary litigation costs” and that it was not proportional to require “Google to start saving
21 petabytes of data per day, indefinitely,” absent a “compelling showing of need.” *Id.* at *2.

22 Given the extraordinary burden of data preservation at this scale, Anthropic requests that
23 the Court limit preservation to (1) a random sample of 500 million records taken from the [REDACTED]
24 [REDACTED] records captured in the 2-month Window and (2) Claude Records from within the 2-month
25 Window that contain the terms “song!,” “lyric!,” “verse!,” or “chorus!,”—the Publishers’
26 proposed search terms. This proposal balances Rule 26(b)’s interests (and still comes at an
27 enormous cost to Anthropic—over \$4 million). A random sample of 500 million records is
28 statistically valid and reliable for purposes of discovery; it provides both sides the data they and

1 their experts need—as in *Concord I*, Anthropic could create subsamples (like the 5 million record
 2 sample). Courts have endorsed sampling where the utility of additional data is negligible
 3 compared to the cost. *See id.* at *1 (approving sampling as “more direct and far less burdensome”
 4 than storing petabytes of data). Anthropic cannot continue to preserve prompt and output records
 5 indefinitely without “incurring substantial [financial] burden”, so good cause exists for an order
 6 limiting the records Anthropic is required to preserve. *See Al Otro Lado, Inc.*, 328 F.R.D. at 422.

7 **B. Publishers Cannot Justify Their Demands For Additional Preservation**

8 Publishers claim they are entitled to indefinite preservation because they want to search
 9 for supposedly infringing outputs. That would not justify the burden and expense of the massive
 10 preservation effort they demand in any case. *See Rodriguez*, 2021 WL 8085492, at *1 (refusing
 11 indefinite preservation where plaintiffs failed to explain their need for additional data). But it is
 12 especially disproportionate here. The parties and the Court *already know* infringing outputs are
 13 exceedingly unlikely to exist. *Concord I* demonstrates that Anthropic’s guardrails essentially
 14 eliminate verbatim output of Publishers’ lyrics. As Publishers concede, (Dkt. 75 ¶¶ 116-118),
 15 those guardrails have only improved since *Concord I* was filed. And after the guardrails were
 16 bolstered, *unrebutted* empirical testing shows that when Claude is prompted for lyrics, it does not
 17 return them. *See Concord I*, Dkt. 686-14 at ¶¶ 178, 191 & Table 11. Likewise, in stark contrast to
 18 *Concord I*, the *Concord II* complaints have not alleged a *single* example of any allegedly
 19 infringing outputs. Dkt. 93. Parties need not preserve data beyond what is truly “needed ... to
 20 prosecute th[e] case.” *FTC v. DirecTV, Inc.*, 2016 WL 7386133, at *5 (N.D. Cal. Dec. 21, 2016).

21 Unable to offer a cogent explanation for their supposed need for additional data,
 22 Publishers attempt to recast Anthropic’s request for reasonable preservation limitations as
 23 malfeasance. But the cases they cite condemning data deletion arise in the context of spoliation
 24 sanctions, not good-faith efforts to secure reasonable preservation agreements, and thus are
 25 inapplicable. *See Ritchie v. United States*, 451 F.3d 1019 (9th Cir. 2006); *Pettit v. Smith*, 45 F.
 26 Supp. 3d 1099 (D. Ariz. 2014). Other cases they rely on to support their campaign against
 27 reasonable preservation limits are equally unavailing. For example, in *Impact Engine, Inc. v.*
 28 *Google LLC*, the court declined to grant the requested protective order on procedural grounds.

2020 WL 1939023, at *2 (S.D. Cal. Apr. 21, 2020). In *Al Otro Lado, Inc.*, the court **granted** in part defendant’s motion for a protective order to limit the surveillance data it was required to preserve based on burden. 328 F.R.D. at 422. And *Pettit* did not involve a preservation order but rather spoliation. 45 F. Supp. 3d at 1102.

Publishers also suggest that Anthropic should agree, in the context of preservation, that the records be “deemed representative of the broader universe of Claude records from January 13, 2026 forward.” It is premature—and improper—for the Publishers to attempt to extract in this preservation dispute a concession that certain records are “representative” for ***all of time*** going forward. Rather, as in *Concord I*, the Parties can negotiate an appropriate size of a representative sample for production in discovery. Once that production sample size and scope is determined, the parties and the Court will be able to make a determination as to what extrapolations can fairly be made from it. *See, e.g., Concord I*, Dkt. 318 (order on contesting representativeness).

C. Publishers Ignored Anthropic’s Cost-Sharing Offer

Anthropic raised these preservation issues early and proactively and has tried to negotiate in good-faith for over three months. On April 16, Anthropic sought to make progress with a proposed stipulation for a 2-month preservation window. Publishers rejected the stipulation on April 24, *see* N. Hailey Email (Apr. 24, 2026), instead proposing that Anthropic preserve all Claude Records through the present, and then preserve additional wholesale 28-day snapshots of Claude Records every third month going forward, without an end-date, *id.* Anthropic explained the enormous costs associated with each snapshot, but offered to consider Publishers’ proposal to take new snapshots every three months if they assumed a reasonable portion of the costs, an offer Publishers ignored. In their portion of this statement, Publishers suggest Anthropic’s cost-sharing proposal is improper because the enormous costs are a function of Anthropic’s success, so they are not undue. But it cannot be that a plaintiff is entitled to demand one-sided payment for unreasonable data preservation just by electing to bring a lawsuit against a fast-growing company.

The District’s ESI guidelines specifically contemplate “sharing expenses” “in cases where the discovery of ESI is likely to be a significant cost or burden,” as here. N.D. Cal. ESI Guidelines § 2.02(f). Any other rule creates misaligned incentives and allows Publishers (and other AI-

plaintiffs) to use the imposition of massive preservation costs as a cudgel to extract unjustified litigation concessions or create settlement leverage. Publishers attempted to do just that here, leveraging the burdens of preservation to try to extract a litigation concession: Publishers suggested that Anthropic need not preserve any outputs if it stipulates that its Claude models did (and continue to) output copies of each of Publishers' more than 20,000 works in suit. Allowing Publishers to thumb the scale this way is particularly inappropriate where Publishers have failed to identify even a single allegedly infringing output in *Concord II*.

Anthropic requests that the Court limit its preservation obligations to only a deduplicated random sample of 500 million Claude Records and records hitting on the four search terms from the 2-month Window, appropriately balancing Rule 26(b)'s interests. Given the volume of records, small changes in preservation can have enormous effects on cost. If the Court is inclined to grant additional preservation, Anthropic requests an opportunity to present additional cost details and/or a proposed cost-sharing order for the Court's consideration.

II. Publishers' Position: Anthropic cannot destroy critically relevant Claude records.

Anthropic seeks to immunize itself from liability by destroying the evidence of its infringement. Anthropic plans to dispute (as it did in *Concord I*) that its Claude AI models generate output copying Publishers' copyrighted song lyrics. But it wants to vaporize the vast majority of Claude prompt-output records necessary to prove (as those records proved in *Concord I*) the extent to which Claude generates such infringing output. Anthropic cannot have it both ways. Its attempt to stack the deck by destroying critical evidence before discovery even begins should be rejected.

Publishers have offered numerous proposals that balance the need to preserve these critical Claude records against the burden of doing so. Specifically, Publishers propose that Anthropic either (1) preserve those Claude records that hit on the search terms "song!," "lyric!," "verse!," or "chorus!," or (2) produce a pre-sample of 1 million Claude records (half pre-suit, half post-suit) so the Parties can evaluate whether applying more specific search terms can narrow Anthropic's preservation obligations. Anthropic fails to show why these reasonable proposals are not feasible.

Instead, Anthropic wants to indiscriminately destroy 99.9% of the Claude records it has currently preserved, fail to preserve *any* new Claude records going forward, and prevent the Parties

1 from drawing any broader conclusions from the 00.1% of Claude records it does keep. Anthropic
 2 cloaks this extraordinary request as a preservation dispute, but it seeks potentially case-dispositive
 3 relief: if Anthropic destroys these records and fails to preserve any future records, Publishers will
 4 have no way of proving the extent of Anthropic’s infringement of their lyrics in its AI output.

5 Anthropic cannot justify this extraordinary demand by invoking exaggerated and
 6 unsubstantiated costs. It vastly overinflates its burden by pointing to the claimed cost of preserving
 7 *all* Claude records—ignoring it can preserve its *relevant* lyric- and song-related Claude records at
 8 a fraction of the cost. Its planned evidence destruction would flout its obligations under the Federal
 9 Rules and severely prejudice Publishers. “Parties should not be able to escape liability by
 10 destroying evidence of their own wrong-doing.” *Ritchie v. United States*, 451 F.3d 1019, 1024 (9th
 11 Cir. 2006). Anthropic cites no authority to justify its demand that the Court bless its spoliation, or
 12 its attempt to improperly saddle Publishers with the cost of its own document preservation.

13 **A. Anthropic must preserve its relevant Claude prompt-output records.**

14 Anthropic’s lyric- and song-related Claude records are critically relevant to Publishers’
 15 claims. Those records are the only evidence of Anthropic’s users prompting Claude for Publishers’
 16 lyrics and other song-related requests and of Claude generating output copying Publishers’ lyrics
 17 in violation of Publishers’ rights. In *Concord I*, Anthropic’s Claude records provided critical
 18 support for Publishers’ motion for summary judgment on direct infringement and fair use.

19 Publishers anticipate pursuing the same discovery of Claude records in *Concord II* that the
 20 Parties agreed to and the Court ordered in *Concord I*. First, to confirm the extent to which
 21 Anthropic’s Claude models generated output infringing the *Concord II* works, Publishers will seek
 22 targeted discovery of Claude records containing the lyrics to those works, based on lyric- and song-
 23 related search terms, consistent with *Concord I*. ECF No. 318 at 3. Second, so that the Parties can
 24 analyze Claude usage more broadly, Publishers plan to request that Anthropic produce a random
 25 sample of Claude records from the time period at issue in *Concord II*, like in *Concord I*. *Id.* at 2.

26 Anthropic’s planned record destruction would thwart this crucial discovery.

27 **B. Publishers’ proposal ensures proportional preservation of Claude records.**

28 Anthropic’s motion proceeds from the false premise that it must preserve all Claude

records, regardless of relevance. But Publishers have proposed multiple ways in which Anthropic could tailor its preservation to the lyric- and song-related Claude records relevant to this case, allowing Anthropic to comply with its preservation duty at a fraction of the cost.² First, Publishers have proposed that Anthropic preserve its Claude records containing the terms “song!,” “lyric!,” “verse!,” or “chorus!” (without limiting that preservation to an arbitrary two-month window). Anthropic cannot stonewall this proposal based on unsubstantiated feasibility claims. If Anthropic does not believe it can leverage its technological expertise to efficiently run these searches, then it can agree that the searches across the two-month sample period be deemed representative of broader Claude usage. Alternatively, if Anthropic produces a random pre-sample of 1 million records (half pre-suit, half post-suit), the Parties can evaluate whether more specific search terms can further narrow Anthropic’s preservation obligations. Evaluating a pre-sample in this manner accords with other cases. *E.g., In re Tiktok*, 2025 WL 3628595, at *7–8 (C.D. Cal. Nov. 10, 2025).

C. Anthropic’s proposal to broadly destroy relevant records should be rejected.

Anthropic instead seeks to destroy 99.9% of Claude records it has preserved from January 13, 2026 to March 24, 2026,³ fail to preserve even a *single* later-created Claude record, and prevent the Parties from drawing any conclusions from the tiny fraction of Claude records it does maintain.

As the party “asking the Court to grant a protective order” relieving it of its preservation obligations, Anthropic “bears the burden” of “articulat[ing] ‘a clearly defined, specific and serious injury’ that will result in the absence of the order,” which must then be balanced against Publishers’ interests. *Impact Engine, Inc. v. Google LLC*, 2020 WL 1939023, at *1 (S.D. Cal. Apr. 21, 2020).

Anthropic comes nowhere close to such a showing. Its sole rationale for this extraordinary relief is the claimed cost of preservation. But its shifting claims regarding those costs are highly suspect. Anthropic initially represented in this dispute statement that it was preserving [REDACTED] [REDACTED] for the two-month period at a cost of \$850,000/month, and the cost for processing that data would be \$4 million. But when pressed to provide a declaration to support those representations, Anthropic changed its story and now claims to be preserving [REDACTED]

² As discussed above, Anthropic should also preserve a limited random sample of Claude records (half pre-suit, half post-suit), of a sufficient size to be statistically significant, such that the Parties can evaluate Claude usage more broadly, consistent with *Concord I*.

³ Publishers reserve all rights regarding Anthropic’s failure to preserve its earlier Claude records.

1 [REDACTED] at a cost of \$233,300/month, for which the processing cost would
 2 be \$2 million. Anthropic does not explain these inconsistencies. Nor does it offer any conceivable
 3 rationale for how these costs could skyrocket to \$72 million for just six additional months of data.

4 In any event, Anthropic's unilateral assessment vastly overinflates its preservation costs,
 5 in multiple respects. Anthropic now faces nearly a *dozen* lawsuits alleging copyright infringement,
 6 many of which cover the same time periods as this case. Nowhere does Anthropic explain why its
 7 "purported costs are solely attributable to this litigation," as opposed to "litigation holds in other
 8 lawsuits." *Pippins v. KPMG LLP*, 2011 WL 4701849, at *1 (S.D.N.Y. Oct. 7, 2011). Anthropic
 9 also cites the costs of preserving *all* Claude records—not the fraction of records actually relevant
 10 to this case. Where Anthropic has refused to engage with Publishers to preserve the subset of lyric-
 11 and song-related Claude records relevant here, its purported "burden is self-inflicted." *Id.* at *9.

12 Anthropic's myopic focus on burden cannot justify its far-reaching demand to be relieved
 13 of its preservation duty. Any increase in Anthropic's preservation costs compared to *Concord I* is
 14 simply a function of increased Claude usage. More usage means more infringement, and also more
 15 financial windfall for Anthropic: in the last year, it raised a staggering \$111 billion in investment
 16 funding, increased its run rate revenue to \$47 billion, and increased its valuation to \$965 billion⁴—
 17 resources that dwarf Publishers'. Anthropic also ignores the other Rule 26 proportionality
 18 considerations—the critical importance of the issues, the over \$3 billion in controversy,
 19 Anthropic's sole access to these records, and the necessity of the discovery in resolving the claims.
 20 All these factors underscore the need to preserve these records. Anthropic's failure to show data
 21 inaccessibility and undue burden likewise precludes its improper demand for cost-shifting. *See,*
 22 *e.g., Io Grp., Inc. v. Veoh Networks, Inc.*, 2007 WL 1113800, at *7 (N.D. Cal. Apr. 13, 2007).

23 Further, Anthropic offers no plan for how the Parties will evaluate Claude usage *after*
 24 March 24, 2026. Its failure to address this problem is especially troubling in that, while it proposes
 25 preserving a "sample of 500 million records" from January 13, 2026 to March 24, 2026, it refuses
 26 to agree to deem this sample representative of the broader universe of Claude records from January
 27 13, 2026 forward or that the findings can be extrapolated across that broader time period. If

28 ⁴ *See, e.g., Anthropic raises \$65B in Series H funding at \$965B post-money valuation*, ANTHROPIC (May 28, 2026), <https://www.anthropic.com/news/series-h>.

Anthropic objects to the costs of preserving all records, it should agree to these sampling safeguards. Absent such guarantees, its “sample” proposal is nothing more than a subterfuge to destroy 99.9% of its Claude records and evade any discovery into Claude usage going forward.

Pippins v. KPMG is instructive. 2011 WL 4701849 (S.D.N.Y. Oct. 7, 2011), *aff’d* 279 F.R.D. 245 (S.D.N.Y. 2012). There, the defendant sought to avoid preserving over 7,500 hard drives, arguing disproportionate costs, and instead moved “to preserve only a random sample of 100 hard drives.” *Id.* at *2. The magistrate judge denied the request because the defendant failed to “establish conclusively” that “the hard drives [were] of only marginal relevance and that it would be unduly burdensome to continue its current preservation efforts.” *Id.* at *8–10. While “preserving the hard drives was expensive,” the magistrate judge “concluded that it would be premature to permit the destruction of any hard drives before discovery.” 279 F.R.D. at 252. The district judge agreed that the defendant “cannot simultaneously demand that the Court analyze [facts supporting the plaintiff’s claims] and also ask the Court to sanction the destruction of what is probably the single best source of that information.” *Id.* at 256; *see also, e.g., Impact*, 2020 WL 1939023, at *1 (citing *Pippins* in rejecting defendant’s argument); *Al Otro Lado, Inc. v. Nielsen*, 328 F.R.D. 408, 415–21 (S.D. Cal. 2018) (defendants who sought “judicial permission to destroy potentially relevant documents and information” had “failed to recognize their preservation obligations”); *Pettit v. Smith*, 45 F. Supp. 3d 1099, 1107–08 (D. Ariz. 2014) (a party cannot “immunize itself from liability by destroying the very evidence needed to prove its liability”).

By contrast, Anthropic fails to cite a single case supporting its extraordinary demand.

D. Anthropic’s merits arguments are premature, irrelevant, and baseless.

Anthropic wastes much ink arguing the merits of *Concord I* and what discovery will show in *Concord II*. These premature contentions have no bearing on preservation. Arguing an unfiled motion to dismiss here puts the cart before the horse. These arguments also evoke Anthropic’s misrepresentation to the Court early in *Concord I* that “Claude customers are not using Claude to generate song lyrics,” Hr’g Tr. 49:22 (Nov. 25, 2024), which Claude records subsequently proved false—further underscoring the importance of the Claude records Anthropic here seeks to destroy.

Date: July 6, 2026

Respectfully submitted,

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By: /s/ Sonal N. Mehta

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SIGNATURE ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)(3)

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of the document was obtained from the document's signatories. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 6, 2026

/s/ Sonal N. Mehta

Sonal N. Mehta