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11 **UNITED STATES DISTRICT COURT**

12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 EDD KING, DIEDRE KING, ELMO
14 SHEEN, and SHEILA LEE, on behalf of
15 themselves and all others similarly situated,

16 Plaintiffs,

17 v.

18 NATIONAL GENERAL INSURANCE
19 COMPANY, NATIONAL GENERAL
20 ASSURANCE COMPANY, INTEGON
NATIONAL INSURANCE COMPANY,
INTEGON PREFERRED INSURANCE
COMPANY, MIC GENERAL INSURANCE
CORPORATION, PERSONAL EXPRESS
INSURANCE COMPANY, SEQUOIA
INSURANCE COMPANY, and DOES 1
through 200, inclusive,

21 Defendants.

22 Case No. 4:15-cv-00313-DMR

23 **MOTION OF CONSUMER WATCHDOG
24 FOR LEAVE TO FILE AMICUS CURIAE
25 BRIEF AND BRIEF CONCERNING
26 PLAINTIFFS' RENEWED MOTION FOR
27 CLASS CERTIFICATION**

28 Hearing Date: March 13, 2025

Dept.: Courtroom 4 – 3rd Floor
Oakland Courthouse
The Honorable Donna M. Ryu

Complaint Filed: January 22, 2015

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Consumer Watchdog respectfully requests leave to file the following brief as amicus curiae to address two issues raised by this Court’s Order on Supplemental Briefing (Dkt. 422) and Plaintiffs’ Renewed Motion for Class Certification.

Consumer Watchdog is a non-profit, non-partisan charitable organization incorporated in California in 1985. A core mission of the organization is to defend the provisions of Proposition 103, the insurance reform initiative approved by California voters on November 8, 1988, and to protect Californians against unfair and abusive insurance rates and practices through enforcement of that measure.

Consumer Watchdog and its attorneys have appeared as a party or acted as amicus curiae in over one hundred court cases, including nearly every landmark case concerning Proposition 103's constitutionality and scope,¹ as well as in dozens of administrative actions before the California Department of Insurance, in which several of the issues presented by this case have arisen.²

The organization also closely monitors legislative activity concerning Proposition 103—and was deeply involved in the California Legislature's consideration of multiple bills that led to the enactment of Insurance Code section 1861.16, directly at issue here.

¹ See, e.g., *Calfarm Ins. Co. v. Deukmejian*, 48 Cal. 3d 805 (1989) (upholding Proposition 103); *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994) (upholding regulations implementing Proposition 103); *Amwest Surety Ins. Co. v. Wilson*, 11 Cal. 4th 1243 (1995); *Proposition 103 Enforcement Project v. Quackenbush*, 64 Cal. App. 4th 1473 (1998); *Spanish Speaking Citizens' Found. v. Low*, 85 Cal. App. 4th 1179 (2000); *State Farm Mut. Auto. Ins. Co. v. Garamendi*, 32 Cal. App. 4th 1029 (2004); *The Found. for Taxpayer & Consumer Rights v. Garamendi*, 132 Cal. App. 4th 1354 (2005); *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal. App. 4th 1029; *Mercury Cas. Co. v. Jones*, 8 Cal. App. 5th 561 (2017); *Mercury Ins. Co. v. Lara*, 35 Cal. App. 5th 82 (2019), *rev. denied*, August 14, 2019; and *State Farm Gen. Ins. Co. v. Lara*, 71 Cal. App. 5th 197 (2021). In many of these cases, Consumer Watchdog is identified by its former name, The Foundation for Taxpayer and Consumer Rights.

² Most recently, Consumer Watchdog submitted an extensive amicus curiae brief in *Villanueva v. Fidelity Nat'l Title Co.*, 2021 WL 1031874 (Consumer Watchdog amicus brief at 2020 WL 418747); see also *Donabedian v. Mercury Ins. Co.*, 116 Cal. App. 4th 968 (2004) (amicus brief at 2003 WL 23209749); *Poirer v. State Farm Mut. Auto Ins. Co.* (October 15, 2004) (unpublished) 2004 WL 2325837 (amicus brief at 2004 WL 1284440); and *Fogel v. Farmers Grp., Inc.*, 160 Cal. App. 4th 1403 (2008) (amicus brief at 2006 CA App. Ct. Briefs LEXIS 745).

1 The unique insurance regulatory system mandated by the voters through Proposition 103 is
2 described simply as a consumer protection measure. But when, as here, its application is contested
3 by an insurance company, the proper interpretation of the law often requires an analysis
4 of the interplay of various statutes and regulations.

5 The issues in this matter are of significant importance to California consumers. “District
6 courts frequently welcome amicus briefs from non-parties concerning legal issues that have
7 potential ramifications beyond the parties directly involved” *Sonoma Falls Devs., LLC v.*
8 *Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). “[A] district court
9 has broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F. 2d 1237, 1260 (9th Cir.
10 1982), *overruled on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995). The proposed brief,
11 following this Motion, is presented to assist the Court in its consideration of issues in Plaintiff’s
12 renewed class certification motion.

13
14 Dated: March 11, 2025

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDD KING, DIEDRE KING, ELMO SHEEN, and SHEILA LEE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NATIONAL GENERAL INSURANCE COMPANY, NATIONAL GENERAL ASSURANCE COMPANY, INTEGON NATIONAL INSURANCE COMPANY, INTEGON PREFERRED INSURANCE COMPANY, MIC GENERAL INSURANCE CORPORATION, PERSONAL EXPRESS INSURANCE COMPANY, SEQUOIA INSURANCE COMPANY, and DOES 1 through 200, inclusive,

Defendants.

Case No. 4:15-cv-00313-DMR

**AMICUS CURIAE BRIEF OF CONSUMER
WATCHDOG CONCERNING PLAINTIFFS'
RENEWED MOTION FOR CLASS
CERTIFICATION**

Hearing Date: March 13, 2025
Dept.: Courtroom 4 – 3rd Floor
Oakland Courthouse
The Honorable Donna M. Ryu

Complaint Filed: January 22, 2015

1 INTEREST OF AMICUS CURIAE CONSUMER WATCHDOG

2 In their renewed Rule 23 motion for class certification, Plaintiffs raise issues of vital
 3 interest to California insurance consumers—specifically, the interpretation of key provisions in
 4 Proposition 103, the voter-enacted insurance reform law of 1988.

5 Among its core missions, Consumer Watchdog, a non-profit, non-partisan organization
 6 incorporated in California in 1985, seeks to protect Californians from unfair and excessive
 7 insurance rates and enforce Proposition 103. Its attorneys have played a role in nearly every major
 8 case interpreting Proposition 103, whether as a party³ or amicus curiae.⁴ The organization has also
 9 participated in numerous civil and administrative proceedings, in which many of the same issues
 10 in this case have arisen. Further, it closely monitors legislative developments concerning
 11 Proposition 103 and was directly involved in the Legislature’s amendment of California Insurance
 12 Code section 1861.16, which is central here.⁵ Consumer Watchdog is a non-profit, non-partisan
 13 charitable citizen organization incorporated in California in 1985. A core mission of the
 14 organization is to defend the provisions of Proposition 103 and to protect Californians against
 15 unfair and abusive insurance rates and practices through enforcement of that measure. The
 16 organization and its attorneys have appeared as a party, or acted as amicus curiae, in numerous
 17 court cases, including nearly every landmark case concerning Proposition 103’s constitutionality
 18 and scope, as well as in dozens of administrative actions before the California Department of

19 ³ See, e.g., *Calfarm Ins. Co. v. Deukmejian*, 48 Cal. 3d 805 (1989) (upholding Proposition 103);
 20 *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994) (upholding regulations implementing
 21 Proposition 103); *Amwest Surety Ins. Co. v. Wilson*, 11 Cal. 4th 1243 (1995); *Proposition 103*
 22 *Enforcement Project v. Quackenbush*, 64 Cal. App. 4th 1473 (1998); *Spanish Speaking Citizens’*
 23 *Found. v. Low*, 85 Cal. App. 4th 1179 (2000); *State Farm Mut. Auto. Ins. Co. v. Garamendi*, 32
 24 Cal. App. 4th 1029 (2004); *The Found. for Taxpayer & Consumer Rights v. Garamendi*, 132 Cal.
 25 App. 4th 1354 (2005); *Ass’n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal. App. 4th 1029; *Mercury*
 26 *Cas. Co. v. Jones*, 8 Cal. App. 5th 561 (2017); *Mercury Ins. Co. v. Lara*, 35 Cal. App. 5th 82
 27 (2019), *rev. denied*, August 14, 2019; and *State Farm Gen. Ins. Co. v. Lara*, 71 Cal. App. 5th 197
 28 (2021). In many of these cases, Consumer Watchdog is identified by its former name, The
 Foundation for Taxpayer and Consumer Rights.

⁴ Most recently, Consumer Watchdog submitted an extensive amicus curiae brief in *Villanueva v. Fidelity Nat'l Title Co.*, 2021 WL 1031874 (Consumer Watchdog amicus brief at 2020 WL 418747); see also *Donabedian v. Mercury Ins. Co.*, 116 Cal. App. 4th 968 (2004) (amicus brief at 2003 WL 23209749); *Poirer v. State Farm Mut. Auto Ins. Co.* (October 15, 2004) (unpublished) 2004 WL 2325837 (amicus brief at 2004 WL 1284440); and *Fogel v. Farmers Grp., Inc.*, 160 Cal. App. 4th 1403 (2008) (amicus brief at 2006 CA App. Ct. Briefs LEXIS 745).

⁵ All statutory references are to the California Insurance Code unless otherwise specified.

1 Insurance in which several of the issues presented by this case have arisen.⁶ The organization also
 2 closely monitors legislative activity concerning Proposition 103—and was directly involved in the
 3 legislative enactment and amendments to California Insurance Code section 1861.16, directly at
 4 issue here.

5 Proposition 103’s regulatory framework is clear and unambiguous. But when insurers
 6 challenge its application, resolving the dispute requires careful statutory and regulatory analysis.
 7 **Consumer Watchdog submits this brief to correct Defendants’ mischaracterizations and to assist**
 8 **the Court in addressing and resolving the issues before it.**

9 DISCUSSION

10 A. The Proposition 103 Statutory Framework

11 Proposition 103 applies to numerous lines of property-casualty insurance, such as
 12 automobile, home, and business. Cal. Ins. Code § 1861.13. To correctly construe Section 1861.16,
 13 the analysis must begin with Section 1861.02, in which the voters mandated a series of special
 14 rules, applicable only to automobile insurance.

15 Section 1861.02, subdivision (a), requires that “[r]ates and premiums for an automobile
 16 insurance policy . . . shall be determined” by three mandatory “rating factors” and by other
 17 optional rating factors that “the commissioner may adopt by regulation and that have a substantial
 18 relationship to the risk of loss.” Cal. Ins. Code § 1861.02, subd. (a)(4). A motorist’s driving safety
 19 record is the first mandatory factor.

20 Section 1861.02, subdivision (b), enacted the Good Driver Discount Policy. It requires
 21 insurance companies to provide a 20% discount for that Policy—to incentivize and reward safe
 22 driving. Cal. Ins. Code § 1861.02, subd. (b). And it also created what became known as the “take
 23 all comers” provision: it requires any insurance company selling auto insurance in California to
 24 sell the Good Driver Discount Policy to any qualifying applicant:

25 Every person who meets the criteria of Section 1861.025 shall be qualified to
 26 purchase a Good Driver Discount policy from the insurer of his or her choice. An
 27 insurer shall not refuse to offer and sell a Good Driver Discount policy to any
person who meets the standards of this subdivision.

28

1 Section 1861.02, subd. (b)(1) (emphasis added).

2 The voters mandated that insurance companies offer and sell a Good Driver Discount
 3 policy upon request by a qualified motorist to eliminate the industry's well-documented practices
 4 of "redlining" and "territorial rating." Using these practices, insurers overpriced—or simply
 5 outright denied coverage—to applicants from neighborhoods they deemed "undesirable." See,
 6 e.g., *King v. Meese*, 43 Cal. 3d 1217, 1237–1246 (1987) (Broussard, J., concurring); Williams,
 7 "*The Wrong Side of the Tracks*": *Territorial Rating and the Setting of Automobile Liability*
 8 *Insurance Rates in California*, 19 Hastings Const. L.Q. 845 (1992).

9 In its current form, Section 1861.16, subd. (b), provides that:

10 An agent or representative representing one or more insurers having common
 11 ownership or operating in California under common management or control shall
 12 offer, and the insurer shall sell, a good driver discount policy to a good driver from
 13 an insurer within the common ownership, management, or control group, which
 14 offers the lowest rates for that coverage. (Emphasis added.)

15 Cal. Ins. Code § 1861.16, subd. (b). As is clear from the text, this section imports the Good Driver
 16 Discount Policy and "take all comers" protections of Section 1861.02 and applies them to a
 17 commonly owned, managed, or controlled group of insurance companies. This was necessary to
 18 ensure that insurance companies could not simply evade those voter-approved requirements by
 19 creating affiliated companies and placing some good drivers into a more expensive affiliate.

20 When the plain language of Section 1861.16 is considered in the full context of
 21 Proposition 103, defendants' argument that the statute does not impose liability on insurance
 22 companies for violation of its "lowest price available" requirement, but only on their agents, is
 23 plainly incorrect. Voter-enacted Section 1861.02 places the Good Driver Discount Policy
 24 obligations squarely upon the insurance companies. The Legislature acknowledged this mandate
 25 in its subsequent amendments, culminating in Section 1861.16. It had no choice but to do so, as
 26 the voters have forbidden the Legislature from amending Proposition 103 in any way that does not
 27 "further its purposes." *Amwest*, 11 Cal. 4th at 1257.

28 Nothing in the language of Section 1861.16 suggests that the Legislature has deviated
 29 from the voters' mandate: regardless of whether an "agent" of the insurance company or a
 30 "representative" of the company makes the offer, they are acting on behalf of the insurance

1 company. It is the insurance company that must fulfill the mandate by “sell[ing]” the Good Driver
 2 Discount Policy to the consumer at the lowest available price as set forth in Section 1861.16,
 3 subdivision (b). Cal. Ins. Code § 1861.16, subd. (b). There is only one exception to the
 4 unambiguous “lowest price available” mandate of subdivision (b), and that exception is found in
 5 subdivision (c). Subdivision (c) provides an insurer with the opportunity to obtain a “supergroup
 6 exemption.” A particular affiliate of an insurance company group is excused from the “lowest
 7 price available” requirement only if the Insurance Commissioner determines that the affiliate
 8 within the control group satisfies each of eight separate conditions. Cal. Ins. Code § 1861.16,
 9 subd. (c). Where any of the eight separately stated statutory conditions are not met, or where, as
 10 here, only one of the NG defendant companies ever obtained CDI approval of its Exhibit 17 filing,
 11 the Lowest Rates Rule requires that any lower-priced good driver policy be cross-offered,
 12 regardless of its underwriting criteria.

13 The Defendants’ interpretation of Section 1861.16 would place it in direct conflict with the
 14 voters mandate of Section 1861.02, an impermissible violation of bedrock rules of statutory
 15 construction. *Alameda Cnty. Flood Control & Water Conservation Dist. v. Dep’t of Water Res.*,
 16 213 Cal. App. 4th 1163, 1186 (2013) (“Where the same word or phrase might have been used in
 17 the same connection in different portions of a statute but a different word or phrase having
 18 different meaning is used instead, the construction employing that different meaning is to be
 19 favored.”). Given the context of the statute and the applicable rules of word usage, Defendants’
 20 interpretation is not semantically permissible. *City of Sacramento v. Pub. Emps. ’ Ret. Sys.*, 22 Cal.
 21 App. 4th 786, 795 (1994). Defendants provide no evidence that that was the Legislature’s intent;
 22 but, if it were, the enactment would be invalid, as the voters have forbidden the Legislature from
 23 any amendment of Proposition 103 that does not “further its purposes.” *Amwest*, 11 Cal. 4th at
 24 1257.

25 **B. Interpretation of the Meaning of “That Coverage” in California Insurance
 26 Code Section 1861.16.**

27 Differences in policy language or deductible amounts do not excuse insurers within a
 28 control group of insurance companies from cross-offering the lowest available good driver rate

1 within that group. This consumer protection principle is central to the Proposition 103 reforms
 2 discussed above. If an insurance group could avoid the requirement to cross-offer its lowest
 3 available group premium simply by offering different deductibles, then every common group
 4 company would quickly circumvent the law by introducing slight deductible variations in their
 5 rate filings.

6 Insurers may not evade Proposition 103's requirement through the artifice of providing
 7 slightly different coverages. As with differences in policy language and ancillary policy
 8 benefits—such as rental reimbursement coverage, which can amount to hundreds of dollars if a
 9 claim is made—the choice of a lower-premium good driver policy belongs to the consumer, not
 10 the insurance company. A lower-priced good driver policy with the closest available deductible
 11 option must be offered to the consumer to ensure an informed decision, if a “same limits policy”
 12 with the identical or lower (better coverage) deductible is not otherwise available. CDI Bulletin
 13 2024-14 (November 25, 2024), Ex. H to Second Request for Judicial Notice (“An insurer is
 14 required to charge each insured, on application or renewal, the lowest premium for which the
 15 insured qualifies.”); see also DKT 422 at 30.

16 **C. There Is No Exception for Affinity Marketing Groups, and This Court Should
 17 Not Create One. An Affinity Group Created by an Insurer That Is Only
 18 Available to Its Policyholders for the Payment of a Policy Fee Is Not Exempt
 19 from Cross-Offering and Must Be Open to All.**

20 Under Section 1861.12, insurers may “issue any insurance coverage on a group plan,
 21 without restriction as to the purpose of the group, occupation or type of group.” Defendants here
 22 refer to their insurance programs as “affinity group” plans and claim that such plans are sold
 23 exclusively to individuals who fall within a specific group. But an insurer must always provide a
 24 Good Driver Discount that is “open to all” as required by and in compliance with Sections
 25 1861.02 and 1861.16.

26 Defendants here appear to contend that their statutory obligations are nullified by their
 27 creation of the so-called “affinity groups.” They argue that only those whom an insurance
 28 company deems “eligible” or “qualified” for the lowest available price are entitled to receive it,
 citing 10 C.C.R. § 2360.3. Finally, they assert that administrative approval of a rate filing

1 overrides the statutory directive. In effect, they ask the Court to create a marketing-based
 2 exception to Proposition 103 that would somehow permit their conduct.

3 Proposition 103 is an initiative statute adopted by the voters pursuant to the California
 4 Constitution (Art. IV, § 1.) California law requires particular deference to such voter-initiated
 5 legislation:

6 [I]t is ““the duty of the courts to jealously guard [the people’s initiative and
 7 referendum power]...[I]t has long been our judicial policy to apply a liberal
 8 construction to this power wherever it is challenged in order that the right [to local
 initiative or referendum] be not improperly annulled. If doubts can reasonably be
 resolved in favor of the use of this reserve power, courts will preserve it.””

9 *Proposition 103 Enforcement Project*, 64 Cal. App. 4th at 1485–1486 [citations omitted]). And
 10 indeed, the voters instructed the courts to construe Proposition 103 liberally. Prop. 103, § 8, subd.
 11 (a). Yet here, defendants seek to create a loophole in Proposition 103 by fabricating distinctions in
 12 their own marketing programs that disregard or contradict the plain language and stated purposes
 13 of Proposition 103. This interpretation would not only contravene the statute’s text but also invert
 14 the very protections Proposition 103 was enacted to ensure.

15 Defendants in effect suggest that the Court should judicially create an “affinity marketing
 16 group” exception to the “lowest price” requirement. The Court should reject defendants’
 17 invitation to sanction their attempt to evade the mandate of Section 1861.16 through this
 18 argument.

19 First, nothing in subdivisions (b) or (c) mentions “affinity groups.” Cal. Ins. Code
 20 § 1861.16, subds. (b)–(c). Indeed, neither Proposition 103 nor any accompanying regulation refers
 21 to “affinity groups.” As noted above, Section 1861.16 contains only one exception to the “lowest
 22 price” requirement, as set forth in subdivision (b). The plain and unambiguous language of
 23 Section 1861.16 refutes defendants’ argument.

24 Second, defendants can identify nothing in Section 1861.12 to support their suggestion
 25 that it creates such an exception to the “lowest price” requirement in Section 1861.16. Cal. Ins.
 26 Code § 1861.12. Section 1861.12 does not refer to or authorize “affinity groups,” much less
 27 provide an exception to the “lowest price” requirement in Section 1861.16:

1 Group Insurance Plans
23 1861.12. Any insurer may issue any insurance coverage on a group plan, without
4 restriction as to the purpose of the group, occupation or type of group. Group
5 insurance rates shall not be considered to be unfairly discriminatory, if they are
6 averaged broadly among persons insured under the group plan.
78 The defendants contend that the purported “Club Dent Pro” was and remains “open to all,”
9 with eligibility contingent solely on the payment of a nominal policy fee collected by company
10 agents along with the policy premium. In this case, the defendants claim that a lower-priced
11 control group company that also writes good driver insurance in California was relieved from its
12 cross-offer obligations—namely, the legal duty to offer its lower-premium policy—because it
13 created a “Club,” charged a policy fee for the “Club” that it collected itself (along with the
14 premium), offered its “Club” only if it underwrote the coverage for the insured, and considered
15 the insured to be in its “Club” the defendant itself created only during the time the policy
16 coverage was in effect. There is no actual defined affinity group, even if there were an affinity
17 group exception to the cross-offer requirement, which there is not.
1819 **D. 10 CCR § 2360.3 Does Not Override the Requirements of Sections 1861.02 and
1861.16.**20 The defendants argue that 10 CCR § 2360.3 adds a “qualification” requirement to Section
21 1861.16. NG Opp at 11. That regulation states:
2223 An insurer shall charge each insured the lowest Premium for which the insured
24 qualifies. At each policy renewal the insurer shall adjust the Premium charged to
25 the insured, as necessary, to reflect the lowest Premium for which the insured
26 qualifies at that time.
2728 Defendants distort this regulation to suggest that an insurance company may decide whether a
particular policyholder “qualifies” to receive the cross-offer. That is a clear misreading of the
regulation and, again, contradicts the statutory mandate.
2930 Section 1861.02, subd. (b)(1), expressly provides that any person who meets the
31 requirements of Section 1861.025 “shall be qualified to purchase a Good Driver Discount policy
32 from the insurance company of his or her choice.” Cal. Ins. Code § 1861.02, subd. (b)(1). Section
33 1861.16 extends that right within a control group of affiliated companies by mandating that a
34 good driver receive the lowest price available from any insurer in the group. Cal. Ins. Code
35

§ 1861.16, subd. (b).

Here, Section 1861.16—not an insurance company’s internal rules or practices—governs. Indeed, the Legislature deliberately foreclosed insurers from circumventing the law as defendants propose. Section 1861.16, subd. (b), states unequivocally that its “lowest price” requirement “applies notwithstanding the underwriting guidelines of any of those insurers or the underwriting guidelines of the common ownership, management, or control group.” 1861.02, subd. (b).

Defendants' convoluted effort to conjure an unwritten exception to the "lowest price" requirement finds no basis within the statutory framework. To the contrary, their interpretation would nullify the express mandate established by Proposition 103.

CONCLUSION

Consumer Watchdog appreciates the opportunity to explain and defend the voters' enactment of protections against unlawful insurance practices such as those alleged here. If there is anything further the organization can do to assist the Court in this proceeding, it stands ready to do so.

Dated: March 11, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2025, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 11, 2025.

/s/ Harvey Rosenfield
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