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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re Google Generative AI Copyright Litigation

Master File Case No. 5:23-cv-03440-EKL-SVK
Consolidated Case No. 5:24-cv-02531-EKL-SVK

PLAINTIFFS' NOTICE OF MOTION AND MOTION TO EXCLUDE THE TESTIMONY OF WILLIAM PATRY AND RYAN SULLIVAN

Judge:	Hon. Eumi K. Lee
Date:	February 4, 2026
Time	10:00 A.M.
Courtroom:	7, Fourth Floor

REDACTED

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on February 4, 2026 at 10:00 a.m., Plaintiffs will and hereby do move the Court to exclude the opinions of Defendant Google LLC's ("Google") experts William Patry and Ryan Sullivan. Pursuant to Section VIII(a) of the Court's Standing Order, Plaintiffs certify compliance with the Court's meet and confer requirement which took place on December 23, 2025.

STATEMENT OF REQUESTED RELIEF AND ISSUE TO BE DECIDED

Whether the opinions of William Patry, including those regarding whether "individualized issues" exist regarding copyright registrations, should be excluded under Federal Rule of Evidence 702 and the standards articulated in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) ("*Daubert I*").

Whether the opinions of Ryan Sullivan, including those regarding whether "individualized issues" exist regarding copyright registrations, should be excluded under Federal Rule of Evidence 702 and the standards articulated in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) ("*Daubert I*").

I. INTRODUCTION

Plaintiffs move to strike the Expert Reports of William Patry and Ryan Sullivan, submitted by Google in opposition to class certification, because they fail to satisfy the core requirements of Rule 702 of the Federal Rules of Evidence under *Daubert I*. Patry formerly served as Google's Senior Copyright Counsel for over 17 years and now works at Quinn Emanuel, where he represents other large technology companies in litigation involving the use of copyrighted works to train artificial intelligence models. Given that background, it is unsurprising that he supports Google's position here. But his report is not admissible expert testimony. Patry's improperly opines on legal issues reserved for the Court, and his opinions are conclusory, unsupported, and unreliable. His report should therefore be excluded in its entirety.

Sullivan's report suffers from parallel deficiencies. Although Sullivan purports to offer economic opinions, his analysis improperly rests on legal conclusions about fair use that are reserved for the Court. Throughout his report, [redacted]—a contested legal issue at the heart of this litigation—and uses that as the foundation for his economic opinions. An economist cannot determine whether fair use does or does not apply; that is a four-factor legal test under 17 U.S.C. § 107. Sullivan's opinions are inadmissible because they rest on improper legal conclusions.

II. LEGAL STANDARD

Under Fed. R. Evid. 702, expert testimony is admissible only if it is both relevant and reliable. *See Daubert I*, 509 U.S. at 589. Testimony is relevant if it will "assist the trier of fact to understand or determine a fact in issue." *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir. 2007). To be reliable, the testimony must be "based on sufficient facts or data," "the product of reliable principles and methods," and "reflect[] a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702.

District courts must act as "gatekeepers" to ensure that expert testimony is sufficiently reliable to assist the factfinder in understanding or determining a fact at issue, and to exclude unreliable and irrelevant expert testimony. *Cooper*, 510 F.3d at 942 (citing *Elsayed Mukhtar v. Cal. State Univ., Hayward*, 299 F.3d 1053, 1063 (9th Cir. 2002), *overruled on other grounds by United States v. Bacon*, 979 F.3d 766 (9th Cir. 2020)). Deciding questions of law is the exclusive province of the trial judge, and an expert may not opine on questions that are matters of law for the court. *Berman v. Freedom Fin. Network, LLC*, 400 F.Supp.3d 964, 971 (N.D. Cal. 2019) (collecting cases). Nor may an expert opine on an ultimate issue of fact, as in doing so the expert substitutes his judgment for that of the finder of fact. *Id*. ("An expert is generally not permitted to opine on an ultimate issue of fact except in limited circumstances, since such opinions may 'invade the province of' the jury." (quoting *Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1060 (9th Cir. 2008))); *Nationwide Transp. Fin.*, 523 F.3d at 1060 ("[E]vidence that merely tells the jury what result to reach is not sufficiently helpful to the trier of fact to be admissible." (quoting *Kostelecky v. NL Acme Tool/NL Indus., Inc.*, 837 F.2d 828, 830 (8th Cir.1988))).

"The proponent of expert testimony has the burden of proving admissibility in accordance with Rule 702." *LD v. United Behavioral Health*, 2023 WL 2806323, at *2 (N.D. Cal. Mar. 31, 2023). And "a court must first find by a preponderance of the evidence that the expert's basis and methodology are sufficient." *Laatz v. Zazzle, Inc.*, 2025 WL 3205586, at *3 (N.D. Cal. Nov. 17, 2025).

III. ARGUMENT

A. Patry and Sullivan Offer Improper Opinions on Ultimate Issues of Law

It is well established that an expert may not opine on "matters of law for the court." *Berman*, 400 F.Supp.3d at 971. Nor may an expert "give an opinion as to [a] legal conclusion, *i.e.*, an opinion on an ultimate issue of law." *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004)

(citation omitted); *United States v. Tamman*, 782 F.3d 543, 552–53 (9th Cir. 2015) (affirming exclusion of expert testimony that "provided only a recitation of facts and the legal conclusion that [defendant] . . . did not break the law").

Patry's report disregards this clear rule. He repeatedly opines that topics relating to ownership and validity registration may create "individualized issues" with respect to copyright registrations. *E.g.*, Expert Report of William Patry ("Patry Rpt.") (ECF No. 288-27), ¶¶ 10 ("claims of ownership, the material covered, or the validity of the registration . . . are dependent on the unique facts applicable to each individual work, and litigation is often necessary to assess them"); 13 ("That sort of ownership dispute is only the beginning of the kinds of individualized issues that can arise with respect to copyright registrations."); 25 ("Registrations that state inaccurate information can be and often are invalidated in litigation, but obtaining information to identify such misrepresentations can be an arduous and highly individualized undertaking"). But whether purported individualized issues defeat predominance is a legal conclusion, not a proper subject of expert testimony. *United Behavioral Health*, 2023 WL 2806323, at *3 (excluding report the court called a "thinly disguised attempt to submit what is essentially an amicus brief as an expert report"); *Fitzhenry-Russell v. Keurig Dr. Pepper Inc.*, 2018 WL 10472794, at *3 (N.D. Cal. Sep. 25, 2018) (excluding expert opinion, holding "whether an individualized inquiry is necessary to the extent that the class cannot be certified is a legal conclusion"); *RJ v. Cigna Health & Life Ins. Co.*, 2024 WL 1107826, at *5 (N.D. Cal. Feb. 12, 2024) ("To the extent that [plaintiff's expert] is offering her opinion on whether class certification is appropriate in this case or the permissible inferences the Court may draw, such opinions do not assist the Court in understanding the evidence or determining a fact in issue."). Thus, Patry's opinions should be stricken as improper legal conclusions.

Patry also submits opinions about the individual work needed to assess each potential ownership topic. *E.g.*, Patry Rpt. ¶¶ 14 ("Even for a single work or a small number of works, this can be a time-consuming and difficult process."); 16 ("Disputes over a work's status as one made for hire are routinely fought out in court"); 18 ("This is an extremely complicated issue to investigate as questions of transfer are governed by rigid timelines, and disputes often arise after an extended passage of time so that evidence is no longer accessible."); 20 ("[Orphan works] remain a significant problem"); 21 ("determining whether individual works in a compilation were validly registered . . . must be undertaken separately as to each

individual work in the collection"); 22 ("Understanding whether a group registration is valid requires a factual and legal inquiry into the complicated question of 'publication' of materials in the group registration."); 23 (derivative works raises "significant issues since they go to the scope of the registration, and possibly its validity, and require examination of individual factual and legal issues on a case-by-case basis"); 24 ("if there is a dispute about whether a work is original and thus whether it is copyrightable, that is a matter that must be considered on a case-by-case basis in litigation"). These opinions are improper because they make conclusions about the complexity of ownership issues, which is a matter for the Court to decide. *See Utne v. Home Depot U.S.A., Inc.*, 2022 WL 1443338, at *3 (N.D. Cal. May 6, 2022) (excluding as improper legal opinion expert's testimony that "there are individualized issues that cannot be managed without collecting detailed individualized facts and data").

This is not the first time that Patry has improperly attempted to offer legal conclusions under the guise of expert testimony. In *Music Sales Corp. v. Morris*, the court in the Southern District of New York struck an affidavit submitted by Patry because it "almost wholly expresses legal conclusions on the meaning of the [Copyright Act]." 73 F.Supp.2d 364, 381 (S.D.N.Y. 1999). His report here suffers from the same defect and should likewise be stricken.

Sullivan's report suffers from the same fundamental defect: it offers legal conclusions disguised as economic analysis. Throughout his report, Sullivan criticizes Plaintiffs' economist, Dr. Michael D. Smith, for [redacted]. But Smith's opinions focus on Google's conduct and its effects on the licensing market for copyrighted works. Fair use or copyright infringement is never an input of his analysis. His opinions on market exist independent of the legal outcome in this case. *See* Ex. 205 (Michael D. Smith Rebuttal Rpt.) to the Supplemental Declaration of Gregory S. Mullens in Support of Plaintiffs' Reply in Support of Class Certification ("Suppl. Mullens Decl."), ¶ 32.

Sullivan takes the opposite approach. Sullivan's analysis depends on the assumption that [redacted]. For example, Sullivan opines that "[redacted]" Expert Report of Ryan Sullivan ("Sullivan Rpt.") (ECF No. 289-36), ¶ 34. He dismisses Smith's harm analysis because it "[redacted]." *Id.* ¶ 24. And he rejects arguments about Google's [redacted]

[redacted] *Id.* ¶ 43. Under Sullivan's framework, [redacted]. Because his opinions are premised on an improper legal conclusion that fair use applies, they too should be excluded.

B. Patry's and Sullivan's Legal Conclusions Will Not Help the Trier of Fact Understand the Evidence or Determine a Fact in Issue

Expert opinions should be excluded if they do not "speak[] clearly and directly to an issue in dispute in the case." *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1321 n.17 (9th Cir. 1995) ("*Daubert II*"). Expert testimony "fit[s]" the case if it "logically advances a material aspect of the proposing party's case." *Id.* at 1315; *see also Senne v. Kan. City Royals Baseball Corp.*, 591 F.Supp.3d 453, 479 (N.D. Cal. 2022) (explaining the fit requirement "is more stringent than the relevancy requirement of Rule 402 of the Federal Rules of Evidence, 'reflecting the special dangers inherent in scientific expert testimony'" (citation omitted)).

Patry's opinions do not satisfy this standard. His opinions concern the administrative feasibility of identifying the legal and beneficial owners of copyrighted works at issue. But the Ninth Circuit expressly rejected any administrative feasibility requirement under Rule 23. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124–25 n.4, 1128 (9th Cir. 2017) (in the context of identifying purchasers of cooking oil); *see also Norton v. LVNV Funding, LLC*, 2020 WL 5910077, at *11 (N.D. Cal. Oct. 6, 2020) ("*Briseno*'s core holding was that administrative feasibility cannot be considered in a vacuum; instead, a court must consider the overall costs and benefits of class adjudication given the particular nature of the case."). In *Bartz v. Anthropic PBC*, Judge Alsup declined to find similar arguments about ownership issues sufficient to defeat class certification, noting: "In the district judge's experience and judgment, very few disputes over ownership will arise but if they do they can be resolved by the district judge on a summary judgment or by a jury at trial (or by excluding the work altogether from the class)." 791 F.Supp.3d 1038, 1061 (N.D. Cal. 2025). Because Patry's opinions address issues that could arise through the administrative process, they are not suited to the Rule 23 analysis. His opinions also deeply contrast with Judge Alsup's expressed judgment, further exemplifying that Patry's opinions squarely concern legal issues better suited for the Court.

Sullivan's opinions similarly fail to assist the Court. Sullivan offers no opinion that Google's conduct caused no market harm, nor any affirmative economic analysis of his own. Instead, he merely [redacted]. But Sullivan's [redacted] do not themselves establish that individualized inquiries would predominate. Sullivan offers no explanation of what individualized inquiries would actually be necessary, no theory of how factor four evidence used for Google's fair use defense would differ for any one plaintiff versus another, and no evidence contradicting Smith's showing that Google's [redacted]. In sum, Sullivan's report is entirely devoid of any affirmative theory as to why Google's conduct caused no market harm despite bearing the burden on that issue. *See Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 459 (9th Cir. 2020) ("Not much about the fair use doctrine lends itself to absolute statements, but the Supreme Court and our circuit have unequivocally placed the burden of proof on the proponent of the affirmative defense of fair use.").

Because Patry's and Sullivan's opinions do not advance any material aspect of Google's opposition to class certification, they should be excluded.

C. Patry's Experience Is Not Germane to the Opinions Offered

Rule 702 requires that the Court determine whether Patry "is qualified by special knowledge as an expert *in the relevant area of expertise*." *AFMS LLC v. United Parcel Serv. Co.*, 2014 WL 12515335, at *6 (C.D. Cal. Feb. 5, 2014) (emphasis added). Patry fails this threshold requirement. His report does not rest on a "a reliable basis in the knowledge and experience of [the relevant] discipline." *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 141, 149 (1999) (quoting *Daubert I*, 509 U.S. at 592); *see also Lewert v. Boiron, Inc.*, 212 F.Supp.3d 917, 924 (C.D. Cal. 2016) (requiring courts to consider "whether the expert is qualified to present the opinion offered"); *Haynes ex rel. Haynes v. National R.R. Passenger Corp.*, 319 F. App'x 541, 542 (9th Cir. 2009) (affirming the exclusion of expert testimony from a person with "extensive qualifications and education in 'Human Factors'" who attempted to testify about medical risks associated with prolonged train travel and their foreseeability).

Patry's experience does not qualify him to render an opinion about the accuracy of class-wide registrations. Patry worked as Copyright Counsel for Google for seventeen years, litigating copyright

disputes that arose between and from Google. Experience acting as Google's advocate hardly represents the experiences of the nationwide classes at issue here. ECF No. 253-1 at 2. Further, Patry's roles as outside counsel for large technology companies at Mayer Brown and Quinn Emanuel do not add any diversity to his experience, as he represents large technology companies regarding their alleged copyright infringement through the use of their AI technologies. His experience does not represent the vast majority of instances where, as Judge Alsup noted, ownership issues are amicably worked out—it is to Google's advantage to create the illusion that they are not. *Bartz*, 791 F.Supp.3d at 1052–53. Nor does Patry's experience as a law professor and at the U.S. House of Representatives qualify him to opine on the state of copyright ownership across the at-issue classes. And Patry does not claim to have studied a single copyright record in preparing his report. While Patry has extensive experience representing Google and other large technology companies, that does not qualify him to opine about the reliability of all copyright registrations within the class or the likelihood of ownership issues arising.

Moreover, Patry's brief stint at the U.S. Copyright Office was over 30 years ago, when artificial intelligence was still the stuff of fiction. This does not support Patry's qualifications to opine regarding the U.S. Copyright Office's operations, *let alone how it operates in this century*. Yet, Patry relies on this brief and aged experience to opine that registrations are unreliable because the "[t]he Copyright Office has a small examining core of approximately 110 examiners (out of a total of 450 employees) who are tasked with reviewing approximately 500,000 applications per year" and that "a single copyright examiner would have to review about 50,000 applications for copyright registration per year." Patry Rpt. ¶ 9. Patry's sources do not support these figures. Patry relies upon a statement from Shira Perlmutter (Register of Copyrights and Director, U.S. Copyright Office), which discusses the number of registered works—not applications. And the statement does not specify the number of examiners at the Office. Even accepting Patry's numbers, however, his analysis that "a single copyright examiner would have to review about 50,000 applications for copyright registration per year" is overstated by a factor of 10 (*i.e.*, 500,000 applications / 110 examiners = 4,545.45 applications per year). Patry's opinions about the operations of the U.S. Copyright Office are entirely speculative. Under Rule 702, they should be excluded.

D. Patry's Analysis Is Superficial, One-Sided, and Unreliable

To satisfy the reliability standard under Federal Rule of Evidence 702, expert opinions must "identify [an] objective source" to show they "follow[] a scientific method embraced by at least some other experts in the field." *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th Cir. 1998); *see Claar v. Burlington N. R. Co.*, 29 F.3d 499, 502 (9th Cir. 1994) (affirming exclusion of expert whose conclusions were not "based on scientific knowledge" or "scientific methods and procedures," but rather by "mere subjective beliefs or unsupported speculation"). Where, as here, an expert testifies based on personal knowledge and experience, such qualitative expert work may be excluded where the "expert's reasoning is circular, speculative, or otherwise flawed," or not "adequately explained." *United States v. Holguin*, 51 F.4th 841, 855 (9th Cir. 2022). Courts are mindful that "reliability becomes more, not less, important when the 'experience-based' expert opinion is . . . not subject to routine testing, error rate, or peer review type analysis, like science-based expert testimony." *Porter v. Martinez*, 68 F.4th 429, 445 (9th Cir. 2023) (quoting *United States v. Valencia-Lopez*, 971 F.3d 891, 898 (9th Cir. 2020)). Patry's report does not meet these standards. His opinions are conclusory, do not consider contradictory evidence, and are mired in Patry's litigation-outcome-driven point of view.

1. Patry's Opinions Are Conclusory

Patry offers the opinion "that matters recited in copyright registrations are not necessarily accurate or correct." Patry Rpt. ¶ 8. Throughout his report, Patry repeatedly opines that speculative issues pertaining to the identity of rightsholders or fraud in registrations create "individualized issues" that render the records of the U.S. Copyright Office unreliable. *Id.* ¶ 13; *see also id.* ¶10 ("issues are dependent on the unique facts applicable to each individual work, and litigation is often necessary to assess them"). Patry's report should be stricken because it does not provide "sufficient explanation of the methodology utilized and how the methodology was applied to reach each respective opinion." *Fischler Kapel Holdings, LLC v. Flavor Producers, LLC*, 2023 WL 8113301, at *4 (C.D. Cal. Oct. 6, 2023) (collecting cases). Indeed, Patry does not "identify [any] objective source" or "follow[] a scientific method embraced by at least some other experts in the field." *See Cabrera*, 134 F.3d at 1423; *United States v. Williams*, 2017 WL 3498694, at *12 n.25 (N.D. Cal. Aug. 15, 2017) ("Consideration of a methodology's scientific validity must necessarily entail how the methodology is employed, even when the methodology itself is generally accepted.").

Instead, his opinions are based on his "experience" as a copyright practitioner alone. Patry Rpt. ¶ 8. But experience alone is "an abstraction not visible to the eyes of the Court, the jury, and opposing counsel, or testable in the crucible of cross-examination." *Open Text S.A. v. Box, Inc.*, 2015 WL 349197, at *6 (N.D. Cal. Jan. 23, 2015); *see GPNE Corp. v. Apple, Inc.*, 2014 WL 1494247, at *6 (N.D. Cal. Apr. 16, 2014) ("[Defendant] cannot cross-examine Mr. [Patry] on his assertions, all of which fundamentally reduce to taking his opinion based on 30 years of experience for granted."). Because his opinions are based entirely on "say so," they are necessarily unreliable. *Siqueiros v. Gen. Motors LLC*, 2022 WL 74182, at *14 (N.D. Cal. Jan. 7, 2022) ("Without such information or explanation of the methodology that [Patry] applied to reach [his] conclusions, [Patry's] conclusions are grounded in nothing more than his say so."); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert."). They opinions should be excluded on this basis.

2. Patry's Opinions Are Deeply Flawed Because They Do Not Consider Contradictory Evidence or Analysis

"Generally, an expert need not rule out every potential cause to satisfy *Daubert*, as long as the expert's testimony addresses obvious alternative causes and provides a reasonable explanation for dismissing specific alternate factors identified by the defendant." *Stanley v. Novartis Pharms. Corp.*, 11 F.Supp.3d 987, 1001 (C.D. Cal. 2014) (cleaned up); *see also In re Live Concert Antitrust Litig.*, 863 F.Supp.2d 966, 973 (C.D. Cal. 2012) (explaining that other "flaws . . . typically go to the weight, rather than the admissibility, of the expert's testimony"). "In some cases, however, the analysis may be 'so incomplete as to be inadmissible as irrelevant.'" *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1188 (9th Cir. 2002) (quoting *Bazemore v. Friday*, 478 U.S. 385, 400 n.10 (1986)). For example, an expert's failure to consider a "'major factor' . . . which should have been included . . . renders [an] analysis so incomplete as to be inadmissible as irrelevant." *In re Live Concert Antitrust Litig.*, 863 F.Supp.2d at 975–76 (cleaned up) (excluding expert opinion on concert ticket prices for failure to consider artist popularity); *see also Claar*, 29 F.3d at 502 (affirming exclusion of experts who "made [no] effort to rule out other possible causes for the injuries plaintiffs complain of, even though they admitted that this step would be standard procedure before arriving at a diagnosis").

Patry does not even attempt to consider conflicting sources or evidence in rendering his opinion. For example, Patry does not consider that applicants for copyright registrations must certify the accuracy and completeness of their application under penalty of perjury. *See* Ex. 207 (Mark Seeley Rebuttal Rpt.) to the Suppl. Mullens Decl., ¶ 20. Such a certification enhances the reliability and accuracy of the final registration record. Nor does Patry consider that copyright registration records are public and made available for inspection, which enhances the reliability and accuracy of the records. *Id.* ¶¶ 28–29. And Patry ignores that not only are over 30 pieces of information required for an application, including a deposit copy, over 20% of the time there is "correspondence" on an application to ensure that an application is complete and accurate. *Id.* ¶ 16. Further, Patry does not consider in rendering his opinion or include in his report the vast majority of examination steps in Compendium III (Chapter 600), which is an over 200-page manual that details (and provides for) a lengthy and robust examination process by trained specialists that takes approximately two months to conduct, before a registration is granted. *Id.* ¶¶ 15–19.[1] Patry's failure to consider any evidence contrary to his point of view renders his opinions unreliable.

3. Patry's Opinions Should be Excluded as Litigation Results-Oriented

The Court should also consider Patry's strong "incentive to reach a particular outcome" helpful to Google. *Lin v. Solta Med., Inc.*, 2024 WL 5199905, at *2 (N.D. Cal. Dec. 23, 2024) (citing *Daubert II*, 43 F.3d at 1317). The incentives here are unmistakable. Patry's experiences working at Google and representing companies in similar litigation over the use of copyrighted works to train AI models, support that Patry has a strong interest in seeing that no class is certified in this action. This direct stake in the outcome further undermines the reliability of his opinions and warrants their exclusion. *Id.*

IV. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court exclude Patry's and Sullivan's expert reports and testimony.

[1] Chapter 600, *Compendium of U.S. Copyright Office Practices, Third Edition*, U.S. Copyright Office, available at https://www.copyright.gov/comp3/chap600/chap600-draft-3-15-19.pdf.

Dated: December 30, 2025

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Lesley E. Weaver, attest that concurrence in the filing of this document has been obtained from the other signatories. Executed this 30th day of December, 2025.

/s/ Lesley E. Weaver
Lesley E. Weaver