No. 25-4978

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BRITTANY BOUNTHON, VIVIANNA RIVERA, AND GINA ALLEN,
individually, and on behalf of others similarly situated

Plaintiffs-Appellants,

V.

THE PROCTER & GAMBLE COMPANY,

Defendant-Appellee

On Appeal from the United States District Court for the Northern District of California, Case No. 3:23–cv–00765–AMO

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF DEFENDANT-APPELLEE

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DISCLOSURE STATEMENTS PURSUANT TO RULES 26.1 AND 29

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, counsel for *amicus curiae* states that the National Association of Manufacturers is a non-profit, tax-exempt organization incorporated in the District of Columbia. The National Association of Manufacturers states that it has no parent corporation and that no publicly held company has 10% or greater ownership.

Pursuant to Rule 29(a)(4)(E), counsel for *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Pursuant to Rule 29(a)(2), counsel for *amicus curiae* states that all parties consented to the filing of this brief.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes and Codes

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is the National Association of Manufacturers (NAM). The NAM and its members are concerned that if the district court's ruling is overturned, the result would lead to the further proliferation of abusive class filings cloaked in the name of consumer protection. These lawyer-generated claims are not pleaded with sufficient facts to plausibly show that reasonable consumers have been misled and provide no tangible benefit for real consumers. It has been the shared experience of the NAM and its members that, rather than providing any such value, these actions only waste judicial resources and make products more expensive for consumers.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the

[1] *Amicus* files this brief in support of Defendant-Appellant per Rule 29(a)(2).

manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case is emblematic of a concerning new trend in consumer class actions: lawyer-driven allegations over marketing statements that are truthful and would not mislead any reasonable consumer to believe otherwise. In these cases, as here, there is no actual consumer injustice for courts to resolve. Inventive lawyers seek technical issues, including by subjecting a product to testing, hoping to identify some cause of action that can survive a motion to dismiss. They then leverage costs and business disruptions of prolonged "consumer" litigation into settlement. Trial judges have become properly skeptical of these cases. If not weeded out at the motion to dismiss stage, the lawsuits can drag on for years, and courts will likely be asked to approve remedies that will be more about finding ways to end the lawsuits and pay lawyers than provide real value to real consumers.

Here, the lawyers submitted Tampax pure cotton™ tampons to a total organic fluorine (TOF) test in search of a harmful contaminant they could argue makes Defendant's labeling that the product "Contains 100% Organic

Cotton Core" misleading. However, across four complaints, they have yet to make any plausible claims. TOF testing does not, itself, identify any specific or harmful chemical—only the presence of carbon-fluorine bonds—which can be indicative of any number of natural or manmade substances, including those found in rainfall. The trace amounts of TOF the tests found, therefore, do not suggest the presence of any harmful impurity, let alone one that makes Defendant's 100% organic cotton core any less organic.

The district court gave the lawyers multiple attempts to plead and re-plead this lawsuit. Understandably, it dismissed the latest complaint with prejudice for continually failing to state a claim. In the first three complaints, the lawyers argued the TOF results meant the tampons had PFAS in them, but that is not true. As the district court noted, even Plaintiffs acknowledged "TOF may detect organofluorine that are not PFAS," there are "gaps" in the testing, and many natural products contain these same bonds. Order at *14. The court continued that even if the trace amounts of TOF indicated the presence of PFAS, Plaintiffs did not "plausibly allege PFAS . . . at a harmful level" that could make these allegations material to a reasonable consumer's purchasing decisions. *Id*. at *15. In the latest complaint, the lawyers abandoned their PFAS allegations and argued, alternatively, that TOF itself

may be harmful or could indicate some other, unnamed, harmful substance. As the court explained, these latest theories offered even less factual content, making the pleadings even more speculative and "implausible." *Id*. at *1, 3.

Amicus respectfully requests that this Court affirm the ruling below. The U.S. Supreme Court has been clear that access to the federal courts requires pleading each element of a cause of action with sufficient facts to make them plausible. Here, Plaintiffs have pleaded only conclusions. After four tries, they have provided no facts that could turn their theories—that consumers were misled or did not receive tampons with a 100% organic cotton core—from merely possible to plausible. The Plaintiffs and their lawyers do not need nor deserve more chances to reinvent these claims.

ARGUMENT

I. Pleading Standards Provide Courts With Important Gatekeeping Obligations to Ensure that the Civil Justice System Is Not Burdened with Speculative Claims.

It has become clear, after four complaints, that this case does not advance the purposes of misrepresentation or consumer protection claims, which are to prevent sellers from misleading consumers into purchasing their products or services and to provide consumers with a remedy if they are so misled. By-and-large, these laws all require sellers to promote their

products and services in ways that would not mislead reasonable consumers' decisions as to whether they would receive fair value in making the purchases in question. *See generally* Victor E. Schwartz & Cary Silverman, *Common-Sense Construction of Consumer Protection Acts*, 54 Kan. L. R. 1 (2006).

Starting in the 1980s and 1990s, these causes of action became subject to abuse, mostly when the threshold rules for pursuing them were either too lenient or not properly enforced. *See id*. Many claims, like here, were lawyer-driven and not about protecting real consumers from real harm. In response, the U.S. Supreme Court and other bodies developed safeguards against such abusive lawsuits, particularly when fashioned as class actions for broad swaths of consumers. *See generally* Philip S. Goldberg & Andrew J. Trask, *No-Injury and Piggyback Class Actions: When Product-Defect Class Actions Do Not Benefit Consumers*, 19 U. Mass. L. Rev. 181 (2024).

The backbones of the regime today are the pleading standards in Rules 8 and 9 of the Federal Rules of Civil Procedures. They provide the basic threshold requirements plaintiffs must meet to bring a misrepresentation-based lawsuit in federal court. District courts must properly apply them and, as here, dismiss speculative lawsuits that fail to state a claim.

Rule 8(a) requires plaintiffs to provide a "short and plain statement" of the facts satisfying each element of a claim. *See* Fed. R. Civ. P. 8(a)(2). In a pair of rulings in the early 2000s, the Supreme Court held that each element must be facially *plausible* on the pleadings to survive a motion to dismiss. *See Ashcroft v. Iqbal,* 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombley*, 550 U.S. 544 (2007). Accordingly, plaintiffs must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"—not the mere possibility the defendant violated a cause of action. *Id*. at 678.; *see also* 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235–236 (3d ed.2004) (stating the pleading must contain something more than "a suspicion [of] a legally cognizable right of action"). Accordingly, district courts, as here, are obligated "to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed." *Twombley*, 550 U.S. at 558. Otherwise, a plaintiff with "a largely groundless claim [would] be allowed to take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value." *Id*. (cleaned up).

Further, when a plaintiff alleges misrepresentation, as here, the pleadings must also satisfy Rule 9(b), which requires pleading the claim with

specificity. *See* Fed. R. Civ. P. 9(b) ("a party must state with particularity the circumstances constituting fraud or mistake"). This rule largely requires a claimant to allege "at a minimum the time, place, and content of the misrepresentation, the resulting injury, and the method by which the misrepresentation was communicated." James Wm. Moore et al., Moore's Federal Practice & Procedure § 9.11(2)(b)(i), at 9–36 (2007). This Court has ruled that these heightened standards apply to all claims sounding in fraud, including, as here, those under California's Consumer Legal Remedies Act (CLRA), Unfair Competition Law (UFL), and False Advertising Law (FLA). *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009).

As this Court has explained, the purpose of Rule 9(b) is to remove from the court dockets claims that are either too speculative, as here, or merely subjective. *See In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399 (9th Cir. 1996). Among other things, specificity helps deter "the filing of complaints as a pretext" for unwarranted discovery or settlement demands, protects defendants from the reputational "harm that comes from being subject to fraud charges," and stops plaintiffs "from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis." *Id.* at 1405 (cleaned up); *see also* Maximillian W. Hirsch, *Policies Behind the*

Heightened Pleading Standard Under FRCP 9(b), Ass'n Bus. Trial Lawyers, L.A. Rep. (Winter 2019) ("[T]he heightened pleading standard is necessary to protect against a plaintiff with a largely groundless claim.") (cleaned up).

In addition, because Plaintiffs have invoked California's CLRA, UCL and FAL, it is important to note that these statutes also have meaningful pleading and standing requirements. Comparable to the federal experience, these statutes also became vehicles for "extortion" in the 1980s and 1990s, as the state's courts did not always apply traditional standing and class action requirements to these claims. Sharon J. Arkin, *The Unfair Competition Law After Proposition 64: Changing the Consumer Protection Landscape*, 32 W. St. U. L. Rev. 155, 156 (2005). In 2004, voters passed Proposition 64 to require plaintiffs to plead actual deception, reasonable reliance, and damages, and courts to apply class actions rules. The statutes are also governed by the "reasonable consumer" standard, which, like federal plausibility standards, requires more than a possibility a label "might" be misunderstood. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016). Although there is no bright-line test, "the law does not concern itself with trifles." *Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 778 (9th Cir. 2024) (citing *Lueras v. BAC Home Loans Servicing, LP*, 221 Cal. App. 4th 49, 79 (2013)). As at the federal level, Plaintiffs

must plead facts showing real people "are likely to be deceived" by the marketing claims. *Id.*

Adhering to these requirements is particularly important when, as here, speculative and unsupported claims are pleaded as a class action. Experience has shown that, in individual cases, plaintiffs' lawyers will often plead facts supporting their claims to signal that the case is strong and worth settling without much discovery and expense. *See* William H.J. Hubbard, *A Fresh Look at Plausibility Pleading*, 83 U. Chi. L. Rev. 693, 702 (2016) ("a factually detailed, plausible complaint makes the plaintiff's case credible by backing up her claims with her money and reputation"). But the opposite is true in class actions; the lawyers often plead as vaguely as possible to broaden the class and preserve flexibility should the facts contradict their early theories of a case. As a result, "the normal gatekeeping function" of plaintiffs' attorney does not operate well in class actions, putting extra burdens on the courts to provide this needed gatekeeping. *Id.*[2]

[2] Plaintiffs also cannot satisfy pleading requirements through promises of future evidence or presuming a fact would be material to other purchasers. *See In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Practices & Liab. Litig.*, 903 F.3d 278, 287 (3rd Cir. 2018) ("defer[ring] what is a pleading obligation is not one we may grant and still fulfill our constitutional obligations").

Thus, courts must require class counsel to plead facts showing that real misrepresentations caused real harm to real consumers. Otherwise, "where plaintiffs base deceptive advertising claims on unreasonable or fanciful interpretations of labels or other advertising, dismissal on the pleadings may well be justified." *Moore v. Trader Joe's Co.*, 4 F.4th 874, 883 (9th Cir. 2021).

II. Detecting Carbon-Fluorine Bonds Does Not Make This Pleading Plausible Because No Facts Show Reasonable Consumers Would Be Misled by the Organic Cotton Labeling.

Here, the district court properly applied these pleading standards; it required Plaintiffs to plead facts plausibly alleging that a misrepresentation or omission by Defendant was material to the purchasing decisions of reasonable consumers. *Cf. Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1092 (9th Cir. 2010); *see also Ebner*, 838 F.3d at 965 (requiring plaintiffs to show "a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled" by the statements) (cleaned up).[3] As the district court found, Plaintiff did not meet this standard. Merely detecting organic fluorine in the tampons is not

[3] *See also Haskell v. Time*, 965 F. Supp. 1398, 1407 (E.D. Cal. 1997) ("anecdotal evidence alone is insufficient to prove that the public is likely to be misled" under the reasonable consumer standard) (citing *William H. Morris Co. v. Group W. Inc.*, 66 F.3d 255, 258 (9th Cir. 1995)).

sufficient to support a consumer protection act claim that the organic cotton included in the tampon's core is not as advertised: 100% organic cotton.

First, as alluded to above, the flaw pervading all four of Plaintiffs' complaints is the nature of TOF testing. This testing is not an indicator of any particular substance or compound. It detects only the existence of "a fluorine atom that had at one point been attached to a carbon atom." Kristin Robrock et al., *PFAS or Not?: TOF Analysis Poses Tough Challenges for Identifying PFAS*, Am. Bar Ass'n Envtl. & Energy Litig. Comm., Nov. 24, 2025. As the district court properly found in response to Plaintiffs' first three complaints, TOF cannot be used as a proxy for PFAS, which is shorthand for a wide variety of per- and poly-fluoroalkyl substances. *Accord id*. ("[T]here is no guarantee that the fluorinated organic chemicals measured using TOF are indeed PFAS compounds."). And, as the court further elaborated in the most recent order, detecting trace amounts of TOF does not mean a product is contaminated at all, let alone by a harmful substance. Thus, the existence of TOF does not, itself, make the 100% cotton core statement misleading.

Second, Plaintiffs have failed to show how the mere detection of TOF would affect a reasonable consumer's purchasing decision. *Cf. Diep v. Apple, Inc.*, 2024 WL 1299995, at *3 (9th Cir. Mar. 27, 2024) ("Although Plaintiffs do

identify a number of [defendant's] statements they allege to be 'misleading,' they do not explain why those statements would be misleading to a reasonable consumer."). As indicated, Plaintiffs concede TOF can result from "naturally occurring" circumstances, including rain. Pl. Br. at 14; *see also* Kentaro Sato, *Naturally Occurring Organic Fluorine Compounds*, TCI Am. (Oct. 8, 2013)[4] (noting "about 30 natural products" contain carbon-fluorine bonds).

Reasonable consumers understand that organic cotton, like other agricultural products, is grown in fields and exposed to rain and other natural elements. *See How Much Water Does Cotton Need to Grow?*, Bio. Insights, Jan. 17, 2026.[5] For this reason, federal courts have explained that promoting a sports drink as "filtered water" does not mislead a reasonable consumer to believe it contains no "incidental impurities or chemicals." *Castillo v. Prime Hydration LLC*, 748 F. Supp. 3d 757, 772 (N.D. Cal. 2024). And marketing a food product as "natural" does not mean to reasonable consumers that it is "completely free of any trace pesticides." *Hawyuan Yu v.*

[4] https://www.tcichemicals.com/US/en/support-download/chemistry-clip/2013-10-08.

[5] https://biologyinsights.com/how-much-water-does-cotton-need-to-grow/.

Dr Pepper Snapple Grp., Inc., 2020 WL 5910071, at *4 (N.D. Cal. Oct. 6, 2020) (citing other cases). Thus, marketing a tampon as having a 100% organic cotton core does not convey to reasonable consumers that it is free from any trace impurities; the cotton core is still 100% organic.

Third, Plaintiffs' assertion that detecting TOF in a concentration of 30 parts per million (ppm) in some components of the tampons must point to *some* harmful substance—which they do not name—is similarly false. It is true that representations or omissions that create "unreasonable safety risks" may be material to consumer decisions, *Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1225 (9th Cir. 2015), but Plaintiffs have not specified any such safety risk. In response to the first three complaints, the district court noted that even if the presence of organic fluorine indicated PFAS, this amount of PFAS would fall well below the statutory thresholds regulating PFAS that even Plaintiffs cited. *See, e.g.*, Cal. Health & Safety Code § 108945(b)(1)-(2) (imposing a 100-ppm threshold for "PFAS that a manufacturer has *intentionally added* to a product") (emphasis added).

In the most recent complaint, Plaintiffs repeated the accusation that 30-ppm of TOF suggests a safety risk, but this time did not even tie it to any potentially harmful substance. Identifying harmful amounts of substances

are scientific, not abstract, exercises. *See* David L. Eaton, *Scientific Judgment and Toxic Torts – A Primer In Toxicology For Judges And Lawyers*, 12 J.L. & Pol'y 5, 11 (2003) ("Dose is the single most important factor to consider in evaluating whether an alleged exposure" can cause an adverse effect.). Scientists, including government regulators, make scientific determinations about the levels of exposure to a substance needed to create a risk of harm based on epidemiology and other studies. For this reason, courts have widely rejected claims alleging that *any exposure* to any chemical or other substance, including asbestos, may support liability. *See* William Anderson & Kieran Tuckley, *How Much is Enough? A Judicial Roadmap to Low Dose Causation Testimony in Asbestos and Tort Litigation*, 42 Am. J. Trial Advoc. 39 (2018).[6] Because Plaintiffs have not shown how much of which substance, or whether the substance is synthetic or natural, is alleged, they have not met the materiality requirement for demonstrating an unreasonable safety risk.

[6] *See, e.g., Moeller v. Garlock Sealing Tech., LLC*, 660 F.3d 950 (6th Cir. 2011) (rejecting any exposure theory); *Bostic v. Georgia-Pacific Corp.*, 439 S.W.3d 332 (Tex. 2014) (same); *Betz v. Pneumo Abex LLC*, 44 A.3d 27 (Pa. 2012) (rejecting any exposure testimony, calling it a "fiction" and requiring experts to prove causative dose); *Ford Motor Co. v. Boomer*, 736 S.E.2d 724, 733 (Va. 2013) (holding experts "must opine as to what level of exposure is sufficient … and whether the levels of exposure at issue … were sufficient").

Thus, under Plaintiffs' various and shifting theories of this case, virtually any agricultural product grown in nature, as well as countless consumer products incorporating them, could give rise to a deceptive advertising claim based solely on the *de minimis* presence of impurities—even if the Defendant makes no affirmative statements about their non-existence. Consumer protection statutes do not impose such a boundless obligation. Because Plaintiffs identify no misrepresentation, no added substance, and no safety concern, their complaint fails as a matter of law, and the Court should affirm the district court's dismissal below.

III. Allowing this Class Action to Survive a Motion to Dismiss Will Benefit Only Lawyers, Not Real Consumers.

Allowing cases where no reasonable consumer would be misled to survive motions to dismiss will undermine the Supreme Court's admonition against *in terrorem* litigation and, ultimately, will harm—not benefit—real consumers. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (cautioning against "the risk of 'in terrorem' settlements that class actions entail"). As the Supreme Court has explained, in this "era of frequent litigation [and] class actions . . . courts must be more careful to insist on the formal rules" that lead to the early dismissal of nonviable claims. *Ariz.*

Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 146 (2011). That is because, as a practical matter, merely having to litigate a putative class action "may so increase the defendant's potential damages liability and litigation costs that he may feel it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978).

Defendants are often placed in an untenable position. Defense costs can run into tens of millions of dollars. *See* Adeola Adele, *Dukes v. Wal-Mart: Implications for Employment Practices Liability Insurance* 1 (July 2011) (noting defense costs of up to $100 million). And these actions can drag on for years, even before a court takes up class certification. *See* U.S. Chamber Inst. for Legal Reform, *Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions*, at 1 (Dec. 2013) ("Approximately 14 percent of all class actions remained pending four years after they were filed, without resolution or even a determination of whether the case could go forward on a class-wide basis.").[7] When the costs of litigating exceed the settlement demand, litigating the case through trial and appeal may not be feasible.

[7] https://instituteforlegalreform.com/research/transunion-and-concrete-harm-one-year-later/

Further, courts and parties have found it can be difficult to assign or demonstrate value in a settlement where the overwhelming majority of class members do not feel they were misled or sustained an injury; they have little interest in claiming any award. *See* Linda S. Mullenix, *Ending Class Actions as We Know Them: Rethinking the American Class Action*, 64 Emory L.J. 399, 419 (2014) (finding "very small percentages of class members actually file and receive compensation from settlement funds"). As a result, attorneys often turn to questionable injunctive relief or giving money to non-parties in an attempt to create enough apparent value to justify releasing the claims and awarding attorney fees. *See Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (Posner, J.) (discussing incentives behind problematic settlements).

Studies have repeatedly demonstrated this problem. In 2020, a white paper by an international law firm studied 44 class settlements and found that class counsel recovered almost as much as class members. *See* Jones Day, *An Empirical Analysis of Federal Consumer Fraud Class Action Settlements (2010–2018)*, at 12 (Apr. 2020).[8] Another review of 510 consumer class actions found that "the cost of using the consumer class-action procedural device to

[8] https://www.jonesday.com/en/insights/2020/04/empirical-analysis-consumer-fraud-class-action

compensate" the small number of class members that submit claims "outweighs the aggregate amount delivered as compensation to consumers"—sometimes 300%-400% of the actual aggregate class recovery. Jason S. Johnson, *High Cost, Little Compensation, No Harm to Deter: New Evidence on Class Actions under Federal Consumer Protection Statutes*, 2017 Colum. Bus. L. Rev. 1, 5 (2017). "Such disproportionate attorneys' fee awards mostly arise in settlements . . . where the harm to consumers is very small or even arguably nonexistent." *Id.* And, in a 2019 study, the Federal Trade Commission found a weighted mean claims rate of just 4%—meaning that 96% of class members in consumer class settlements recovered nothing. *See Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns*, Fed. Trade Comm'n, at 11 (Sept. 2019).[9]

The truth is that real consumers rarely see value in these lawsuits. Worse, the lawsuits are likely to make the products at issue more expensive, *costing* consumers money. Studies have shown that "litigation expenses,

[9] *See also* The State of Class Actions Ten Years After the Enactment of the Class Action Fairness Act, Hearing Before the Subcomm. on the Constitution and Civil Justice of the H. Comm. on the Judiciary, 114th Cong. 6 (Feb. 27, 2015) (statement of Andrew Pincus on behalf of the U.S. Chamber) (reporting on empirical analysis by his law firm).

attorney's fees, and settlement costs" are often passed "to consumers through increased prices, fewer innovations, and lower product quality." Joanna Shepherd, *An Empirical Study of No-Injury Class Actions*, Emory Univ. Sch. of Law, Legal Studies Research Paper Series No. 16–402, at 23 (2016).

Requiring class counsel to, at the very least, include in the pleadings plausible allegations of material representations and harm to consumers helps filter out these unsound class actions. Here, the District Court properly applied the law and granted Defendant's motion to dismiss with prejudice because the Plaintiffs made no showing in their multiple pleadings that there was any material misrepresentation at issue. This Court should affirm this ruling to rein in abusive class actions and ensure that judicial resources are spent on claims involving actual misrepresentations and real-world harms.

CONCLUSION

For these reasons, *amicus* asks the Court to affirm the ruling below.

Respectfully submitted,

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Dated: March 23, 2026

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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I certify that on March 23, 2026, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

/s/ Philip S. Goldberg