24-1281

In the United States Court of Appeals
FOR THE SECOND CIRCUIT

MICHAEL CAMPBELL, on behalf of themselves and all others similarly situated, ERNEST FABRIZIO, on behalf of themselves and all others similarly situated, JOSHUA KNIGHT, on behalf of himself and all others similarly situated,

Plaintiff - Appellants,

v.

THE IBM PERSONAL PENSION PLAN, THE PLAN ADMINISTRATOR COMMITTEE, INTERNATIONAL BUSINESS MACHINES CORPORATION,

Defendants - Appellees.

On Appeal from the United States District Court for the Southern District of New York, No. 22-cv-4592, Hon. Nelson S. Román

BRIEF FOR THE ERISA INDUSTRY COMMITTEE, THE AMERICAN BENEFITS COUNCIL, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, The ERISA Industry Committee, the American Benefits Council, and the Chamber of Commerce of the United States of America certify that they are non-profit organizations that do not have parent corporations and do not issue public stock.

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INTEREST OF *AMICI CURIAE*[1]

Three organizations—The ERISA Industry Committee, the American Benefits Council, and the Chamber of Commerce of the United States of America—representing varying constituencies, jointly file this brief because they share concerns about the interpretation and application of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), to plan sponsors.

The ERISA Industry Committee ("ERIC") is a national non-profit business trade association representing approximately 100 of the nation's largest employers in their capacity as sponsors of employee benefit plans for their workers, retirees, and families. ERIC member companies are leaders in every sector of the economy. As the voice of large employer plan sponsors on public policies that affect their ability to provide benefits to millions of active workers, retired persons, and their families nationwide, ERIC frequently participates as *amicus curiae* in cases that have the potential for far-reaching effects on employee benefit plan design or administration.

The American Benefits Council (the "Council") is a national non-profit organization dedicated to protecting and fostering privately sponsored employee

[1] No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or person other than the *amici curiae*, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

benefit plans. Collectively, the Council's more than 430 members either directly sponsor or provide services to retirement and health and welfare plans covering virtually all Americans who participate in employer-sponsored programs. The Council frequently participates as *amicus curiae* before the Supreme Court and federal courts of appeals, including this one, in cases with the potential to significantly affect the administration and sustainability of employee benefit plans under ERISA.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before the Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the Nation's business community.

This is such a case. As sponsors of ERISA-governed employee benefit plans of all types, the employer members of the *amici* have a substantial interest in knowing that courts will correctly interpret and apply established law controlling these plans. The conditions required for sound plan administration—including

stability, predictability, and the ability to plan and reasonably anticipate pension funding needs for the future—are undermined by legal rules that do not clearly delineate when and under what circumstances plan sponsors will be held liable to their participants.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court correctly applied the statute of limitations defined by the IBM plan, which sets a constructive knowledge standard much like the federal discovery rule.[2] Under that standard, plaintiffs' claims are not timely because plaintiffs knew or should have known the material facts on which those claims are based more than two years before plaintiffs filed suit, when IBM disclosed to plaintiffs the facts they challenge now. That conclusion follows from the plain language of the plan, case law applying the federal discovery rule, and the facts effectively admitted by the allegations of the complaint. Plaintiffs argue that IBM's disclosures did not start the limitations clock because plaintiffs lacked the "sophisticated understanding of actuarial calculations" that they contend is necessary to fully develop their claims. But the constructive knowledge standard

[2] This brief focuses on the constructive knowledge standard because it is of particular interest to *amici*'s members, many of which sponsor plans with similar limitations periods, regularly issue disclosures similar to those plaintiffs challenge here, or both. *Amici* agree with IBM (at 35), however, that the Supreme Court's decision in *Intel Corp. Investment Policy Committee v. Sulyma* left in place all "of the 'usual ways' to prove actual knowledge at any stage in the litigation." 589 U.S. 178, 189 (2020) (citation omitted).

turns on when material facts are objectively discoverable, not on a plaintiff's subjective understanding.

Plaintiffs' contrary approach is untenable. In effect, conditioning accrual of plaintiffs' claims on their subjective understanding would not only vitiate the plan-defined statute of limitations here but also nullify the constructive knowledge standard in future cases. Moreover, if accepted, plaintiffs' arguments would produce absurd results. For example, plaintiffs suggest that, in cases involving complex benefit calculations, *no* disclosures would ever start the statute of limitations, and claims could never accrue until plaintiffs consulted with an accountant—or a lawyer.

That in turn would give rise to other harmful consequences for employee benefit plan offerings: plaintiffs' approach, for example, would incentivize plans to issue discouragingly longer and more technical disclosure documents (which ironically would be more expensive for plans to produce—expenses not always borne by plan sponsors, but often by plans and, in some cases, by participant accounts—yet less likely to be read by plan participants). A rule that depended on a plaintiff's subjective understanding would open the door to unpredictable plan liability for stale claims, including claims that can severely undermine a plan's financial stability. Imposing such increased costs and unpredictability on ERISA plans discourages innovation and ultimately harms both employers and employees. Accordingly, *amici* respectfully ask this Court to affirm the judgment below.

ARGUMENT

I. The district court correctly held plaintiffs' statutory claims untimely.

A. The district court correctly applied the constructive knowledge standard, as the plan's terms require.

When ERISA "does not specify a statute of limitations" for a claim, "a participant and a plan may agree by contract to a particular limitations period, even one that starts to run before the cause of action accrues, as long as the period is reasonable." *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 105-06 (2013). ERISA does not prescribe a statute of limitations for plaintiffs' claims under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3). *E.g.*, *Conn. Gen. Life Ins. Co. v. BioHealth Lab'ys, Inc.*, 988 F.3d 127, 132-33 (2d Cir. 2021). So the plan's limitation period applies: two years from "the earliest date on which the claimant knew or should have known the material facts on which [the] claim or action is based, regardless of whether the claimant was aware of the legal theory underlying the claim or action." A121-22. Plaintiffs do not deny that this limitations period governs, nor do they contend that it is unreasonable. Pls.' Br. 40-41.

The plan's constructive knowledge standard is similar to (though more stringent than, *see* Defs.' Br. 16) the default federal discovery rule, and this Court's cases applying that rule are instructive. The default discovery rule provides that "a plaintiff's cause of action accrues when he discovers, *or with due diligence should have discovered*, the injury that is the basis of the litigation." *Guilbert v. Gardner*,

480 F.3d 140, 149 (2d Cir. 2007) (emphasis added) (citation omitted). The limitations period thus begins to run when the factual basis for a claim is "readily . . . *discoverable* from information furnished to pensioners by the pension plan." *Novella v. Westchester County*, 661 F.3d 128, 147 n.22 (2d Cir. 2011) (emphasis added); *see also, e.g.*, *Becnel v. Deutsche Bank, AG*, 507 F. App'x 71, 73 (2d Cir. 2013) (under the discovery rule, a claim is "timely only if [the plaintiffs] did not have constructive notice of the facts giving rise to the claim" outside of the limitations period).

In *Novella*, this Court applied these principles to an ERISA claim for miscalculation of benefits. It recognized that in that context, a miscalculation claim would accrue when a plan discloses its use of the challenged method of calculation. *See Novella*, 661 F.3d at 148 ("[A]ctual notice to a pensioner that a double rate method was used would put him on notice."). At that point, the plaintiff has constructive knowledge of the miscalculation—"there is enough information available . . . to assure that he knows or reasonably should know of the miscalculation"—so the statute of limitations begins to run. *Id.* at 147. This rule "balances a pension plan's legitimate interest in predictability and finality with a pensioner's equally legitimate interest in having a fair opportunity to challenge a miscalculation of benefits once it becomes known—or should have become known—to him." *Id.*

Given the plan's constructive knowledge standard, the same principles apply here. And, as the district court correctly concluded, plaintiffs' claims are untimely under a straightforward application of the constructive knowledge standard to the allegations in the operative amended complaint and the documents incorporated in it.

The amended complaint alleges that IBM "provided information to [plaintiffs] concerning the amount of retirement benefits they would receive under various forms of retirement benefit." A63, ¶ 97. The information that IBM admittedly provided to plaintiffs included the factual predicate for their claims: that the plan uses an 8% interest rate and the UP-1984 mortality table when it converts a single life annuity to a joint and survivor annuity. A57-58, ¶¶ 64-70; *see* A658, A696. The amended complaint itself alleges that IBM's "communicat[ions] to Plaintiffs . . . calculated the value of benefits using the Plan's outdated and unreasonable actuarial assumptions for calculating joint and survivor annuities." A63, ¶ 98. In other words, by the plaintiffs' own allegations, IBM communicated to plaintiffs years ago the precise basis for their claims now. Because IBM's communications to plaintiffs "contained the material facts on which their statutory claims are now based," the district court correctly concluded the "claims therefore began to accrue on the date on which [plaintiffs] received" the communications. SA8.

B. Plaintiffs' counterarguments lack merit and would effectively nullify the constructive knowledge standard.

Plaintiffs do not deny that they received IBM's disclosures,[3] or that those communications included the factual basis for their claims. Instead, plaintiffs object that the district court failed to consider—and, on a motion to dismiss, categorically could not have determined—what plaintiffs subjectively "understood" about the information. Pls.' Br. 41; *accord, e.g.*, Pls.' Br. 39 (claiming that district court erred in applying constructive knowledge standard because statutory claims "requir[e] a sophisticated understanding of actuarial calculations"); Pls.' Br. 49 (similarly arguing that claims "require an expert-level understanding"). But a constructive knowledge accrual rule "sets an objective standard"—indeed, that is the point of a constructive knowledge standard. *Freier v. Westinghouse Elec. Corp.*, 303 F.3d 176,

[3] Plaintiffs, gesturing toward the limits of a district court's analysis on a motion to dismiss, object to the court's consideration of *any* materials outside the four corners of the complaint. *See* Pls.' Br. 50-57. But plaintiffs admittedly relied on the communications they now claim the district court could not consider, and those statements disclosed the actuarial assumptions plaintiffs challenge. *See* Defs.' Br. 27-33; *see also, e.g.*, *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002). The "motion to dismiss for failure to state a claim" is an "important mechanism for weeding out meritless claims" in ERISA cases. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). When, as here, a court can fully assess a limitations defense from the face of a complaint and documents integral to or incorporated in the complaint, a plaintiff cannot thwart the court's ruling by insisting that factual disputes exist without identifying any material ones. *See, e.g.*, *Testa v. Becker*, 910 F.3d 677, 682-84 (2d Cir. 2018) (affirming dismissal of untimely ERISA claim based on summary plan description document); *I. Meyer Pincus & Assocs., P.C. v. Oppenheimer & Co.*, 936 F.2d 759, 762 (2d Cir. 1991) (considering document "integral to the complaint").

198 (2d Cir. 2002). Plaintiffs' objections about their subjective understanding are thus beside the point; such an approach would render the constructive knowledge standard a dead letter.

Plaintiffs contend that *Osberg v. Foot Locker, Inc.*, 862 F.3d 198 (2d Cir. 2017), supports their attempt to smuggle subjective understanding into the constructive knowledge standard. But plaintiffs overread that case. According to plaintiffs, under *Osberg*, disclosure of the relevant facts did not start the limitations clock here because "they 'would still have had to make a sophisticated chain of deductions about the meaning of the information'" they received to "discover their injury." Pls.' Br. 48 (quoting *Osberg*, 862 F.3d at 207).

Under a constructive knowledge standard, however, the clock starts to run when a plaintiff in fact gained or objectively should have gained knowledge of the relevant *facts*, not when the plaintiff subjectively understood their legal significance. *See, e.g.*, *Stone v. Williams*, 970 F.2d 1043, 1049 (2d Cir. 1992) ("[T]he legal rights that stem from certain facts or circumstances need not be known, only the facts or circumstances themselves."). The plaintiff need not comprehend "that those facts are sufficient to entitle her to relief." *Id.* In many settings, determining the legal "actionability" of known facts can be "a matter of real complexity" that requires "considerable enquiry and investigation." *Rotella v. Wood*, 528 U.S. 549, 556 (2000). Yet under "the traditional federal accrual rule of injury discovery," a

plaintiff need not recognize that the defendant has breached the relevant legal duty "before the statute starts running." *Id.* at 555-56 (discussing racketeering and malpractice claims). Under the constructive knowledge standard, plaintiffs here had the "obligation to inquire" further as soon as they "had information available to them by which they reasonably *could have discovered*" their claim. *Novella*, 661 F.3d at 146-47 (emphasis added). Plaintiffs had the requisite information when IBM disclosed it, over two years before they filed suit, so their claims are untimely regardless of when plaintiffs' counsel developed a theory of liability based on those facts.

Contrary to plaintiffs' objections, *Osberg* casts no doubt on these principles or the district court's application of them. In that case, the Court reasoned that the limitations clock did not start when the plaintiff received plan "communications [that] not only failed to disclose" the relevant facts, but also "were designed to conceal that information." *Osberg*, 862 F.3d at 204 (citation omitted). The statute of limitations does not begin to run when, as in *Osberg*, a plaintiff receives disclosures that are "designed . . . to conceal" the material facts that might give rise to a claim, even if the plaintiff could theoretically discover those facts through "a heroic chain of deductions." *Id.* at 208. Plaintiffs do not contend, however, that this case involves any such intentional deception or concealment—only that their claims

involve factual complexity. *Osberg* does not suggest that factual complexity itself defers accrual.

But even if *Osberg* did lend some support to plaintiffs' argument, it still would not be controlling. In *Osberg*, "the federal discovery rule generally applicable to ERISA claims" governed accrual. *Id.* at 207. Here, on the other hand, the plan-defined rule governs. And the plan's rule says that the limitations period began to run when plaintiffs "knew or should have known of the material facts on which [their] claim or action is based, regardless of whether [they were] aware of the legal theory underlying the claim or action." SA6 (quoting A122, § 7.2(a)(2)(C), and citing A339, § 7.2(a)(2)(D)). The plan terms thus make even clearer that constructive knowledge of the material facts—the mortality table and other actuarial assumptions that plaintiffs challenge—starts the clock. Plaintiffs thus miss the mark in focusing on what "deductions" they actually drew from those facts. Pls.' Br. 2, 18, 39, 46, 47, 48, 49, 50.

Plaintiffs deny that their claims accrued when they received the relevant disclosures but do not identify any other event that would start the limitations period. And it goes without saying that a rule delaying accrual indefinitely is untenable. By arguing that they lacked constructive knowledge even after disclosure of the material facts, because they lacked "a sophisticated understanding of actuarial calculations," Pls.' Br. 39, plaintiffs suggest that *no* disclosures would ever suffice, and that their

claims could never accrue until they consulted with an accountant—or a lawyer. Courts rightly reject theories "with no accrual date" for claims, or that otherwise would result in "nullification of the statute of limitations." *Thompson v. Ret. Plan for Emps. of S.C. Johnson & Son, Inc.*, 651 F.3d 600, 607 (7th Cir. 2011); *cf. Osberg*, 862 F.3d at 208 (acknowledging such concerns while finding that they have less purchase when a plan "intentionally makes misstatements and omissions to conceal an injury from plan participants"). Again, claims accrue under a constructive knowledge standard when a plaintiff knows or should know of the material facts necessary to assert a claim. Yet delaying accrual until a plaintiff also has a fully developed legal theory would negate that standard entirely. That result cannot be right, and neither can an approach that would require it.

"Statutes of limitation serve several important policies, including rapid resolution of disputes, repose for those against whom a claim could be brought, and avoidance of litigation involving lost evidence or distorted testimony of witnesses." *Carey v. Int'l Bhd. of Elec. Workers Loc. 363 Pension Plan*, 201 F.3d 44, 47 (2d Cir. 1999). As this Court has recognized, any approach to the constructive knowledge standard that would allow a plaintiff to file suit years or even decades after the material facts were readily available would defeat the purpose of having a statute of limitations at all. *See Novella*, 661 F.3d at 146-47 (rejecting approach under which "a pensioner could collect benefit checks for twenty or thirty years without any

obligation to inquire as to the correctness of the calculations underlying the benefit payments"). This Court should reject plaintiffs' effort to rewrite the plan's constructive knowledge standard into a rule that the limitations clock does not begin to run until the plaintiff receives outreach from a savvy lawyer.

II. Plaintiffs' attempt to throw out the statute of limitations would threaten the system of employer-sponsored benefit plans and harm both employers and employees.

Plaintiffs' theory would have sweeping consequences to the detriment of pension plan sponsors and participants alike. To begin, throwing out the plan's prescribed statute of limitations would flout the Supreme Court's clear holding that "a participant and a plan may agree by contract to a particular limitations period, even one that"—unlike the limitations period here—"starts to run before the cause of action accrues." *Heimeshoff*, 571 U.S. at 105-06. Plaintiffs' approach would also undermine the longstanding principle underlying that holding: that, unless prohibited by statute, parties "may agree by contract to a particular limitations period." *Id.* at 106; *see also id.* at 106-08 (collecting cases dating back to *Riddlesbarger v. Hartford Ins. Co.*, 74 U.S. (7 Wall.) 386, 390 (1868)). Plaintiffs' theory would upend settled law not only in cases involving plan-defined limitations periods but also in virtually any case involving even arguably technical or complex facts, including cases (like *Novella* and *Osberg*) where federal law imposes a constructive knowledge standard. Nullifying that standard would make it difficult,

if not impossible, for familiar plan disclosures to begin the limitations period, which in turn would have far-reaching adverse consequences.

For starters, recognizing a purported lack of subjective understanding as a defense to the statute of limitations in arguably factually complex cases would encourage employers to prioritize exhaustive detail over comprehensibility in plan disclosures. One of Congress's goals in enacting ERISA was to ensure that "[d]escriptions of plans furnished to employees [w]ould be presented in a manner that an average and reasonable worker participant can understand intelligently." H.R. Rep. No. 93-533 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4646, 1973 WL 12549. If plaintiffs' argument here prevailed, it would stampede employers and other plan sponsors into issuing exhaustive and exhausting communications disclosing any and all conceivably relevant information, no matter how technical or tangential. Voluminous disclosures might make it easier to defend against objections like plaintiffs' here, but could also frustrate Congress's intent and risk a return to the pre-ERISA state of affairs, when the "average plan participant, even where he ha[d] been furnished an explanation of his plan provisions, often [could not] comprehend them because of the technicalities and complexities of the language used." *Id.* Indeed, employees might be so daunted by the sheer size of these enhanced disclosure documents that they will put them in a drawer (or cast them in

the trash) unread. Plans are required by law to make many such disclosures.[4] And the ERISA Advisory Council has observed that summary plan descriptions (SPDs)—which are supposed to be fundamental disclosures easily understood by the average participant—have already grown in length and complexity to fend off lawsuits,[5] a problem that plaintiffs' theory would only exacerbate.

Developing and disseminating longer and more granular disclosures would also increase costs and the administrative burden borne by plans, thereby diverting resources that could otherwise be used to benefit employees. So would the threat of defending against stale claims, which would require plans to maintain benefit records indefinitely in case necessary to avoid or use in litigation. *See Withey v. Perales*, 920 F.2d 156, 159 (2d Cir. 1990) ("[I]f there were no limitations period, administrative costs might burgeon because of the need to keep the files of all

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[4] *See, e.g.*, 29 U.S.C. § 1144(e)(3) (requiring disclosures related to automatic contribution arrangements); 29 C.F.R. § 2550.404-a5 (requiring disclosures related to administrative fees, among other things).

[5] *See* Advisory Council on Emp. Welfare & Pension Benefit Plans, *Mandated Disclosure for Retirement Plans — Enhancing Effectiveness for Participants and Sponsors* 14 (Nov. 2017) (describing how "the length of SPDs has grown, due to, among other things, a response to increased litigation (particularly class action lawsuits)," such that "the SPD has developed into a behemoth document that does not serve participant interests because it is so detailed that it discourages participants from reading it at all"), https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/advisory-council-retirement-plan-disclosures.pdf.

recipients perpetually available in the event hearings on underpayments were demanded.”).[6]

On top of those costs, effectively “tolling of the statute of limitations in perpetuity[] would thwart actuarial prediction of plan liability and thereby threaten the ability of pension plans to prepare in advance to meet financial obligations simultaneously to both beneficiaries and adverse litigants.” *Veltri v. Bldg. Serv. 32B-J Pension Fund*, 393 F.3d 318, 325-26 (2d Cir. 2004) (internal quotation marks omitted). “Sound administration of a pension plan demands advance planning” and “depends on stability and predictability.” *Cummings by Techmeier v. Briggs & Stratton Ret. Plan*, 797 F.2d 383, 389 (7th Cir. 1986). Unexpected liabilities resulting from claimed violations from long ago can undermine a plan’s financial footing and “potentially jeopardize[] the pension rights of [participants] legitimately entitled to receive them.” *Id.*

The threat of these consequences will take a toll on innovation in employee benefit plans by encouraging plan sponsors to offer only the most well-worn benefit options—or worse, discouraging employers from offering benefit plans at all. ERISA regulates the administration of benefit plans but does not require employers to offer them, *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 833 (2003);

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[6] For ERISA’s recordkeeping requirements, see 29 U.S.C. §§ 1027, 1059.

Inter-Modal Rail Emps. Ass'n v. Atchison, Topeka & Santa Fe Ry. Co., 520 U.S. 510, 515 (1997); *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996), and the statute "represents a careful balancing between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (internal quotation marks and citation omitted). Statutes of limitations are among the reasonable "safeguards" against excessive liability that "encourage employers and others to undertake the voluntary step of providing medical and retirement benefits to plan participants." *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 259 (2008) (Roberts, C.J., concurring in part). Nullifying the statute of limitations would threaten plan sponsors with liability indefinitely, which would "unduly discourage employers from offering ERISA plans in the first place." *Conkright*, 559 U.S. at 517 (brackets and citation omitted).

CONCLUSION

For the reasons set forth above and in defendants-appellees' response brief, this Court should affirm.

Dated: November 22, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. In accordance with to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that this brief complies with the type-volume limitation of Second Circuit Rules 29.1(c) and 32.1(a)(4)(A) because, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 3,998 words.

2. I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, Times New Roman 14-point font.

Dated: November 22, 2024

/s/ Michael E. Kenneally
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