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18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**

20 UNITED STATES OF AMERICA,
 21
 22 Plaintiff,

23 v.

24 ADOBE INC., a corporation,
 25 MANINDER SAWHNEY, individually, and
 26 DAVID WADHWANI, individually,
 27
 28 Defendants.

Case No. 5:24-cv-03630-BLF

**COMPLAINT FOR PERMANENT
 INJUNCTION, MONETARY
 JUDGMENT, CIVIL PENALTY
 JUDGMENT, AND OTHER RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff, the United States of America (“the United States”), acting upon notification and referral
2 from the Federal Trade Commission (“FTC”), for its Complaint alleges:

3 **NATURE OF THE CASE**

4 1. Adobe Inc. (“Adobe”) is one of the world’s largest software companies, known for
5 developing popular design and productivity software applications, such as Acrobat, Photoshop, and
6 Illustrator. Adobe offers subscription plans to these and dozens of other products and services on its
7 website, *Adobe.com*.

8 2. For years, Adobe has harmed consumers by enrolling them in its default, most lucrative
9 subscription plan without clearly disclosing important plan terms. Adobe fails to adequately disclose to
10 consumers that by signing up for the “Annual, Paid Monthly” subscription plan (“APM plan”), they are
11 agreeing to a year-long commitment and a hefty early termination fee (“ETF”) that can amount to hundreds
12 of dollars. Adobe clearly discloses the ETF only when subscribers attempt to cancel, turning the stealth
13 ETF into a powerful retention tool that generates significant revenues by trapping consumers in
14 subscriptions they no longer want.

15 3. During enrollment, Adobe hides material terms of its APM plan in fine print and behind
16 optional textboxes and hyperlinks, providing disclosures that are designed to go unnoticed and that most
17 consumers never see. Adobe then deters cancellations by employing an onerous and complicated
18 cancellation process. As part of this convoluted process, Adobe ambushes subscribers with the previously
19 obscured ETF when they attempt to cancel. Through these practices, Adobe has violated federal laws
20 designed to protect consumers.

21 4. Defendants know that these inadequate APM plan disclosures harm and mislead consumers
22 but continue to engage in these unlawful practices because better disclosures would hurt Adobe’s bottom
23 line by reducing subscription revenues. As one Adobe executive admitted, the hidden ETF is “a bit like
24 heroin for Adobe” and “there is absolutely no way to kill off ETF or talk about it more obviously [without]
25 taking a big business hit[.]”

26 5. Adobe’s misconduct does not stop with concealing key APM plan terms to maximize
27 profits. Adobe utilizes other onerous cancellation procedures to trap consumers in subscriptions they no
28 longer want. Consumers attempting to cancel online are forced to navigate numerous hurdles, including

1 hidden cancellation buttons and multiple, unnecessary steps such as pages devoted to password reentry,
2 retention offers, surveys, and warnings. Consumers attempting to cancel via phone or chat experience
3 dropped calls and chats, significant wait times, and repeated transfers. Adobe uses a dedicated “Retention”
4 team to discourage subscribers who try to cancel. Adobe relies on such obstacles to thwart cancellations
5 and retain subscription revenues, depriving consumers of a simple mechanism to cancel as required by
6 law.

7 6. To put an end to Adobe’s unlawful conduct, the United States brings this lawsuit, seeking
8 injunctive relief, civil penalties, equitable monetary relief, as well as other relief.

9 **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

10 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345,
11 and 1355, as well as 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a), because this case involves claims arising
12 under federal laws regulating commerce and is commenced by the United States.

13 8. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), (d), and
14 1395(a), as well as 15 U.S.C. § 53(b), because Defendants transact business in this District and a
15 substantial part of the events or omissions giving rise to the claims occurred in this District.

16 9. Divisional assignment to the San Jose Division is proper under Civil Local Rule 3-2(e)
17 because Adobe has its principal place of business in San Jose and because a substantial part of the events
18 or omissions giving rise to the claims occurred there.

19 **PLAINTIFF**

20 10. The United States brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19,
21 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and
22 57b, as well as Section 5 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404,
23 which authorize the United States to seek, and this Court to order, permanent injunctive relief, rescission
24 or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, or
25 other equitable relief, in addition to civil penalties, for Defendants’ violations of the FTC Act, 15 U.S.C.
26 § 45(a), and ROSCA, 15 U.S.C. § 8403.

DEFENDANTS

A. Adobe

11. Defendant Adobe is a Delaware corporation with its principal place of business at 345 Park Avenue, San Jose, California 95110. Adobe transacts and has transacted business in this District and throughout the United States.

12. At all times relevant to this Complaint, acting alone or in concert with others, Adobe has advertised, marketed, distributed, or sold subscriptions to its software products and services to consumers throughout the United States. Adobe has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

B. Maninder Sawhney

13. Defendant Maninder Sawhney (“Sawhney”) is the Senior Vice President of Digital Go To Market & Sales at Adobe, a position he has held since December 2018. At times relevant to this Complaint, acting alone or in concert with others, Sawhney formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Adobe, including acts and practices set forth in this Complaint.

14. As Senior Vice President of Digital Go To Market & Sales, Sawhney has led a team that directs certain of Adobe’s acts and practices set forth in this Complaint, including practices related to Adobe’s subscription enrollment processes and material terms of Adobe’s subscription plans. Sawhney has participated in and been involved in directing Adobe’s unlawful conduct, including by making critical decisions about Adobe’s relevant practices and by advising and steering Adobe’s leadership regarding company strategy.

15. Sawhney, in connection with the matters alleged in this Complaint, transacts or has transacted business in this District and throughout the United States.

C. David Wadhvani

16. Defendant David Wadhvani (“Wadhvani”) is the President of Digital Media Business at Adobe and reports directly to Adobe’s Chief Executive Officer (“CEO”). At times relevant to this Complaint, acting alone or in concert with others, Wadhvani formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Adobe, including acts and practices set

1 forth in this Complaint.

2 17. As President of Digital Media Business, Wadhvani helps guide Adobe's digital
3 subscription business strategy. Wadhvani supervises Sawhney and has participated in guiding and
4 directing Sawhney's management of Adobe's acts and practices set forth in this Complaint, including
5 practices related to Adobe's subscription enrollment processes and material terms of Adobe's subscription
6 plans. Wadhvani has participated in and helped direct Adobe's unlawful conduct, including by
7 participating in key decisions regarding Adobe's digital subscription offerings, providing approval for
8 courses of action by his reports, and helping guide the work of various Adobe teams and personnel
9 implementing Adobe's enrollment and cancellation policies.

10 18. Wadhvani, in connection with the matters alleged in this Complaint, transacts or has
11 transacted business in this District and throughout the United States.

12 **THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT**

13 19. ROSCA, 15 U.S.C. § 8401 *et seq.*, recognizes that "[c]onsumer confidence is essential to
14 the growth of online commerce," and that "[t]o continue its development as a marketplace, the Internet
15 must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete
16 with one another for consumers' business." *Id.* § 8401.

17 20. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods
18 or services sold in transactions effected on the Internet through a "negative option feature" unless the
19 seller: (a) clearly and conspicuously discloses all material terms of the transaction before obtaining the
20 consumer's billing information; (b) obtains the consumer's express informed consent before making the
21 charge; and (c) provides simple mechanisms to stop recurring charges. *See id.* § 8403.

22 21. A "negative option feature" is defined as: "in an offer or agreement to sell or provide any
23 goods or services, a provision under which the consumer's silence or failure to take an affirmative action
24 to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the
25 offer." 16 C.F.R. § 310.2(w); *see* 15 U.S.C. § 8403.

26 22. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404(a), and Section 18(d)(3) of the FTC
27 Act, *id.* § 57a(d)(3), a violation of ROSCA constitutes a violation of an FTC rule under Section 18 of the
28

1 FTC Act, *id.* § 57a, and constitutes an unfair or deceptive act or practice in or affecting commerce, in
2 violation of Section 5(a) of the FTC Act, *id.* § 45(a).

3 **DEFENDANTS' UNLAWFUL ACTIVITIES**

4 **I. Adobe's Subscription-Based Business Model**

5 23. Prior to 2012, Adobe typically sold its software to consumers under a perpetual licensing
6 model, where the consumer paid for the product once and could use it indefinitely.

7 24. In or around 2012, Adobe began shifting to a subscription-based licensing model, where
8 consumers must pay for monthly or yearly access to Adobe's products, and where their subscription
9 renews automatically. Under this model, Adobe earns more revenue the longer a consumer remains
10 subscribed. Adobe's shift to the subscription model has significantly increased its recurring revenues.

11 25. Adobe's subscription offerings include a wide array of software products and services for
12 content design, publication, and cloud storage, including its flagship applications Acrobat, Photoshop,
13 Illustrator, and Creative Cloud. Adobe has sold these subscriptions to a wide range of consumers on its
14 website, *Adobe.com*, as part of Adobe's Digital Media business unit.

15 26. Adobe's subscription revenue has nearly doubled in recent years. In 2019, Adobe earned
16 \$7.71 billion in subscription-based revenue. By 2023, subscription-based revenue accounted for \$14.22
17 billion of Adobe's \$19.41 billion in total annual revenue.

18 27. Adobe offers three types of subscription plans to consumers: (1) "Monthly," (2) "Annual
19 Paid Monthly" ("APM"), and (3) "Annual Prepaid."

20 28. The APM plan is sometimes referred to by Adobe as "Yearly, billed monthly" or "Annual,
21 billed monthly" ("ABM"). Internally and on *Adobe.com*, Adobe uses these terms interchangeably.

22 29. Adobe frequently pre-selects the APM plan as a default selection in subscription
23 enrollment flows.

24 30. The APM plan accounts for most of Adobe's subscription revenues. Since at least 2019,
25 the APM plan has included the following material terms, among others:

- 26 a. subscribers are automatically charged each month until they affirmatively cancel;
- 27 b. cancellation before the end of the year is subject to an ETF;
- 28 c. Adobe calculates the ETF amount as 50 percent of the "remaining contract

1 obligation,”—i.e., the customer will be “charged a lump sum amount” of 50 percent
2 of the total monthly charges for the months remaining in the yearly contract;

3 d. subscribers who cancel before the end of the first year lose service at the end of the
4 monthly billing period during which they cancel; and,

5 e. subscribers cancelling within 14 days of their first payment are entitled to a full
6 refund.

7 31. Adobe’s subscription-based model incentivizes it to, on the front end, lock consumers into
8 longer-term subscriptions like the APM plan, and, on the back end, discourage cancellation.

9 **II. Adobe’s Unlawful Subscription Enrollment Practices**

10 32. Consumers subscribe to Adobe products by using a computer or smart device to take one
11 of multiple paths to begin the enrollment process, each of which is also known as an enrollment “flow.”
12 For example, consumers can go to *Adobe.com* and navigate to the page of the product to which they want
13 to subscribe.

14 33. For many products and services, Adobe offers free trials in addition to no-trial (or “buy
15 now”) subscriptions. Adobe automatically converts consumers who select the APM plan during a free trial
16 enrollment to paid subscribers if they do not cancel their subscriptions before the trial period ends.
17 Consumers who start with a “buy now” APM subscription, rather than a free trial, encounter substantially
18 the same enrollment flow, except the “buy now” subscription flows do not contain text relating to a free
19 trial.

20 34. Regardless of the specific enrollment flow consumers encounter when they sign up, the
21 segment or product they select, and whether they receive a free trial, consumers who have subscribed to
22 an APM plan since at least 2019 have generally followed substantially the same enrollment flow provided
23 in the example below, except that the enrollment flow many consumers have encountered, particularly
24 prior to October 2021, does not include the initial plan selection page. Adobe’s enrollment flows fail to
25 clearly and conspicuously disclose material terms of the APM plan, including (1) that the length of the
26 subscription term is one year, (2) that cancellation before the end of the first year is subject to an ETF,
27 and (3) the amount of the ETF.

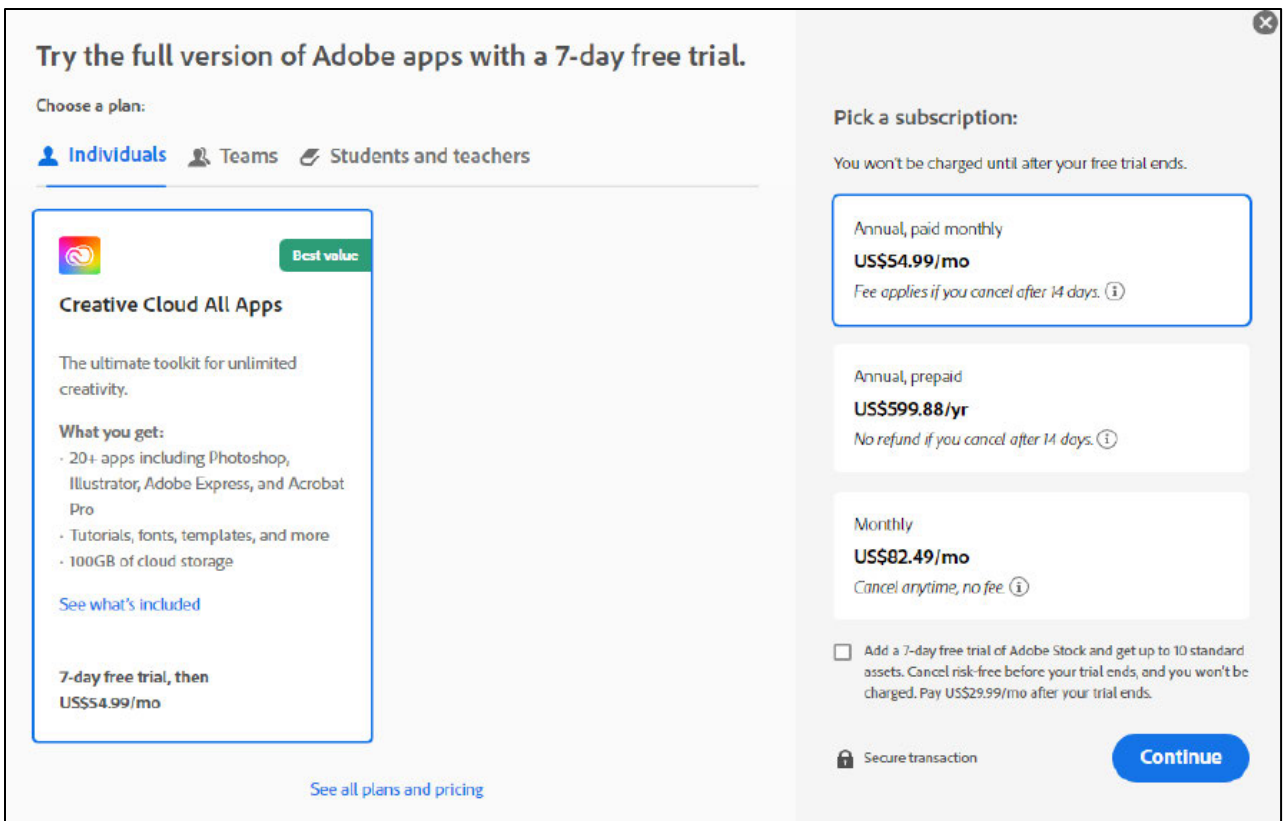
A. Adobe’s Unlawful Enrollment Flows

35. Paragraphs 36 to 52 provide an example of an illustrative enrollment flow for consumers enrolling in a free trial for an APM plan. In this example flow, consumers who select a “Free trial” button for a product are directed to additional pages, including pages for: (1) plan selection, (2) email entry, and (3) payment entry.

1. Plan Selection Page

36. Adobe’s enrollment flows often begin with a plan selection page that presents available subscriptions and their prices, like the one illustrated below.

Enrollment Flow Example 1: Plan Selection Page In Creative Cloud Free Trial Flow, May 2023

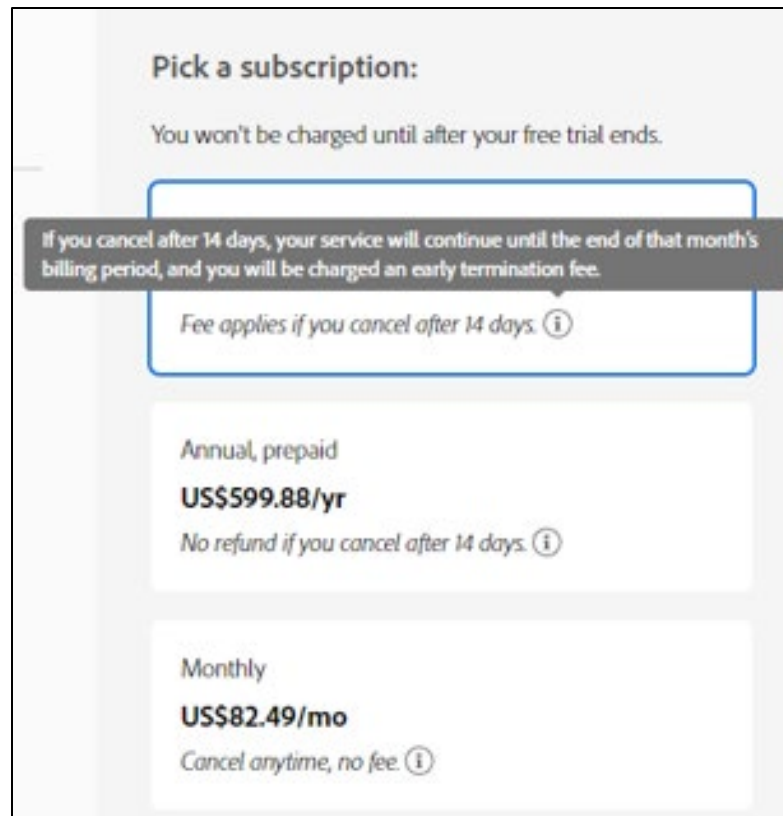


37. The element of each plan that Adobe displays most prominently is a price, with the APM plan showing the lowest dollar amount. Adobe frequently also pre-selects the APM plan as a default.

38. In Enrollment Flow Example 1, the bottom of each plan selection box includes a less prominent line of text, followed by a “tooltip” icon: ⓘ. In particular, the APM plan box states: “Fee applies if you cancel after 14 days. ⓘ.”

39. Consumers navigating the enrollment flow do not see the additional text contained in the tooltip (i.e., a small pop-up text box), which is in an even less prominent font, unless they hover over or click the ⓘ icon. Customers using a touchscreen device (e.g., a phone or tablet) must tap the ⓘ icon to view the tooltip. Consumers who access the ⓘ icon for the APM plan in this example flow reveal a tooltip that reads: “If you cancel after 14 days, your service will continue until the end of that month’s billing period, and you will be charged an early termination fee.”

Enrollment Flow Example 2: APM Plan Tooltip In Creative Cloud Free Trial Flow, May 2023



40. Enrollment Flow Example 2 is a zoomed-in version of the plan selection list featured on Adobe’s plan selection page. In this example, the tooltip icon is being engaged with (i.e., hovered over or clicked), revealing the informational text it displays.

41. As Enrollment Flow Example 2 shows, a consumer who accessed the information contained behind the tooltip is still not given concrete information about the amount of the ETF, how it is calculated, or the subscription term, if any, to which it applies.

42. As Enrollment Flow Examples 1 and 2 show, the plan selection page does not state anywhere that the APM plan requires a one-year commitment. Consumers who do not access the ⓘ icon

1 are not informed that the “fee” mentioned in the APM box in less prominent text is an ETF.

2 43. Moreover, the plan selection page, even in the text accessible only through the tooltip, does
 3 not clearly explain what constitutes “early termination,” *i.e.*, that cancelling before paying for a full year
 4 of service will result in a fee.

5 44. Finally, the plan selection page does not disclose *at all* the amount of the fee that consumers
 6 would be charged for early cancellation.

7 45. Adobe often presents consumers with a plan selection page similar to the one described
 8 above. However, for certain consumers—particularly prior to October 2021, but also for many consumers
 9 since then—Adobe has not included a plan selection page at any point. In these enrollment flows,
 10 consumers do not even see other subscription plan options and do not have an opportunity to view the
 11 tooltip text.

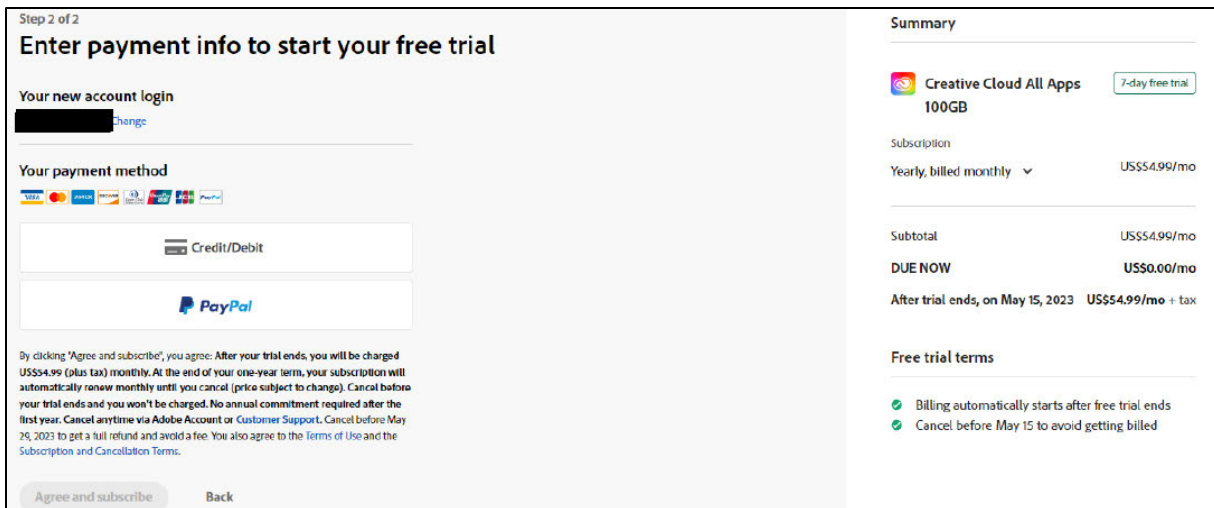
12 **2. Email Entry Page**

13 46. Whether consumers encounter a plan selection page, or Adobe pre-selects the APM Plan
 14 and omits a plan selection page as set forth in Paragraph 45, Adobe then directs consumers to additional
 15 pages, often including one that requires consumers to provide an email address. Nothing on this page
 16 mentions an annual commitment, an ETF, or a fee amount.

17 **3. Payment Entry Page**

18 47. The final enrollment page is often a payment entry page (an example of which is shown
 19 below), where Adobe requires consumers to enter their payment information to enroll.

20 **Enrollment Flow Example 3: Payment Page In Creative Cloud Free Trial Flow, May 2023**



1 48. Enrollment Flow Example 3 provides an example of the page in Adobe’s enrollment flows
2 that directs consumers to enter their payment information. The page also provides information about the
3 APM plan’s terms, but in small inconspicuous font beneath that entry form, which Adobe knows many
4 consumers do not notice or read. In the example above, that text states:

5 By clicking “Agree and subscribe”, you agree: **After your trial ends, you**
6 **will be charged US\$[subscription price] (plus tax) monthly. At the end**
7 **of your one-year term, your subscription will automatically renew**
8 **monthly until you cancel (price subject to change). Cancel before your**
9 **trial ends and you won’t be charged. No annual commitment required**
10 **after the first year. Cancel anytime via Adobe Account or [Customer](#)**
11 **[Support](#).** Cancel before [date] to get a full refund and avoid a fee. You also
12 agree to the [Terms of Use](#) and the [Subscription and Cancellation Terms](#).

13 49. This fine print paragraph includes the *first and only* mention across the entire flow of an
14 “annual commitment.” Even here the commitment is not explicitly linked to any ETF or other charge. The
15 reference to cancelling to “avoid a fee” does not mention the ETF by name or state its amount.

16 50. In Enrollment Flow Example 3, the blue text labeled “Subscription and Cancellation
17 Terms” is a hyperlink that consumers may click on to reveal a pop-up window with additional terms.
18 Consumers can enroll in subscriptions without clicking that link, and Adobe knows most consumers do
19 not click it before enrolling in an APM plan.

20 51. Even if a consumer clicked on the “Subscription and Cancellation Terms” hyperlink, they
21 would then have to scroll to the bottom of the pop-up window (through multiple screens of text if on a
22 mobile device) to find cancellation terms, which in this example enrollment flow state:

23 You can cancel your subscription anytime via your Adobe Account page or
24 by contacting Customer Support*. If you cancel within 14 days of your
25 initial order, you’ll be fully refunded. Should you cancel after 14 days,
26 you’ll be charged a lump sum amount of 50% of your remaining contract
27 obligation and your service will continue until the end of that month’s
28 billing period.

52. This description, if a consumer were to find it, does not include the word “fee” or phrase
“Early Termination Fee,” and thus does not match earlier references to a “fee” for cancellation. Nor does
this text clarify the length of the subscription term or what it means by “your remaining contract
obligation.”

53. In contrast to Enrollment Flow Example 3, Adobe’s enrollment flows for some users,

1 including those who have enrolled in subscriptions that Adobe has marketed for use in particular business
2 or education contexts (which Adobe may refer to as “Business and Teams” or “Teams” users, “Students
3 or Teachers” or “STE,” “Schools and Universities,” or “Education”), have at times not displayed a
4 hyperlink to terms and conditions on the payment entry page and instead have enabled consumers to view
5 those terms only *after* Adobe has collected their payment information.

6 **B. Defendants Know About and Profit from Consumer Confusion Regarding the APM**
7 **Plan**

8 54. Adobe’s enrollment practices have generated frequent complaints from subscribers of the
9 APM plan, including to the Better Business Bureau (“BBB”), to state law enforcement agencies, on social
10 media, on Adobe’s community support web pages, and to Adobe itself.

11 55. In their complaints, consumers have reported they did not understand what they were
12 signing up for and were surprised to learn they were enrolled in a plan that requires a one-year commitment
13 or that imposes a hefty ETF. The ETF and related confusion have been top drivers of customer support
14 contacts, dissatisfied customers, and customer inquiry escalations at Adobe.

15 56. Defendants know about and have monitored numerous complaints received directly from
16 consumers and from other sources like the BBB, and they know that consumers are often confused about
17 or misunderstand the terms of the APM plan, including its one-year commitment and ETF.

18 57. Defendants have also faced outside pressure to change their enrollment practices,
19 including, for example, from a report that Forrester Research Inc. released in May 2022, which found
20 most consumers had difficulty trying to determine how much they would be forced to pay if they cancelled
21 a subscription. Defendants know that Adobe employees and executives have also internally expressed
22 concern about consumer confusion and harm caused by Adobe’s enrollment practices.

23 58. Despite knowing about widespread consumer confusion regarding APM terms, Defendants
24 have refused to remedy their unlawful practices because Adobe has profited handsomely from these
25 practices. Indeed, Adobe’s insufficient APM disclosures are a deliberate company strategy that
26 Defendants have contemplated ending but have ultimately decided to continue because fewer consumers
27 would sign up for the APM plan if Adobe clearly disclosed its material terms, and because many of the
28

1 consumers who do sign up for APM plans would cancel their subscriptions earlier if Adobe did not charge
2 a hefty ETF.

3 **III. Sawhney's Supervision of, and Participation in, Adobe's Unlawful Enrollment Practices**

4 59. Since at least 2019, Maninder Sawhney has played a central role in implementing and
5 directing Adobe's ETF and APM enrollment flow practices.

6 60. Specifically, Sawhney has led a team that oversees and manages Adobe's ETF policies.

7 61. Sawhney and his team have closely tracked consumer complaints about the ETF, analyzed
8 and proposed changes to ETF policies, conducted analysis of the ETF's revenue implications (including
9 analysis of the revenue Adobe would lose if it more clearly disclosed or eliminated the ETF), and briefed
10 and advised Adobe leadership about ETF issues and business strategy.

11 62. Sawhney has made critical decisions steering Adobe's ETF approach—including directing
12 Adobe's strategy regarding setting the ETF amount, selecting Adobe's default plan, the substance of
13 disclosures offered to consumers during enrollment, and what enrollment flows to make available to
14 different consumers.

15 63. Through his work monitoring ETF complaints and managing the company's ETF policies,
16 Sawhney has been keenly aware of the significant harm the ETF has caused to consumers.

17 64. Sawhney has reviewed and discussed many consumer complaints stating that the APM
18 plan's material terms were not clearly disclosed.

19 65. Sawhney has also regularly reviewed critical assessments of Adobe's ETF and APM plan
20 practices prepared by various Adobe teams, including customer experience, customer support, and product
21 management teams. These assessments have emphasized that the APM plan disclosures during the
22 enrollment process are not clear, that many consumers are unaware of the ETF and the one-year term, and
23 that these unclear disclosures lead to widespread consumer surprise and anger.

24 66. Sawhney has himself pointed out that many APM plan subscribers are unaware of the ETF
25 and its one-year commitment, but he has continued to help direct and implement Adobe's unremedied
26 ETF practices to protect the company's revenues.

27 67. Sawhney has discussed regulatory scrutiny bearing on Adobe's ETF disclosures with
28 fellow executives, and he and his reports have discussed legal issues involving Adobe's practices relating

1 to auto-renewal subscriptions (*i.e.*, negative option subscriptions), which are governed by ROSCA. For
2 example, Sawhney has participated in discussions among Adobe executives regarding the Forrester
3 Research Inc., report (*see supra*, ¶ 57) that analyzed Adobe’s hiding of the ETF and referenced possible
4 ROSCA violations, and he has overseen his team’s preparation of materials for circulation within the
5 company that reference regulatory concerns regarding Adobe’s ETF disclosures.

6 **IV. Wadhvani’s Supervision of, and Participation in, Adobe’s Unlawful Enrollment Practices**

7 68. David Wadhvani is Adobe’s President of Digital Media Business. In this role, he reports
8 directly to Adobe’s CEO, Shantanu Narayen, and helps guide Adobe’s overall business strategy regarding
9 online subscriptions, including the APM plan.

10 69. Wadhvani was previously a Senior Vice President of the Digital Media Business. He has
11 worked in a leadership role within the Digital Media Business for more than a decade.

12 70. Wadhvani was one of the chief architects behind Adobe’s pivot from its legacy product
13 offerings to its current digital subscription model based on maximizing recurring revenues.

14 71. As a senior executive in the Digital Media Business unit, Wadhvani has participated in
15 and helped to direct Adobe’s ETF and APM plan enrollment flow practices.

16 72. Sawhney has reported directly to Wadhvani, including to discuss and receive approval for
17 proposed courses of action and policy changes involving the ETF.

18 73. As Sawhney’s supervisor, Wadhvani has received detailed briefings prepared by
19 Sawhney’s team regarding ETF policies, consumer complaints, and business strategy.

20 74. Wadhvani has participated in discussions with Sawhney—and with other executives—
21 regarding inadequate APM plan disclosures and consumer anger over the surprise ETF. These discussions
22 have addressed many aspects of the company’s ETF strategy, including details of Adobe’s APM plan
23 enrollment flows, disclosures made to consumers, plan defaulting, and how adjustments to enrollment
24 flows would impact APM plan sign-up and retention rates and Adobe’s revenues. Wadhvani has provided
25 detailed feedback and guidance to Sawhney on these issues.

26 75. Like Sawhney, Wadhvani has internally recognized how Adobe’s hidden ETF harms
27 consumers, but he has contributed to and directed ETF policies that prioritize Adobe’s revenues over clear
28 disclosures and has continued to participate in and help direct Adobe’s unlawful practices.

1 **V. Adobe's Unlawful Cancellation Practices**

2 76. Adobe auto-renews its customers' subscription plans and continues to charge customers
3 until they affirmatively act to cancel their subscriptions.

4 77. Adobe generally provides subscribers with two primary options to cancel a subscription:
5 (1) online self-cancellation; and (2) contacting customer service via online chat or phone. However, Teams
6 and Education subscribers cannot self-cancel online.

7 78. As set forth below, from at least as early as August 2019 until at least June 2023, neither
8 cancellation method provided consumers with a simple way to cancel their subscriptions.

9 **A. Self-Cancellation Flow on *Adobe.com***

10 79. Most Adobe customers have the option to self-cancel their subscriptions online.

11 80. Adobe has redirected consumers seeking to cancel online into a flow designed to promote
12 retention and frustrate cancellations. In contrast to an enrollment process that often includes only three
13 screens, to cancel on *Adobe.com*, consumers have generally had to navigate numerous pages with multiple
14 options, much of which is wholly unnecessary to honor consumers' cancellations requests. Where
15 consumers have failed to click the appropriate option, Adobe has required them to restart the entire
16 cancellation process from the beginning.

17 81. To cancel, consumers must first locate the cancellation page. Adobe has previously
18 included a cancellation option on consumers' account management page, but as part of its efforts to
19 "optimize" its flow to reduce cancellation attempts, Adobe redesigned its cancellation flow to conceal the
20 cancellation button, requiring consumers in many instances to navigate through several pages to find and
21 even begin the self-cancellation process.

22 82. For example, at relevant times, consumers have had to first locate the account management
23 page, then correctly choose a "Manage plan" hyperlink among various similar hyperlinks (e.g., "Access
24 your services" and "Edit billing and payment"), and finally identify the "Cancel your plan" button.

25 83. Locating and clicking on a "Cancel your plan" button does not result in cancellation.
26 Instead, after users have clicked "Cancel your plan," Adobe has forced them to undergo a convoluted
27 process requiring several additional steps, some of which were wholly unnecessary to complete
28 cancellation.

1 84. For example, at relevant times, consumers who clicked “Cancel your plan” had to reenter
2 their Adobe password—regardless of whether the subscriber had already signed in before reaching the
3 screen. Also, consumers have been sent to a mandatory Feedback page, requiring them to provide reasons
4 for cancellation. This page has not informed consumers that their cancellation request was incomplete.

5 85. Additionally, consumers have had to navigate through several web pages, pop-ups, and
6 offers designed for retention. For example, at relevant times, consumers had to decline an offer to “switch
7 products or change some part of your plan.” Consumers have also had to reject various “save offers” by
8 Adobe, which could include discount offers, offers to switch to other products, and an offer to chat with
9 an Adobe representative and “check for a custom deal.”

10 86. Finally, Adobe has required consumers to review and “confirm” the multitude of
11 consequences that would follow the cancellation. For example, at relevant times, Adobe placed in
12 prominent red font the ETF amount that APM plan subscribers would be charged if they cancelled their
13 subscription.

14 87. Many subscribers learn for the first time about the ETF—and its amount—during
15 cancellation. Adobe offers no way to dispute this charge using the self-cancel flow. Subscribers have had
16 to either pay the fee to cancel or reach out to Adobe’s customer service to discuss or dispute the fee. If
17 they chose the latter route, they could not complete self-cancellation.

18 88. Numerous consumers have also complained about other barriers to cancellation, including
19 that online cancellation buttons were missing or did not work for them.

20 **B. Cancellation By Contacting Customer Service**

21 89. Adobe’s subscribers generally can also attempt to cancel by contacting Adobe’s customer
22 service via phone or online chat. Like the self-cancellation process, Adobe’s customer service cancellation
23 process prioritizes retaining consumers and continuing to collect subscription revenue rather than
24 providing a simple mechanism to cancel.

25 90. Subscribers who have attempted to cancel via customer service have encountered several
26 obstacles that impede or delay their attempts to cancel. For example:

- 27 a. customer service is wholly unavailable to individual consumers between Friday and
28 Sunday evenings;

- 1 b. subscribers have had their calls or chats either dropped or disconnected and have
- 2 had to re-explain their reason for calling when they re-connect;
- 3 c. if a subscriber is inactive in an online customer service chat for just three minutes,
- 4 the chat automatically ends, forcing the subscriber to restart the process; and,
- 5 d. subscribers have been transferred to one or more Adobe representatives during their
- 6 call or chat, forcing them to encounter delays, re-explain themselves, and request
- 7 cancellation multiple times.

8 91. Adobe knows that many consumers have been impeded from easily canceling. Indeed,
9 Adobe has designed and evaluated its cancellation procedures partly with the goal of preventing
10 cancellations and maximizing customer retention.

11 92. For instance, Adobe’s standard operating procedure during relevant times has been to
12 transfer calls from APM plan subscribers seeking to cancel to Adobe’s retention personnel, who are trained
13 to retain customers attempting to cancel their subscriptions and “save” them from canceling in order to
14 protect Adobe’s revenue.

15 93. Once subscribers reach an Adobe representative on the phone or chat and verify their
16 account, they encounter retention tactics and obstacles to completing cancellation similar to those that
17 users experience when trying to self-cancel online.

18 94. For example, Adobe representatives typically ask subscribers to provide a reason for
19 cancelling before proceeding with their request. Depending on the subscriber’s stated reason for
20 cancelling, Adobe instructs representatives to present multiple retention offers before agreeing to cancel.

21 95. Many subscribers who insist on cancelling encounter resistance and delay from Adobe
22 representatives, such as additional follow-up questions. For example, a representative may ask a free trial
23 subscriber if they would consider postponing cancellation until the end of their trial period, or may ask an
24 APM plan subscriber if they are willing to postpone cancelling in exchange for receiving several free
25 months.

26 96. Many subscribers attempting to cancel via phone or chat have been subjected to a time-
27 consuming and burdensome process. For example, numerous subscribers attempting to cancel via phone
28 have been subject to calls lasting upwards of 20 or 30 minutes.

1 97. Adobe instructs its representatives to use the ETF as a method of retaining subscribers and
2 discouraging cancellations, and to invoke the ETF when subscribers are not “saved” by retention offers,
3 such as discounts.

4 98. Adobe has waived the ETF for some consumers, including those who threaten legal action
5 against Adobe, but it has not disclosed that practice to consumers generally.

6 99. Additionally, Adobe provides no refunds or only partial refunds to some subscribers who
7 incur charges after an attempted, unsuccessful cancellation.

8 100. In numerous instances, subscribers who have requested to cancel through Adobe’s
9 customer service believe they have successfully cancelled but continue to be charged. Some of these
10 subscribers do not realize for months that Adobe is continuing to charge them, and only learn about the
11 charges when they review their financial accounts.

12 101. Subscribers whose cancellations do not take effect are forced to restart their attempts to
13 cancel. Because Adobe does not offer the ability to request or obtain a refund of erroneous charges through
14 its self-cancellation flow, such subscribers must contact customer service to stop the charges and request
15 a refund. These subscribers again face all the difficulties described above.

16 **C. Adobe Wields the Surprise Early Termination Fee to Discourage Cancellations**

17 102. As set forth above, regardless of whether a consumer attempts to cancel through self-
18 cancellation or by contacting customer service, Adobe has used the ETF to discourage cancellations.

19 103. While Adobe obscures the ETF during enrollment, it highlights it during cancellation.
20 Adobe’s manipulative enrollment practices make the ETF an effective retention tool: since many APM
21 plan subscribers do not know about the fee until they attempt to cancel, they are surprised and discouraged
22 from cancelling upon learning about the fee and its amount, which can sometimes be several hundred
23 dollars.

24 **D. Adobe Knows Its Customers Struggle to Cancel Unwanted Subscriptions**

25 104. Adobe knows about the barriers consumers face when attempting to cancel their
26 subscriptions and has known for years that it was failing to provide consumers with a simple way to cancel
27 subscriptions.

28 105. As described above, Adobe has tracked negative public comments about its product and

1 reputation. Adobe knows its cancellation practices have generated numerous complaints from subscribers,
2 including to the BBB, state law enforcement agencies, and to Adobe itself.

3 106. The complaints describe a range of difficulties consumers have encountered when
4 attempting to cancel an Adobe subscription. As examples:

5 a. One consumer was so frustrated with trying to cancel their subscription they
6 emailed Adobe’s CEO Narayan directly: “I am desperate. I no longer know how to
7 get help. I am writing for the umpteenth time . . . I have made written online requests
8 galore, I have made 4 phone calls to Adobe’s advertised phone numbers. I get no
9 help online and no help by phone. Instead I spend an hour being transferred from
10 one person to another and eventually being hung up on. . . . What does it take to
11 cancel the subscription?”

12 b. Another consumer stated: “I have corresponded with Adobe on the phone and via
13 their chat support over 3 times in the last few months to try and cancel my
14 membership. Each time I try to cancel, there is a rigorous negotiation and instead
15 of allowing the user to cancel their account, they offer 2 months at no charge.”

16 c. As to self-cancellation, yet another consumer reported: “Adobe literally will not let
17 me cancel my subscription. Online I’m put thru an [sic] loop to continually sign in
18 and cannot move forward to cancel.”

19 107. Adobe has also internally acknowledged and discussed ways that its online and customer-
20 service cancellation processes impede cancellation attempts and has compiled data showing that many
21 consumers trying to cancel have been subjected to inefficiencies such as substantial delays, lengthy calls,
22 multiple agent transfers, and repeat calls without resolution.

23 108. At least as early as October 2019, Adobe management knew that its online self-cancellation
24 process does not communicate to customers who accept a “save offer” that they have not cancelled their
25 plans and may still be subject to ETF or automatic subscription renewal. They also knew subscribers
26 contacting customer service similarly do not understand the implications of accepting save offers.

27 109. Adobe also knows its cancellation practices have generated negative commentary by third
28 parties, including, for example, an August 2021 video case study by a company called Growth Design Inc.

1 titled “Adobe: The Psychology of User Offboarding,” which highlights and criticizes various manipulative
2 and otherwise complicated aspects of Adobe’s self-cancel flow.

3 **E. Adobe Has Made It More Difficult for Consumers to Cancel Subscriptions**

4 110. Despite the foregoing, until at least June 2023, Adobe did not change its cancellation flow
5 to provide consumers with a simple mechanism to cancel their Adobe subscriptions.

6 111. Indeed, instead of improving the cancellation process for subscribers, Adobe has at times
7 added additional friction to deter cancellations.

8 112. For example, between August 2019 and June 2023, Adobe added additional screens to the
9 cancellation flow. Similarly, as set forth in Paragraph 81, Adobe has at times removed the cancellation
10 link from the account management page to reduce subscription cancellation rates.

11 **VI. Adobe’s Knowledge of ROSCA**

12 113. Adobe is one of the world’s largest software companies. It has extensive legal resources,
13 including in-house and outside counsel. Adobe’s management routinely conferred with its counsel
14 regarding legal and regulatory issues relating to Adobe’s subscriptions.

15 114. Adobe and its executives were aware of significant government and regulatory scrutiny
16 into its subscription enrollment and cancellation practices, including a Civil Investigative Demand the
17 FTC issued to Adobe in June 2022 probing potential violations of ROSCA related to Adobe’s APM plan
18 disclosures and cancellation mechanisms. Adobe has nevertheless persisted in its violative practices to the
19 present day.

20 115. Adobe and its executives also had other indications that its practices were illegal, including,
21 for example, the May 2022 Forrester Research Inc. report discussed in Paragraph 57, which specifically
22 referenced ROSCA and explained how Adobe’s practices—including insufficient disclosures and
23 deceptive enrollment flow features that hid critical information—appeared to violate ROSCA.

24 116. Adobe employees, including executives and members of Sawhney’s team, have discussed
25 regulatory scrutiny and legal risks relating to Adobe’s ETF policies, including in discussions regarding
26 the adequacy of Adobe’s enrollment flow disclosures.

27 117. Adobe executives have also regularly discussed widespread consumer confusion and anger
28 regarding the ETF and the APM plan’s one-year commitment and widespread consumer complaints

1 regarding how challenging it is to cancel subscriptions. This includes employees repeatedly
2 acknowledging that Adobe has misled consumers by failing to clearly inform them of the ETF, and
3 acknowledgment by executives that Adobe hides key disclosures where many consumers are unlikely to
4 see them. These discussions indicate that Adobe is aware that it is violating ROSCA's requirements.

5 118. Adobe has been forced to repeatedly grapple with how its ETF and APM plan enrollment
6 and cancellation policies run afoul of regulatory requirements, including ROSCA, but it has continued to
7 engage in violative conduct to maximize its subscription revenues.

8 **VIOLATIONS OF ROSCA**

9 119. Defendants offer consumers negative option features as defined by ROSCA, including in
10 subscriptions for products and services including the monthly, annual paid monthly, annual billed
11 monthly, yearly billed monthly, yearly paid monthly, annual prepaid, yearly paid upfront, annual paid
12 upfront, and yearly billed upfront plans.

13 **COUNT I**

14 *Against All Defendants*

15 **Failure to Clearly and Conspicuously Disclose Material Terms**

16 120. Paragraphs 1–119 are incorporated as if set forth herein.

17 121. In numerous instances, in connection with charging consumers for goods or services sold
18 in transactions effected on the Internet through a negative option feature, as described above, Defendants
19 have failed to clearly and conspicuously disclose all material terms of the transaction before obtaining the
20 consumer's billing information, including, for example, the subscription's billing and renewal terms, the
21 length of the subscription, what cancellation fees will apply and when, and the amount of those fees.

22 122. Defendants' practices as set forth are violations of ROSCA, 15 U.S.C. § 8403(1), and thus
23 violations of Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute
24 unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25 **COUNT II**

26 *Against All Defendants*

27 **Failure to Obtain Express Informed Consent**

28 123. Paragraphs 1–119 are incorporated as if set forth herein.

1 133. Third, Defendants have repeatedly decided against rectifying some of Adobe’s unlawful
2 practices because of the revenue implications.

3 134. Fourth, Defendants retain the means, ability, and incentive to continue or resume their
4 pattern of unlawful conduct in designing enrollment and cancellation processes for Adobe’s lucrative
5 subscription plans.

6 **CONSUMER INJURY**

7 135. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a
8 result of Defendants’ violations of ROSCA and the FTC Act. Absent injunctive relief by this Court, Adobe
9 is likely to continue to injure consumers and harm the public interest.

10 **THIS COURT’S POWER TO GRANT RELIEF**

11 136. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive
12 and such other relief as the Court may deem appropriate to halt violations of any provision of law enforced
13 by the FTC, including ROSCA.

14 137. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 5 of ROSCA, 15 U.S.C. § 8404,
15 authorizes the Court to grant such relief as the Court finds necessary to redress injury to consumers
16 resulting from Defendants’ violations of ROSCA, including the rescission or reformation of contracts,
17 restitution, the refund of monies paid, and disgorgement of ill-gotten monies.

18 138. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of
19 the Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC’s
20 Rules of Practice, 16 C.F.R. § 1.98(c), authorizes this Court to award monetary civil penalties for each
21 violation of ROSCA committed with actual knowledge or knowledge fairly implied.

22 139. Defendants violated ROSCA with the knowledge required by Section 5(m)(1)(A) of the
23 FTC Act, 15 U.S.C. § 45(m)(1)(A).

24 140. Each instance in which Defendants have failed to comply with ROSCA constitutes a
25 separate violation for the purpose of assessing monetary civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Enter judgment against Defendants and in favor of the United States for violations of ROSCA as alleged in this Complaint;
- B. Impose monetary civil penalties on Defendants for each violation of ROSCA;
- C. Enter a permanent injunction to prevent future violations of ROSCA by Defendants;
- D. Award monetary and other relief within the Court’s power to grant; and
- E. Award any additional relief as the Court determines to be just and proper.

DEMAND FOR JURY TRIAL

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

1 Dated: June 17, 2024

Respectfully submitted,

2 *Of Counsel:*

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