

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES TUCCORI, <i>et al.</i> , individually	)	
and on behalf of similarly situated	)	
individuals,	)	No. 1:24-cv-00150
	)	
<i>Plaintiffs,</i>	)	Hon. Lindsay C. Jenkins
	)	
v.	)	Consolidated with:
	)	
AT WORLD PROPERTIES, LLC, <i>et al.</i> ,	)	No. 24-cv-02399
	)	No. 24-cv-03160
<i>Defendants.</i>	)	No. 24-cv-3356
	)	No. 24-cv-9039
	)	No. 24-cv-11735
	)	No. 25-cv-04207

**DOUGLAS ELLIMAN INC.'S RESPONSE TO OBJECTIONS
CONCERNING REVERSE AUCTION AND SETTLEMENT FAIRNESS**

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I. INTRODUCTION

Douglas Elliman Inc. (“Douglas Elliman”) respectfully requests the Court overrule the objections filed by Tom Wheeler (ECF No. 204) and Aaron Bolton (ECF No. 207) (together, the “Objectors”) and finally approve Douglas Elliman’s settlement with the *Tuccori* Plaintiffs. As detailed below and in the *Tuccori* Plaintiffs’ memoranda in support of preliminary and final approval, the settlement is fair, reasonable, and adequate and has overwhelming class support: notice reached over 39.6 million prospective class members, over 132,000 claims have been submitted, only 25 individuals opted out, and only two objections were filed—one (Bolton) from attorneys competing with Plaintiffs’ counsel here.

Objectors’ unsupported reverse auction accusation fails. Douglas Elliman appropriately opted into a court-approved mediation process in *Tuccori* modeled on the opt-in procedure approved in *Sitzer/Burnett v. National Association of Realtors, et al.*, Case No. 4:19-cv-00332 (W.D. Mo.) (“*Burnett*”), ECF No. 1622; those settlements were recently affirmed in *Burnett v. Nat’l Ass’n of Realtors*, 187 F.4th 1051 (8th Cir. 2026).

The accusation fails for four additional reasons. *First*, Douglas Elliman never received a settlement offer from, mediated with, or otherwise engaged in settlement discussions with Plaintiffs’ counsel in *Lutz v. HomeServices of America, Inc.*, No. 4:24-cv-10040-KMM (S.D. Fla.) (“*Lutz*”), who represent Bolton here. There was no competing offer against which to “auction.”

Second, Douglas Elliman decided in January 2026 to participate in the *Tuccori* mediation given that Bolton’s counsel were pursuing in *Lutz* the nearly 79% of buyer-side claims already released, in violation of the injunction in the final approval order of Douglas Elliman’s seller-side settlement in *Gibson v. National Association of Realtors, et al.*, Case No. 4:23-cv-00788 (W.D. Mo.) (“*Gibson*”), while simultaneously seeking on appeal to unwind that release—an effort the

Eighth Circuit rejected. *Gibson v. Nat'l Ass'n of Realtors*, No. 24-3473, 2026 WL 2580277 (8th Cir. Sept. 1, 2026).

Third, Douglas Elliman engaged in an arm's-length, adversarial mediation before former Northern District Chief Judge James F. Holderman (Ret.), a highly respected and impartial mediator.

Fourth, Bolton's claim that he could have secured a higher settlement does not address whether Douglas Elliman's \$2,041,250 *Tuccori* settlement is fair, reasonable, and adequate. Bolton himself benchmarks buyer-side settlements against defendants' seller-side settlements. By that measure, the *Tuccori* settlement represents at least 11.50% of Douglas Elliman's \$17.75 million *Gibson* settlement. After discounting the \$10 million contingent portion of the *Gibson* settlement to account for its risk of non-payment, that figure rises to approximately 15%. Those percentages are more than adequate given at least four factors: (1) nearly 79% of buyer-side claims were already released; (2) only claims in 25 states and the District of Columbia remained in *Lutz*; (3) Douglas Elliman had material brokerage operations in only six of those jurisdictions; and (4) unlike *Gibson*, *Lutz* involved only state law claims with plaintiffs facing significant hurdles at class certification and complex issues of proof on liability and damages.

The objections should be overruled and Douglas Elliman's settlement approved.

II. BACKGROUND

Douglas Elliman incorporates by reference HomeServices of America, Inc., BHH Affiliates, LLC, and HSF Affiliates, LLC's discussion of the relevant background of the *Lutz* case. ECF No. 238 at 2–5. Douglas Elliman emphasizes below a few of the significant challenges facing the *Lutz* plaintiffs:

- The *Lutz* plaintiffs never pursued a claim for federal antitrust damages under the Sherman Act, and their federal injunctive relief antitrust claim was dismissed with prejudice on July 15, 2025. *Lutz*, ECF No. 144. In other words, the *Lutz* plaintiffs had no claim for nationwide damages or injunctive relief.
- Their remaining state law antitrust and consumer protection claims were dismissed without prejudice on July 15, 2025. *Id.* Although the *Lutz* plaintiffs amended those claims, following Douglas Elliman’s subsequent motion to dismiss, they dropped consumer protection claims in 11 states, leaving state law claims in only 25 states and Washington, D.C. *Lutz*, ECF Nos. 144, 152, 154 at 31.
- Litigating those remaining state law claims—involving different indirect purchaser antitrust and consumer protection standards in numerous jurisdictions—would present significant obstacles to class certification and would be procedurally complex and costly to the class.
- Given the indirect purchaser nature of their remaining state law antitrust claims, the *Lutz* plaintiffs would face serious difficulties in proving damages, *i.e.*, that the diverse levels of real estate commissions across those states were caused by NAR’s alleged anticompetitive rules (which set no specific required commission rates) and that any such allegedly inflated commissions indirectly impacted home prices.

III. ARGUMENT

A. Douglas Elliman’s *Tuccori* Settlement is Fair, Reasonable, and Adequate and Not the Product of a Reverse Auction

The Objectors claim that Douglas Elliman’s *Tuccori* settlement was the product of a reverse auction and is substantively unfair. Objectors who “float out the specter of a reverse auction” but “br[ing] forth no facts to give that eidolon more substance” cannot defeat an otherwise

fair settlement. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1099 (9th Cir. 2008). Despite Objectors’ attempted aspersions, the circumstances and substance of Douglas Elliman’s fair, reasonable, and adequate settlement in *Tuccori* have none of the indicia of a reverse auction. The settlement also has the overwhelming support of the class. As previously noted and as set forth in Plaintiffs’ motion for final approval, ECF No. 240, class notice was sent to over 39.6 million prospective class members, over 132,000 claims have been submitted, and only 25 individuals opted out of the class.

The principal objector (Bolton, ECF No. 207) is represented by the same attorneys as represent the plaintiffs in *Batton* and *Lutz*, and seeks to raise the specter of a reverse auction. Far from engaging in a reverse auction, Douglas Elliman simply opted into a court-approved opt-in mediation process in *Tuccori*. *Tuccori*, ECF No. 58. That process was modeled after the opt-in procedure approved by the district court in *Burnett*, ECF No. 1622; those settlements were recently affirmed in *Burnett v. Nat’l Ass’n of Realtors*, 187 F.4th 1051 (8th Cir. 2026).

The Objectors’ reverse auction accusation fails for several other reasons. *First*, Douglas Elliman has never received a settlement offer from or otherwise engaged in mediation or settlement discussions with Plaintiffs’ counsel in *Lutz*. Spiro Decl. ¶ 2. There simply was no competing settlement offer to “auction” against. *See Negrete*, 523 F.3d at 1099 (“No settlement was directly in prospect in this case, and it could not, therefore, be said that a settlement was being circumvented or co-opted.”); *Grider v. Keystone Health Plan Cent., Inc.*, 500 F.3d 322, 331 (3d Cir. 2007) (“[T]here is simply no support for the proposition that a court may enjoin parties from participating in or reaching a bona fide settlement in another federal court that may dispose of claims before it—particularly when there is no pending settlement in the enjoining court.”); *1925 Hooper LLC v. The Nat’l Ass’n of Realtors*, No. 1:23-CV-5392-MHC, 2026 WL 1508737, at *14–16 (N.D. Ga.

Mar. 31, 2026) (rejecting reverse auction argument in a seller-side settlement of the same alleged conspiracy at issue here where the settling defendants had previously rejected a settlement offer by the objecting plaintiffs and did not inform the other side of their settlement of those prior settlement negotiations) (citing *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir. 2002) (stating that, if the objector’s argument was accepted, the “reverse auction argument would lead to the conclusion that no settlement could ever occur in the circumstances of parallel or multiple class actions—none of the competing cases could settle without being accused by another of participating in a collusive reverse auction.”) (internal quotation marks omitted)).

Second, Douglas Elliman’s decision to participate in the court-approved opt-in mediation in *Tuccori* was informed by the fact that, at the time, the *Lutz* plaintiffs were improperly pursuing the nearly 79% of released buyer-side claims in violation of an injunction issued in the final approval order in Douglas Elliman’s seller-side settlement in *Gibson*. Spiro Decl. ¶ 4; *Lutz*, ECF No. 174 at 13–15. At the same time, counsel for Bolton and the *Lutz* plaintiffs, acting on behalf of objector James Mullis, objected to Douglas Elliman’s *Gibson* settlement on the ground that it released the seller-side class’s buyer-side claims and, after the *Gibson* court overruled that objection, appealed to the Eighth Circuit seeking to unwind that release. *Gibson*, ECF Nos. 471, 530 ¶¶ 67–86, 561; *Lutz*, ECF No. 174 at 5, 13–14. The Eighth Circuit has since rejected that challenge and affirmed the settlement. *Gibson v. Nat’l Ass’n of Realtors*, No. 24-3473, 2026 WL 2580277 (8th Cir. Sept. 1, 2026).

As of March 23, 2026, when Douglas Elliman mediated with the *Tuccori* Plaintiffs, the only settlement *Lutz* counsel had obtained was in *Batton I* with Keller Williams and that settlement improperly sought to compensate the enjoined, released buyer-side claims, *Batton I*, ECF No. 262 at 15, ECF No. 276 at 3, 7–9, as Bolton concedes in his objection, ECF No. 207 at 21.

Understandably, although it received no offer, Douglas Elliman was not willing to entertain the prospect of a settlement violative of an injunction and pay twice for claims it had already settled. Spiro Decl. ¶ 5. Although Bolton’s counsel may point to their subsequent settlement in *Batton I* with RE/MAX as evidence that they were willing to consider a settlement excluding the released claims, that settlement was not publicly announced until March 25, 2026 and followed Bolton’s counsel’s losing a series of motions challenging Anywhere’s *Tuccori* settlement concerning solely the non-released buyer-side claims. *Tuccori*, ECF No. 118; *Batton I*, ECF Nos. 294, 310.

Third, Douglas Elliman made the decision to participate in the *Tuccori* opt-in mediation in January 2026.¹ Spiro Decl. ¶ 3. That decision was made independent of and months before the *Lutz* court’s April 17, 2026 order granting in part and denying in part Douglas Elliman’s motion to dismiss. *Id.*; *Lutz*, ECF No. 191.² Douglas Elliman engaged in a good-faith, arm’s-length, and adversarial mediation process in *Tuccori* on March 23, 2026, overseen by former Chief Judge James F. Holderman, reached a settlement in principle after further arm’s-length and good-faith negotiations on March 26, 2026, and signed the opt-in agreement on April 6, 2026. Spiro Decl. ¶¶ 6–8; *see Ponzio v. Pinon*, 87 F.4th 487, 507–08 (11th Cir. 2023) (rejecting a reverse auction

¹ By January 2026, Douglas Elliman had already succeeded in securing a dismissal of all of plaintiffs’ claims in *Lutz*, including the federal antitrust claim with prejudice, and only the newly amended state law claims remained, subject to Douglas Elliman’s pending motion to dismiss. *Lutz*, ECF Nos. 144, 145, 152, 154 at 31.

² Objector Bolton’s claim that Douglas Elliman settled “5 days after the magistrate judge confirmed that Douglas Elliman was required to submit its expert reports within 14 days” (ECF No. 207 at 9) is misleading. Douglas Elliman had already reached a settlement in principle with *Tuccori* counsel on March 26, 2026, which was six days before the magistrate judge confirmed the expert report deadline would hold. Spiro Decl. ¶ 7. Moreover, Bolton omits that all parties, including Bolton’s counsel, were seeking an extension of the *Lutz* schedule at the time and had filed a joint motion to amend the case schedule on March 6, 2026, given that substantial document discovery remained to be completed. *Lutz*, ECF No. 170. On April 13, 2026, the *Lutz* court granted that motion in part by moving, amongst other deadlines, the expert report deadline to July 3, 2026. *Id.*, ECF No. 189.

argument and approving a settlement where former Chief Judge Holderman oversaw the arm's-length and adversarial mediation settlement negotiations).

Fourth, Bolton's argument that he could have secured a higher settlement fails to address whether Douglas Elliman's \$2,041,250 *Tuccori* settlement is fair, reasonable, and adequate. Although Bolton suggests Douglas Elliman's \$17.75 million *Gibson* settlement is not an appropriate benchmark, Bolton himself grounds all of the buyer-side settlements in proportion to settling defendants' seller-side settlements and argues only that he could have secured a higher proportion. ECF No. 207 at 21–24. Such an argument says nothing about the fairness and adequacy of the settlement actually reached. *See 1925 Hooper LLC*, 2026 WL 1508737, at *15 (“[E]ven if the Court were to credit the *Gibson* Plaintiffs' view that the claims in the present case should have been valued differently, approval is still appropriate if the court finds ‘that the relief afforded under the settlement agreement was adequate.’”) (quoting *Ponzio*, 87 F.4th at 505).

Douglas Elliman's *Tuccori* settlement represents at least 11.50%³ of its \$17.75 million *Gibson* seller-side settlement, which is more than fair and adequate when accounting for three factors: (1) the nearly 79% of the buyer-side claims already released, reducing the \$17.75 million figure to \$3,727,500; (2) unlike the nationwide *Gibson* settlement, the *Lutz* claims had been limited to state law indirect purchaser and consumer protection claims in 25 states plus the District of Columbia (51% of the nation), further reducing the amount by 49% to \$1,901,025 (less than Douglas Elliman's \$2,041,250 settlement in *Tuccori*); and (3) Douglas Elliman only operated material brokerages in 6 of those 25 states plus the District of Columbia (approximately 23%), further reducing the amount by 77% to \$437,235.75. Spiro Decl. ¶9. These benchmarks – coupled

³ Douglas Elliman's *Tuccori* settlement is greater than the *Tuccori* plaintiffs' icebreaker settlements with the original ten settling brokerages (approximately 10% of their seller-side settlements). ECF No. 115, Ex. A at 6.

with the substantial litigation risks facing the *Lutz* plaintiffs – provide strong support for the fairness, reasonableness, and adequacy of Douglas Elliman’s *Tuccori* settlement.

Bolton’s objection also concedes that \$10 million of Douglas Elliman’s \$17.75 million *Gibson* settlement was contingent in nature. ECF No. 207 at 8 n.3. Yet Bolton fails to account for the probability at the time of the *Gibson* settlement that those contingencies would not be met. Accounting for that risk of non-payment, the probability-adjusted value of the *Gibson* settlement at the time was approximately \$13,540,000. Spiro Decl. ¶¶ 10–11. Douglas Elliman’s *Tuccori* settlement thus represents approximately 15% of the probability-adjusted value of its *Gibson* settlement.

IV. CONCLUSION

Douglas Elliman’s settlement has the overwhelming support of the class and by any measure is fair, reasonable, and adequate. For the foregoing reasons and as detailed in the *Tuccori* Plaintiffs’ memoranda in support of preliminary and final approval, the Court should overrule the objections of Tom Wheeler and Aaron Bolton and finally approve Douglas Elliman’s fair, reasonable, and adequate settlement with the *Tuccori* Plaintiffs.

Dated: October 7, 2026

Respectfully submitted,

By: /s/ Edward M. Spiro

Robert J. Anello (*pro hac vice*)

Edward M. Spiro (*pro hac vice*)

Tyler J. Good-Cohn (*pro hac vice*)

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CERTIFICATE OF SERVICE

I, Edward M. Spiro, hereby certify that, on October 7, 2026, a true and correct copy of the foregoing was filed electronically using the CM/ECF system, which will provide notice to all counsel of record.

/s/ Edward M. Spiro
Edward M. Spiro

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
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<i>Plaintiffs,</i>	)	Hon. Lindsay C. Jenkins
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<i>Defendants.</i>	)	No. 24-cv-3356
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	)	No. 24-cv-11735
	)	No. 25-cv-04207

**DECLARATION OF EDWARD M. SPIRO IN SUPPORT OF
DOUGLAS ELLIMAN INC.'S RESPONSE TO OBJECTIONS
CONCERNING REVERSE AUCTION AND SETTLEMENT FAIRNESS**

I, Edward M. Spiro, declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a principal at Morvillo Abramowitz Grand Iason & Anello P.C. and counsel for Douglas Elliman Inc. ("Douglas Elliman") in the above-captioned action and in *Lutz v. HomeServices of America, Inc., et al.*, Case No. 4:24-cv-10040-KMM (S.D. Fla.) ("*Lutz*"). I submit this declaration in support of Douglas Elliman's response to the objections filed by Tom Wheeler (ECF No. 204) and Aaron Bolton (ECF No. 207). I have personal knowledge of the facts set forth herein and am competent to testify to them.

2. Neither Douglas Elliman nor its counsel has ever received a settlement offer from Plaintiffs' counsel in *Lutz*, who represent Bolton in his objection here. No mediation or settlement negotiations have taken place between Douglas Elliman and plaintiffs' counsel in *Lutz*.

3. Douglas Elliman made the decision to participate in the court-approved *Tuccori* opt-in mediation process in January 2026. This decision was made independent of, and predated by months, the *Lutz* court's April 17, 2026 order granting in part and denying in part Douglas Elliman's motion to dismiss.

4. Douglas Elliman's decision was motivated in part by the fact that the *Lutz* plaintiffs were pursuing claims and seeking discovery concerning the nearly 79% of buyer-side claims that had already been released in Douglas Elliman's seller-side settlement in *Gibson v. National Association of Realtors, et al.*, Case No. 4:23-cv-00788 (W.D. Mo.) ("*Gibson*") and that the *Lutz* plaintiffs were enjoined from pursuing in the *Gibson* court's final approval order. Plaintiffs' counsel in *Lutz*, who represent Bolton in his objection here, also represented objector James Mullis in objecting to Douglas Elliman's *Gibson* settlement on the ground that it released the seller-side class's buyer-side claims. After the *Gibson* court overruled that objection, Mullis appealed to the Eighth Circuit seeking to unwind that release. On September 1, 2026, the Eighth Circuit rejected that challenge and affirmed the settlement in *Gibson v. Nat'l Ass'n of Realtors*, No. 24-3473, 2026 WL 2580277 (8th Cir. Sept. 1, 2026).

5. By the time of Douglas Elliman's March 23, 2026 mediation in *Tuccori*, the only settlement that plaintiffs' counsel in *Lutz* had achieved in another case was with Keller Williams in *Batton I*. That settlement improperly sought to compensate already-released buyer-side claims that the *Batton I* plaintiffs were enjoined from pursuing in the final approval order in *Sitzer/Burnett v. National Association of Realtors, et al.*, Case No. 4:19-cv-00332 (W.D. Mo.) ("*Burnett*"), ECF No. 1622. Although Douglas Elliman never received a settlement offer from the *Lutz* plaintiffs' counsel, Douglas Elliman was unwilling to entertain a settlement that would violate an injunction and seek compensation for the nearly 79% of buyer-side claims that had already been released.

Douglas Elliman had already settled those claims in *Gibson* and was not willing to pay twice for the same claims.

6. Douglas Elliman's settlement with the *Tuccori* Plaintiffs was the product of an arm's-length, adversarial mediation conducted in good faith. On March 23, 2026, Douglas Elliman participated in a mediation session before former Northern District Chief Judge James F. Holderman (Ret.), who was appointed by the *Tuccori* court as Special Master for Mediation. Judge Holderman is a widely respected jurist and mediator with extensive experience overseeing complex class action settlements.

7. Following the mediation session on March 23, 2026, Douglas Elliman and the *Tuccori* plaintiffs continued to negotiate in good faith over the ensuing days. Those negotiations were conducted at arm's length, and both sides were represented by experienced counsel. Douglas Elliman reached a settlement in principle with the *Tuccori* plaintiffs on March 26, 2026.

8. Douglas Elliman signed the opt-in settlement agreement on April 6, 2026, and counsel for the *Tuccori* plaintiffs signed on April 7, 2026.

9. In evaluating the potential settlement value of the remaining buyer-side claims against Douglas Elliman in comparison to Douglas Elliman's \$17.75 million seller-side settlement in *Gibson*, Douglas Elliman accounted for, at a minimum, the following factors: (1) the nearly 79% of the buyer-side claims already released, reducing the \$17.75 million figure to \$3,727,500; (2) unlike the nationwide *Gibson* settlement, the *Lutz* claims had been limited to state law indirect purchaser and consumer protection claims in 25 states plus the District of Columbia (51% of the nation), further reducing the amount by 49% to \$1,901,025 (less than Douglas Elliman's \$2,041,250 settlement in *Tuccori*); and (3) Douglas Elliman only operated material brokerages in

6 of those 25 states plus the District of Columbia (approximately 23%), further reducing the amount by 77% to \$437,235.75.

10. Two \$5 million payments equating to \$10 million of Douglas Elliman's \$17.75 million *Gibson* seller-side settlement were contingent on Douglas Elliman having a cash balance of at least \$40 million by, at the earliest, December 31, 2025 and December 31, 2026, respectively. At the time of Douglas Elliman's entering into the *Gibson* seller-side settlement on April 18, 2024, the probability that those financial conditions would be met in the future was not certain, especially given that Douglas Elliman had reported net loss of \$66.4 million in the twelve months ended March 31, 2024 and its cash balance had declined from \$163.9 million at December 31, 2022 to \$91.5 million at March 31, 2024 (average decline of \$4.8 million per month). *See* Douglas Elliman Inc., Annual Report (Form 10-K) at F-4 (Dec. 31, 2022); Douglas Elliman Inc., Quarterly Report (Form 10-Q) at 2, 23 (Mar. 31, 2024).

11. In evaluating the actual value of the *Gibson* settlement on April 18, 2024, the date of that settlement, Douglas Elliman's Chief Financial Officer has attempted to estimate cash balances at each of December 31, 2025 and 2026, the earliest payment dates of the contingencies, by using the average financial results of the eight quarters preceding the April 18, 2024 settlement (March 31, 2022 through March 31, 2024). Accounting for Douglas Elliman's Adjusted EBITDA, capital expenditures, and interest income over those eight quarters,¹ he has estimated the arithmetic mean of the projected cash balance at each earliest payment date (December 31, 2025 and 2026) and used the differences between each projected cash balance in those quarters to estimate the standard deviations. He then has analyzed the probability of exceeding the \$40 million threshold

¹ Each of interest income and capital expenditures are reported in Douglas Elliman's quarterly and/or annual reports on Forms 10-Q and 10-K, and Adjusted EBITDA is a non-GAAP measure that is reported (and defined) in the Company's quarterly earnings releases.

(using the normal distribution function in Microsoft Excel) and determined that the probability of payment for each of the \$5 million contingencies was approximately 67.89% and approximately 47.91%, at December 31, 2025 and 2026, respectively. Given these probabilities of payment, the expected value of the contingent \$5 million payments at the time of the settlement on April 18, 2024 was approximately \$3,394,500 and \$2,395,500, respectively. Adding in the \$7,750,000 base settlement payment, the contingent probability-adjusted total value of Douglas Elliman's seller-side settlement is approximately \$13,540,000. Thus, Douglas Elliman's \$2,041,250 settlement in *Tuccori* is approximately 15% of this probability-adjusted total value of Douglas Elliman's seller-side settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 7, 2026, in New York, New York.



Edward M. Spiro