No. 22-CV-0895

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

EARTH ISLAND INSTITUTE,

Plaintiff-Appellant,

v.

THE COCA-COLA COMPANY,

Defendant-Appellee.

On Appeal from a Judgment of the
Superior Court of the District of Columbia,
Civil Division, Case No. 2021 CA 1846 B
The Honorable Maurice A. Ross, Judge

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

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CORPORATE DISCLOSURE STATEMENT

Pursuant to D.C. Court of Appeals Rule 29(a)(4)(A), *Amicus Curiae* the National Association of Manufacturers states as follows:

The National Association of Manufacturers (NAM) is the national trade association representing manufacturers across the United States. The NAM does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Manufacturers (NAM) and its members are concerned that if the Court overturns the ruling below, manufacturers routinely will be subject to ideologically driven litigation over matters of public policy, particularly of national and international scope, that are far removed from the actual purposes of consumer protection law. The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million men and women, contributes $2.9 trillion to the United States economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

INTRODUCTION

The District of Columbia Consumer Protection Procedures Act (CPPA) was enacted to protect consumers from unfair trade practices related to the goods and services they purchase. The CPPA provides a means to stop practices that mislead consumers into purchasing products that are different from or less valuable than

[1] All parties have consented to the filing of this brief.

promised, and to compensate those who have lost money as a result. This lawsuit has nothing to do with these considerations.

Here, an environmental advocacy group is invoking the CPPA to change national and international practices over the use of plastic, including the plastic bottles Defendant uses for its beverages. In an attempt to shoehorn these public policy matters into a CPPA claim, it challenges Defendant's statements about its sustainability efforts, along with its values and priorities as a company. Plaintiff asserts that Defendant's vocal support for recycling and environmental sustainability is inherently misleading because Defendant can "never be a truly 'sustainable' company" unless it stops using plastic. Compl. ¶ 15. Thus, Plaintiff's theory is that Defendant can be liable under the CPPA merely for discussing its environmental policies, goals and aspirations while, at the same time, selling beverages in plastic bottles. It seeks to stop Defendant from speaking on its sustainability efforts anywhere and everywhere, which presumably would include its efforts to engage policymakers on recycling and other such policy initiatives.

The Superior Court properly held the CPPA does not apply to these claims. The complaint does not challenge any representation made on a product label, in a product advertisement, or directed at any consumer transaction. And, the complaint does not allege that any challenged statement is factually false—merely that they send a message Plaintiff disagrees with about the underlying public policy matters.

Specifically, D.C. Code § 28-3904(a) and (d) apply only to statements about a product or service, and Defendant's statements here do not relate to any product or service. Op. at 7. They are "aspirational sentiments, such as future goals or vague corporate ethos." *Id.* at 3. Second, subsections (e), (f) and (f-1) apply only to material facts, and aspirational statements are not facts. They are not "provably false or plausibly misleading" statements about a product, its characteristics, or Defendant's environmental practices. *Id.* at 6. "Nothing in the CPPA prohibits an entity from cultivating an image." *Id*. at 10. Third, the statements included in the complaint were cherry-picked from various global communications, not advertisements or statements directed at real people in the District. There is no local nexus. Thus, the challenged statements have nothing to do with any product or service and are not material facts that have the capacity to mislead reasonable District consumers into purchases. *Id*. at 9. They are simply not actionable under the CPPA.

Amicus requests that the Court affirm the ruling below. The scope of the CPPA should not be broadened to be so limitless and unprincipled as to allow these types of claims. Doing so would swing the District's courthouse doors wide open to any advocacy or front group to sue over public policy matters in an effort, among other things, to regulate business conduct and silence corporations with different views on the issues—without any real-life nexus to District consumers and their purchases. Years ago, Robert Reich, who served as Secretary of Labor under President Clinton,

cautioned that lawsuits seeking to regulate are "faux legislation" that "sacrifices democracy." Robert B. Reich, *Don't Democrats Believe in Democracy?*, Wall St. J., Jan. 12, 2000, at A22. This litigation takes this concept of regulation through litigation many bridges too far. The Court should affirm the ruling below and keep the CPPA focused on protecting consumers from actual unfair trade practices.

ARGUMENT

I. THE CPPA DOES NOT GOVERN THE COMMUNICATIONS AT ISSUE IN THIS LITIGATION

The Court should reinforce the longstanding principle that the purpose of the CPPA is solely to ensure District consumers are provided with "truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia." D.C. Code § 28-3901(c). The statute is not about settling public policy differences, including those at the national and international levels. It also is not, as the District's Attorney General asserts in his *amicus* brief, about deciding which advocacy efforts qualify as "environmentally friendly," whether the sale of plastic bottles contribute to "global plastic pollution," how much recycling would mitigate plastic bottle use, and which legislation Defendant supported or opposed in Congress. *See* A.G. Br. at 3 (providing these reasons for why Plaintiff stated a claim). To be subject to the CPPA, statements must be (1) made in connection with a "consumer transaction" or advertisement about "goods and services" directed to District residents to facilitate a consumer

transaction; and (2) be material to a reasonable consumer's decision as to whether they would receive fair value in purchasing the product or service. *See* D.C. Code § 28-3901. Other statements do not implicate the legal interests the CPPA protects.

The text of the CPPA confirms this point; it states that the statute's purpose is to provide a remedy for improper "trade practice[s]," which are "act[s] which . . . solicit or offer for or effectuate a sale . . . of consumer *goods or services*." D.C. Code § 28-3901(a)(6), (b)(2) (emphasis added). To this end, several of the CPPA subsections Plaintiffs invokes, D.C. Code § 28-3904(a), (d), (h), expressly require the statement to describe aspects of Defendant's "goods or services." Statements about corporate image and policy matters are not about goods and services. The other provisions Plaintiff cite require the communication to be about a material fact to a *transaction* involving the good or service. *Id*. at § 28-3904(e) and (f). It is well-established that a fact is material only if a reasonable consumer "would attach importance to its existence or nonexistence in determining [the] choice of action in the transaction." *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013); *see also Ford v. ChartOne, Inc.*, 908 A.2d 72, 81 (D.C. 2006) ("[A] valid claim for relief under the CPPA must originate out of a consumer transaction.").

This Court, in *Floyd v. Bank of Americ*a, reinforced this constraint on the scope of the CPPA when it affirmed dismissal of a CPPA claim because it challenged matters not related to a consumer transaction or advertisement about a good or

service. 70 A.3d 246 (D.C. 2013). There, consumers asserted the CPPA governed the fact that their calls to a bank were answered overseas without their knowledge or being notified of the consequences. *Id.* at 249-50. With respect to Section 28-3904(a) and (d), the Court held that the CPPA does not apply to statements that are not about the "economic output," *i.e.*, the good or service, offered. Statements about other matters do not fall within the auspices of the CPPA, even though they allegedly impacted the plaintiff's desire to do business with the bank. *Id.* at 254-55.

In addition, the Court in *Floyd* favorably cited a California case dismissing consumer protection claims where the statements in question also did "not bear upon the issue of whether [the defendant] made misleading representations *regarding its services*." *Id*. at 255 (citing *Waters v. Advent Prod. Dev.*, No. 07cv2089, 2011 WL 721661 (S.D. Cal. Feb. 22, 2011) (emphasis added by this Court)). The Court dismissed the claims under subsection (f) because the statements did not speak to any "fact" about the bank's services. *Id.*; *Wells v. Allstate Ins. Co*., No. CIV.A.00-0760-LFO, 2002 WL 34486968, at *1 (D.D.C. May 23, 2002) (The statement must be one that can be "proved or disproved," not "general" or "subjective"). The Court concluded that to allow claims to be brought under the CPPA that are not about a merchant's products or services would "stretch[] the meaning of [the CPPA's] statutory terms beyond what the words can bear." *Floyd,* 70 A.3d at 254.

Indeed, even in *Animal Legal Defense Fund v. Hormel Foods Corp.*, where the Court established standing for advocacy groups, the Court at least required the claim to have a nexus to the products and packing for sale to District consumers. 258 A.3d 174, 179 (D.C. 2021). There, ALDF challenged an advertising campaign for deli meat products, asserting that labeling the products as "natural" was misleading because of how the meat products were produced. *See id*. at 186. There is no such nexus to Defendant's beverages, bottles, or any other product in the case at bar. The statements here involve only corporate aspirations, goals and ethos on public policy matters. Although some people may "prefer to support companies that purport to share their values," Compl. ¶ 4, the CPPA does not police these collateral matters.

Further, the "generalized statements" challenged here about Defendant's commitment to sustainability are not "verifiable facts." *Kubicki on behalf of Kubicki v. Medtronic, Inc*., 293 F. Supp. 3d 129, 191-92 (D.D.C. 2018). If "[a]ll statements that [plaintiff] points to as misleading are in fact either accurate, not misleading to a reasonable consumer, or mere puffery," as here, they are not actionable under the CPPA. *Whiting v. AARP*, 701 F. Supp. 2d 21, 29 (D.D.C. 2010), *aff'd*, 627 F.3d 355 (D.C. Cir. 2011); *see also Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 706 (D.C.

1981) ("Opinions or predictions of future events do not constitute representations of material fact upon which a plaintiff successfully may place dispositive reliance.").[2]

For these reasons, Plaintiff and its *amici* are incorrect that a fact's materiality can be based on the subjective preferences of a person or advocacy group. The CPPA does not govern "values," how a company positions itself on matters of public concern, or the image Defendant's truthful statements about its activities, social priorities and goals portray. There may be consumers, for example, who will choose whether to purchase a product based on which political candidates a company's owner or CEO supports, ideological views about a product or company, or risks a product may pose to public health or the environment, despite its many benefits. Even though these and other such matters may influence some purchasing decisions, discourse about them are outside the scope of the CPPA. The sole focus of a CPPA inquiry is whether District consumers received *fair value* for the product or service purchased based on the representations the seller made about *that product or service*.

Because the allegations at bar are not governed by the CPPA, the Superior Court was obligated to grant dismissal as a matter of law. *See, e.g., Whiting*, 627 F.3d at 363-64 (surveying cases and finding courts "could appropriately grant a

[2] Similarly, courts have repeatedly recognized that "generalized statements of optimism that are not capable of objective verification" do not provide a basis for a claim in the security fraud context. *SEC v. E-Smart Techs., Inc.*, 74 F. Supp. 3d 306 (D.D.C. 2014) (quoting *Freeland v. Iridium World Commc'ns, Ltd.*, 545 F. Supp. 2d 59, 76 (D.D.C. 2008)).

motion to dismiss on a deceptive practices claim if no reasonable person would be so deceived"). The Superior Court fulfilled its responsibility to be a proper gatekeeper to the courthouse doors. It refused to allow Earth Island's public policy differences with Defendant to be falsely painted with a CPPA veneer.

II. SILENCING CORPORATE SPEECH ON MATTERS OF PUBLIC CONCERN IS NOT A VIABLE USE OF THE CPPA

A clear indication the public policy matters raised in this litigation do not fit under the auspices of the CPPA is the type of speech Plaintiff seeks to suppress. Under the CPPA, a nonprofit organization can avoid class certification requirements and federal court jurisdiction by seeking injunctive relief along with attorney's fees and costs, but not monetary damages. *See ALDF*, 258 A.3d at 190. Here, Plaintiff seeks a declaration that Defendant's statements about recycling, curbing waste and other environmental policy matters violate the CPPA because it disagrees with the image those statements create for the company. It then seeks an order enjoining Defendant from making those statements. The result would be to force the company to stop engaging in these public policy dialogues.

Defendant presumably would not be able to make statements about its efforts to make its operations and products more sustainable, or engage with Congress or the executive branch on matters relating to recycling, curbing waste or other such environmental public policy matters. These are matters of public concern—not issues directed at business transactions, in the District or elsewhere. *See Pac. Gas &*

Elec. Co. v. Pub. Util. Comm'n of Cal, 475 U.S. 1, 8-9 (1986); *cf. ONY, Inc. v Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 497 (2d Cir. 2013) (disagreements over policy, science and other matters of public concern are not governed by consumer protection laws). In fact, companies are generally *encouraged* to engage on these issues because the public benefits when companies voice their commitment to social, environmental, safety and other important public policy matters. They can help make significant progress and advance the discussion in meaningful ways. Yet, here, Plaintiff would silence Defendant from doing so merely because Defendant continues to sell beverages in plastic bottles and Plaintiff does not agree with the effectiveness of the solutions, including recycling, that Defendant is advocating.

In its *amicus* brief, the Attorney General defends this litigation by referencing its own attempt to silence energy companies from engaging in the public dialogue over climate change solutions. *See* A.G. Br. at 2 (citing *District of Columbia v. Exxon Mobil Corp*., -- F. Supp. 3d --, 2022 WL 16901988 (D.D.C. Nov. 12, 2022)). In similar fashion, among other things, the Attorney General asserts it is inherently "misleadingly" for any energy company to discuss its work to create a "sustainable" future, make energy "cleaner," and be "part of the solution to climate change" solely because its business involves selling products that contribute to climate change. A.G. Compl. at ¶¶ 104, 106. For example, he suggests these companies cannot discuss their efforts to develop less carbon-intensive energy products because, in his own

estimation, these investments should be higher. *Id*. at ¶ 100. As here, that complaint also does not allege these statements are false or misleading themselves or are related to the products offered for sale to District consumers. The cases are political and undermine the development of alternative energy—that is not the CPPA's purpose.

Allowing the CPPA to enjoin companies from engaging in such "matters of public concern" should sound loud First Amendment alarms. Plaintiff cannot stop Defendants from discussing aspirational sentiments, future goals and corporate ethos on matters of public policy merely by asserting that these statements create a "misleading" image in their view. Plaintiff must show "falsity, as well as fault" to infringe on such speech. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986) (defamation claim); *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1058 (9th Cir. 1990) ("the same first amendment requirements that govern actions for defamation" apply to other claims implicating speech on matters of public concern). But, such corporate positions and opinions are not facts capable of being proven "false." *Myers v. Plan Takoma, Inc.*, 472 A.2d 44, 47 (D.C. 1983); *White v. Fraternal Ord. of Police*, 909 F.2d 512, 522 (D.C. Cir. 1990) ("[A] statement of opinion having no provably false factual connotation is entitled to full constitutional protection."); *accord Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990) ("[A] statement on matters of public concern must be provable as false before there can be liability."). Defendant has a First Amendment right, just as Plaintiff has, to engage in these dialogues.

From a practical perspective, the result of reversing the ruling below would be to make public policy debates decidedly one-sided. Advocacy groups could bring CPPA cases to undermine a company politically and enjoin them from engaging policymakers and the public on areas where they have expertise and a stake in the outcome. Under this view, these groups could stop beverage manufacturers from talking about plastic recycling, energy companies from discussing climate change, zoos from raising issues of animal welfare, auto manufacturers from engaging on vehicle safety, and more. Conversely, the advocacy groups could make *purposefully* misleading statements about the same public policy issues and have no accountability under the law because the CPPA applies only to entities that sell products and services in the District, which advocacy groups do not do. This result may serve the groups' interests, but not the legal interests of District consumers. The Court should affirm the ruling below so the CPPA cannot be improperly weaponized.

III. EXPANDING THE SCOPE OF THE CPPA TO GOVERN MATTERS OF PUBLIC CONCERN WOULD CREATE OPPORTUNITIES FOR LITIGATION ABUSE BY THIRD PARTY INTEREST GROUPS

Allowing the claims at bar would open the CPPA's organizational standing for public interest groups to abuse. Advocacy and front groups could file CPPA claims with no real or articulable nexus to the District's consumers and the products and services they purchase. *See* Cary Silverman & Thomas J. Sullivan, *DC Court of Appeals Abandons Article III Standing for Consumer Advocacy Groups*, Wash. Legal

Found., Legal Opinion Letter (Sept. 24, 2021)[3] (expressing concern that the District's courts will be turned "into a playground for national advocacy groups to promote their policy agendas, rather than serve the interests of consumers"). Here, a California advocacy group is suing a Georgia-based company over statements not targeted to or plausibly alleged to have been seen by any consumers in the District. Rather, as discussed, Plaintiff seeks to change national and international practices over the use of plastic irrespective of the legal interests of District consumers.

Courts around the country, along with the American Bar Association, have cautioned against allowing "self-appointed" groups to bring litigation when they have no real world connection to the parties they purport to represent. *See*, *e.g.*, *Cetacean Community v. Bush*, 386 F.3d 1169, 1171 (9th Cir. 2004). These groups tend to focus on their organizational agendas, even when not aligned with the real parties in interest. *See* Terry Carter, *Beast Practices: High-Profile Cases Are Putting Plenty of Bite into the Lively Field of Animal Law*, 93-Nov A.B.A. J. 39, 41 (2007) (noting there often is a tension between the organization's interest and the "client").

This dichotomy reached a boiling point in *Naruto v. Slater*, where the Ninth Circuit found PETA leveraged a monkey "as an unwitting pawn in its ideological goals." 888 F.3d 418, 421 n.3 (9th Cir. 2018). The Ninth Circuit noted PETA

[3] https://www.wlf.org/wpcontent/uploads/2021/09/09242021SilvermanSullivan_LOL.pdf.

"abandoned [the monkey's] substantive claims in what appears to be an effort to prevent [a result] adverse to PETA's institutional interests." *Id.* A concurrence further cautioned that interest group standing generally "is particularly susceptible to abuse" because it allows ideological driven groups to bring suit for others "with no means or manner to ensure the [real plaintiffs'] interests are truly being expressed or advanced." *Id*. at 432. As can be seen here, these dynamics can occur under the CPPA when there is no true nexus to the legal interests of District consumers.

In some instances, advocacy groups have filed series of ideologically driven lawsuits and then leveraged the litigation to fund their operations. In *NonHuman Rights Project, Inc. v. Breheny*, a group filed a writ seeking to remove an elephant from a zoo, solely on ideological grounds. *See* 197 N.E.3d 921 (N.Y. 2022). It raised money off the litigation by selling apparel, tote bags and mugs as well as holding virtual fundraising events—stating in its annual report that this case helped place the group "at a healthy operating surplus."[4] Indeed, statutes such as the CPPA, which allow a prevailing party to recover attorney's fees and costs, have a history of being misused by advocacy groups to fund their operations. *See* Phil Taylor, *Lawsuit Abuse Charge by Western Lawmakers Enrages Enviro Groups*, N.Y. Times, Nov. 19, 2009

[4] Nonhuman Rights Project, 2020 Annual Report at 30, https://www.nonhumanrights.org/content/uploads/2020-Annual-Report.pdf.

(reporting on interest groups that repeatedly invoked the Equal Access to Justice Act attorney's fee provision to fund their organizations).

Ensuring a real nexus between the CPPA lawsuit and legal interests of District consumers with respect to the information they receive about actual products and services can help guard against the worst of these types of interest group abuses.[5]

IV. THE COURT SHOULD LEARN FROM THE CALIFORNIA EXPERIENCE AND ENSURE CPPA LITIGATION REMAINS TIED TO THE LEGAL INTERESTS OF REAL CONSUMERS

Finally, California's experience is instructive with respect to the concerns expressed in this brief. Until 2004, California's consumer protection statute, similar to the CPPA, allowed "any person acting for the interests of itself, its members or the general public" to file an action seeking injunctive relief, regardless of whether the person experienced an injury. Cal. Bus. & Prof. Code § 17204 (2004); *see also Stop Youth Smoking Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1097 (Cal. 1998) (finding an uninjured entity could bring action alleging a retailer profited from youth smoking). California courts had also ruled that plaintiffs who brought these actions need not show actual deception, reasonable reliance, or damages. *See*

[5] In other contexts, there have been concerns about undisclosed third parties funding front groups to bring lawsuits. *See generally* Manufacturers' Accountability Project, *Beyond the Courtroom*, https://mfgaccountabilityproject.org/beyond-the-courtroom (exposing funding mechanisms driving lawsuits against energy manufacturers); Donald J. Kochan, Op-ed, *Keep Foreign Cash Out of U.S. Courts*, Wall St. J., Nov. 24, 2022 (observing that foreign adversaries can fund lawsuits to "weaken critical industries" or "obtain confidential materials through the discovery process").

Comm'n on Children's Television, Inc. v. Gen. Foods Corp., 673 P.2d 660, 668-69 (Cal. 1983). By the 1990s, the law became a vehicle for "extortion," including by groups seeking to advance political causes unconnected to the interests of real consumers. Sharon J. Arkin, *The Unfair Competition Law After Proposition 64: Changing the Consumer Protection Landscape*, 32 W. St. U. L. Rev. 155, 156 (2005). "Most troubling was the creation of organizations and associations the sole purpose of which was to initiate unfair-competition-law litigation." Michael Mallow, *Proposition 64: Striking a Balance (Briefly) in 2006*, 13 No. 10 Andrews Class Action Litig. Rep. 15, 2006 WL 3314610, at *2 (Nov. 16, 2006). As a California practitioner observed, "[m]any of these associations were actually created and managed by the very attorneys who represented the associations." *Id*.

Some of these cases, as here, had significant implications for free speech. For example, Nike faced a representative action brought by a California resident after it defended itself against allegations related to the treatment of workers in facilities in Asia. *See Nike, Inc. v. Kasky*, 539 U.S. 654, 656 (2003). After the trial court dismissed the claim on First Amendment grounds and an intermediate appellate court affirmed, the California Supreme Court reversed in a split decision. *Kasky v. Nike, Inc*., 45 P.3d 243, 248-49, 261-63 (Cal. 2002). The U.S. Supreme Court then granted *certiorari* to consider whether the First Amendment protected a business engaged in public debate when its speech "might affect consumers' opinions about

the business as a good corporate citizen and thereby affect their purchasing decisions." 539 U.S. at 657. Although the high court later dismissed the writ of *certiorari* as improvidently granted, Justice Stevens in a concurrence to the dismissal cautioned that protecting participants in public debate from "the chilling effect of the prospect of expensive litigation" is "a matter of great importance." *Id.* at 664 (Stevens, J., joined by Ginsburg and Souter, concurring).

Ultimately, public outrage over Section 17200 lawsuits led California voters to pass Proposition 64 (approved Nov. 2, 2004), which curtailed the ability of the litigation to be misused in ways similar to the case at bar. The reforms permitted only those who "suffered injury in fact and lost money or property" from a violation of the Act to bring an action, *see* Cal. Bus. & Prof. Code § 17204, and required public interest groups seeking to represent consumers to meet ordinary standing and class action requirements, *see* Cal. Bus. & Prof. Code § 17203. Here, the Court can guard against the improper use of the CPPA in this case by making every effort to keep "public interest" suits under the CPPA subject to reasonable limits, namely for cases where merchants factually misrepresent goods and services sold in the District. The CPPA should not be a vehicle for out-of-state groups to wage public policy battles.

CONCLUSION

For these reasons, the Court should affirm the ruling of the Superior Court.

Dated: May 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2023, I electronically filed the foregoing brief with the Court's electronic filing system. I further certify that all participants in this case are registered and that service will be accomplished via the Court's electronic filing system.

Dated: May 22, 2023

Respectfully submitted,

/s/ Philip S. Goldberg

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Philip S. Goldberg
Signature

22-CV-0895
Case Number(s)

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May 22, 2023
Date

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