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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

EVA LIGHTHISER; et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United  
States; et al.,

Defendants.

Case No. 2:25-cv-00054-DLC

**BRIEF IN SUPPORT OF  
MOTION TO INTERVENE AS  
INTERVENOR-DEFENDANTS  
BY STATE OF MONTANA, 18  
OTHER STATES, AND ONE  
TERRITORY**

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## **INTRODUCTION**

The State of Montana, by and through Attorney General Austin Knudsen, 18 other States (Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Utah, West Virginia, and Wyoming) and one Territory (the U.S. Territory of Guam), by and through their Attorneys General (collectively, the “State Intervenor”), move this Court for leave to intervene as Defendants in this important matter. The State Intervenor seek to intervene as of right because they have significant property and economic interests in this matter that only they can adequately represent. In the alternative, they seek permissive intervention.

President Donald J. Trump’s Executive Orders unleashing American energy have already provided tremendous benefits to the State Intervenor and their millions of citizens, as well as the promise and hope for a more prosperous, strong, and peaceful future, especially among those “forgotten” communities whose very livelihoods depend on a revival of America’s unparalleled energy sector. The energy policy of the United

States, led by President Trump's Executive Orders, will continue to create jobs and improve lives.

Discontent with the new policies of the new Administration, Plaintiffs raise policy grievances under the guise of unenumerated "constitutional" harms. But the State Intervenor's have unique interests in this case because it threatens their economies, the use of their properties, and their state budgets. Countless jobs could be affected by this litigation.

The State Intervenor's seek to intervene to defend their significant interests. Upon intervening, the State Intervenor's intend to file a Motion to Dismiss Plaintiffs' Complaint by August 4, 2025, in accordance with the schedule set by the Court. *See* Doc. 31; *see also Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009) ("Courts, including this one, have approved intervention motions without a pleading where the court was otherwise apprised of the grounds for the motion.") (citation omitted). The State Intervenor's' intervention is not a waiver of their sovereign immunity.

Plaintiffs plan to take a position after reviewing the State Intervenor's' papers. The United States takes no position on this Motion.



## **BACKGROUND**

### **A. Three Executive Orders**

On January 20, 2025, his first day back in the Oval Office, President Donald J. Trump signed a pair of Executive Orders designed to fulfill one of his central campaign promises to the American voters: the promise to unleash American energy right here in the United States. He signed a third Order shortly thereafter, on April 8, 2025. State Intervenor and their citizens already are benefitting from these Executive Orders.

*First*, Executive Order 14154, “Unleashing American Energy,” aims to “restore American prosperity,” particularly for “those men and women who have been forgotten by our economy in recent years,” and to “rebuild our Nation’s economic and military security.” Doc. 1-1, at 1 (copy of the Order); *see* Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8353, 8353 (Jan. 29, 2025). The Order aims to remove unnecessary regulatory “red tape” and alleviate “high energy costs” that “devastate American consumers” by “driving up the costs of transportation, heating, utilities, farming, and manufacturing.” *Id.* The Order realigns the “policy of the United States” to, *inter alia*, “encourage energy exploration and production on Federal lands,” support “creat[ion of] jobs and

prosperity at home,” “reduce the global influence of malign” actors, and “promote true consumer choice, which is essential for economic growth and innovation.” *Id.*

*Second*, Executive Order 14156, “Declaring a National Energy Emergency,” seeks to expedite and prioritize the unleashing of American energy and all the benefits flowing therefrom to the American people and the State Intervenor. *See* Doc. 1-2 (copy of the Order); Exec. Order No. 14156, Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 29, 2025). Among other things, this Order aims to expeditiously remedy the “high energy prices that devastate Americans, particularly those living on low- and fixed-incomes” and to bolster the “national and economic security” of the United States. Doc. 1-2, at 1.

*Third*, Executive Order 14261, “Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241,” encourages increased domestic energy production, including coal. Doc. 1-3, at 1 (copy of the Order); Exec. Order No. 14261, Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241, 90 Fed. Reg. 15517, 15517 (Apr. 14, 2025). This Order aims, *inter alia*, to “lower the cost of living” and “secure America’s economic prosperity and national

security.” *Id.* It seeks to strengthen an industry that “has historically employed hundreds of thousands of Americans,” including many citizens of State Intervenor. *Id.* The Order aims to “increase our [Nation’s] energy supply, lower electricity costs, stabilize our grid, create high-paying jobs, support burgeoning industries, and assist our allies.” *Id.* The Order realigns “the policy of the United States” to make domestic coal production “a national priority” and to “remov[e] Federal regulatory barriers” to coal production. *Id.*

#### **B. Plaintiffs’ Policy Grievances**

Plaintiffs, discontent with the policy positions of the new Administration when it comes to unleashing American energy—and the ensuing creation of hundreds of thousands of new jobs and economic security for the State Intervenor and all Americans—seek declaratory and injunctive relief against the Executive Orders. Doc. 1, at 125. Plaintiffs ask this Court to grant nationwide relief that will impact State Intervenor, based on alleged violations of “unenumerated liberty interests.” *Id.* at 104.

### **C. Proposed Intervenor**

Proposed State Intervenor are sovereign States of the United States of America who, by and through their respective Attorneys General, seek to intervene in this action to protect their interests, which include significant property and economic interests. At stake is the use of vast swaths of land, particularly land rich with natural resources, contained within the States; as well as employment of hundreds of thousands of Americans; the economic restoration of struggling communities; the cost of energy; attracting business and employers; tax revenues; and the potential need to reallocate resources, not to mention the potential reality of wasted time and resources spent in furtherance of the Executive Orders.

Indeed, Plaintiffs' Complaint identifies numerous effects on the State of Montana's interests. Plaintiffs complain that "actions to implement the challenged [Executive Orders] and resulting directives are occurring in" Montana. Doc. 1, ¶¶ 9, 43, 175. They rely on alleged environmental conditions in towns and communities in Montana, including Livingston, Broadus, Kalispell, Missoula, Bozeman, Polson, Montana City, and Red Lodge. *Id.* ¶¶ 10-22. The State of Montana has

an interest in the disposition of this action because it will affect Montana's counties and cities.

Plaintiffs also complain of policies surrounding certain mining entities and infrastructure located in Montana, including the Spring Creek Mine and the Colstrip Generating Station, as well as NorthWestern Energy and Talen Montana. *Id.* ¶¶ 20, 165, 176. They complain of new "coal leasing and extraction" opportunities being pursued in Montana. *Id.* ¶ 179-81. The State of Montana has an interest in this case because it will directly impact the business done in the energy sector within its borders, as well as the employment implications and development implications involved that will impact so many of its citizens.

Plaintiffs presume Montana's position regarding interpretation of state law and how the State understands a decision by the Montana Supreme Court. *Id.* ¶ 23. Plaintiffs rely on Montana's Constitution, particularly those provisions relating to Montana's public trust resources, "including waters, the atmosphere, and fish and wildlife." *Id.* ¶¶ 24, 267-69. They also rely on how Montana's state courts interpret

these provisions. *Id.* The State of Montana has an interest in voicing, on its own behalf, its position on its Constitution, its case law, and its courts.

Plaintiffs allege effects from the Executive Orders on costs of energy to Montana citizens. *Id.* ¶ 92. They allege effects on climate that are, allegedly, particularly acute in Montana. *Id.* ¶¶ 93-94, 109. The State of Montana has an interest in the cost of energy impacting its citizens.

Plaintiffs allege many negative ramifications of the Executive Orders on Montana's universities, including Montana State University and the University of Montana. *Id.* ¶ 146. The State of Montana has an interest in how its universities are operated, and how this case might impact its universities.

The other States joining in this Motion have the same interests as applied to their States. Although Plaintiffs use examples from Montana, Plaintiffs seek relief that would impact all States. Thus, all State Intervenor have an interest in the disposition of this action because it will affect their citizens, their economy, and their institutions.

No existing party can adequately represent the State Intervenor's interests, as they are largely unique to the States.

## **ARGUMENT**

### **I. Legal Standard**

A court “must permit any [applicant] to intervene” who demonstrates that: (1) the application to intervene is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; and (4) the existing parties may not adequately represent the applicant’s interest.” Fed. R. Civ. P. 24(a)(2); *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (citation and quotations omitted). “[T]he requirements for intervention are broadly interpreted in favor of intervention.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004); *see also United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (“courts generally construe [Rule 24(a)] broadly in favor of proposed intervenors”). Additionally, courts grant permissive intervention when the applicant “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B).

“[A] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.” *Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quoting *City of Los Angeles*, 288 F.3d at 397-98). Consistent with this “traditionally liberal policy in favor of intervention,” *id.*, “[c]ourts are to take all well-pleaded, nonconclusory allegations in the motion to intervene ... as true absent sham, frivolity or other objections,” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

Although the State Intervenor enjoys Article III standing, “[i]n the Ninth Circuit, standing is not a prerequisite to intervention.” *HRPT Props. Trust v. Lingle*, No. 09-cv-375, 2009 WL 10741365, at \*2 (D. Haw. Oct. 21, 2009) (collecting cases); *see also Cal. Dep’t of Social Servs. v. Thompson*, 321 F.3d 835, 846 n.9 (9th Cir. 2003) (noting an intervenor “did not need to meet Article III standing requirements to intervene”); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527-29 (9th Cir. 1983); *Medtronic Vascular Inc. v. Advanced Cardiovascular Sys., Inc.*, No. 06-cv-1066, 2007 WL 2155701, at \*1 (N.D. Cal. July 26, 2007) (“a party seeking to intervene as of right under Rule 24(a) need not possess constitutional Article III standing in this circuit”); *Ashley Creek Props.*,



*LLC v. Timchak*, No. 08-cv-412, 2009 WL 585786, at \*1 (D. Idaho Mar. 5, 2009); *Portland Audubon Soc’y v. Hodel*, 866 F.2d 302, 308 n.1 (9th Cir. 1989) (abrogated on other grounds by *Wilderness Soc’y*, 630 F.3d 1173) (observing that the Ninth Circuit “decline[s] to incorporate an independent standing inquiry into [its] intervention test”).

## **II. The State Intervenor’s Are Entitled to Intervene as of Right**

The State Intervenor’s satisfy all four factors to intervene as of right. *See Prete*, 438 F.3d at 954.

### **A. The State Intervenor’s Motion is timely.**

Courts focus on three primary factors when determining timeliness: (1) the stage of the proceedings; (2) the prejudice to other parties; and (3) the reason for and length of delay. *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (citing *Alisal Water*, 370 F.3d at 921). The “crucial date” of timeliness is “when proposed intervenors should have been aware that their interests would not be adequately protected by the existing parties.” *Id.* (quoting *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999)).

The State Intervenor’s easily satisfy the timeliness requirement. *First*, the proceedings have just begun, with the Complaint filed May 29,

2025, and without any responsive pleading filed or dispositive issues otherwise decided by the Court. Intervention will not disrupt the schedule set by the Court, *see* Doc. 31, and the State Intervenor will comply with that schedule. The State Intervenor's Motion is undoubtedly punctual. *See, e.g., Jackson v. Abercrombie*, 282 F.R.D. 507, 513 (D. Haw. 2012) (noting timeliness of motion to intervene filed "less than three months after" the complaint and even "after Defendants filed their answers") (observing the Ninth Circuit described "the same timing" of the motion as "made at an early stage of the proceedings" (quoting *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011))).

*Second*, the existing parties will not suffer any prejudice. "[T]he only 'prejudice' that is relevant under this factor is that which flows from a prospective intervenor's failure to intervene after he knew, or reasonably should have known, that his interests were not being adequately represented—and not from the fact that including another party in the case might make resolution more 'difficult.'" *Smith*, 830 F.3d at 857 (citing *United States v. State of Oregon*, 745 F.2d 550, 552-53 (9th Cir. 1984)). In other words, delay is the key consideration. Here, the

State Intervenor's Motion is made at the very beginning of these proceedings, which by definition demonstrates that it is made when the State Intervenor "knew, or reasonably should have known" that their interests were not being adequately represented; i.e., the "crucial date" for timeliness analysis. *See id.* at 854, 857.

*Third*, for the same reason, the State Intervenor satisfies the final factor. As already explained, there has been no delay by the State Intervenor in filing this Motion.

Therefore, under the totality of the circumstances, the State Intervenor's Motion is timely.

**B. The State Intervenor has a significant protectable interest relating to the property or transaction that is the subject of the action.**

Courts "do not require" proposed intervenors to show "a specific legal or equitable interest"; instead, "it is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Wilderness Soc'y*, 630 F.3d at 1179 (cleaned up). Accordingly, "the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with

efficiency and due process.” *Id.* (quoting *Fresno Cnty. v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)). This is consistent with the Ninth Circuit’s “traditionally liberal policy in favor of intervention.” *Id.*

The State Intervenor’s easily satisfy this standard. At stake for the State Intervenor’s in this litigation are significant property and economic interests, including use of vast swaths of land and natural resources, employment of hundreds of thousands of their citizens, the economic restoration of struggling communities, the cost of energy, attracting business and employers, tax revenues, and the reallocation and potentially wasted allocation of significant state resources. Plaintiffs’ push for permanent injunctions against the Executive Orders, *see* Doc. 1, at 119, directly implicates the effects of those Orders upon the State Intervenor’s significant property and economic interests.

Therefore, the State Intervenor’s are “apparently concerned [parties]” in this matter, *Wilderness Soc’y*, 630 F.3d at 1179, and satisfy this factor in favor of intervention.

**C. The disposition of this case will, as a practical matter, impair or impede the State Intervenor's ability to protect their significant interests.**

When a proposed intervenor demonstrates a significant protectable interest, courts often “have little difficulty concluding that the disposition of this case may, as a practical matter, affect it.” *California ex rel. Lockyer v. United States*, 450 F.3d 436 (9th Cir. 2006); *see also* Fed. R. Civ. P. 24 advisory committee’s note to 1966 amendment (“If [a proposed intervenor] would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene ....”); *Berg*, 268 F.3d at 822.

Here, the State Intervenor's have many significant protectable interests. *See supra*. Should Plaintiffs succeed in enjoining the Executive Orders and halting its many benefits flowing to State Intervenor's, the State Intervenor's ability to protect their significant interests would, as a practical matter, be directly impaired. *See, e.g., Citizens for Balanced Use*, 647 F.3d at 898 (finding that proposed intervenor-defendant, in an action for injunction of a government order, would suffer impairment of its interests, as a practical matter, should the plaintiffs prevail).

Therefore, the State Intervenor is “entitled to intervene.” *Berg*, 268 F.3d at 822.

**D. The existing parties do not adequately represent the interests of the State Intervenor.**

In evaluating whether existing parties adequately represent the interests of proposed intervenors, courts consider three factors: “(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.” *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). When a proposed intervenor and an existing party share the same “ultimate objective,” a presumption of adequacy arises which can be rebutted by a compelling showing of inadequacy. *Id.* (citations omitted). However, “intervention of right does not require an absolute certainty ... that existing parties will not adequately represent [the proposed intervenor’s] interests.” *Id.* at 900. Rather, the proposed intervenor need simply show that representation of its interests “may be” inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538

n.10 (1972). Indeed, “the burden of showing inadequacy is ‘minimal’ ....” *Berg*, 268 F.3d at 823 (citing *Trbovich*, 404 U.S. at 538 n.10). Accordingly, “[a]ny doubt as to whether the existing parties will adequately represent the intervenor should be resolved in favor of intervention.” *Issa v. Newsom*, No. 2:20-cv-1044, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020) (citation omitted).

The State Intervenor satisfy these requirements. The many significant interests unique to the State Intervenor demonstrates that they bring many “necessary elements to the proceeding that other parties would neglect.” See *Citizens for Balanced Use*, 647 F.3d at 898. Because the Federal Defendants do not share the many unique significant interests of the State Intervenor, the Federal Defendants will *not* “undoubtedly make all of [the State Intervenor] arguments” before this Court. See *id.* Nor are they capable of doing so. Only the State Intervenor have the capacity, competency, and incentives to represent their unique interests not shared by the Federal Defendants. Indeed, “it is not [State Intervenor] burden ... to anticipate specific differences in trial strategy. It is sufficient for [State Intervenor] to show that, because

of the difference in interests, it is likely that Defendants will not advance the same arguments as [State Intervenors].” *Berg*, 268 F.3d at 824.

For this reason, courts have routinely permitted States to intervene as defendants alongside the federal government. *See, e.g., WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 2, 4-5 (D.D.C. 2017) (granting States of Wyoming, Colorado, and Utah to intervene as defendants alongside federal defendants) (acknowledging other cases resulting in similar interventions (collecting cases)); *id.* at 5 (finding “the Federal Defendants do not adequately represent the interests of Wyoming, Colorado, or Utah” because “[w]hile the Federal Defendants’ duty runs to the interests of the American people as a whole, the state-intervenors will primarily consider the interests of their own citizens” and “may have unique sovereign interests not shared by the federal government”); *Miccosukee Tribe of Indians of Fla. v. EPA*, No. 22-cv-22459, 2022 WL 19296576, at \*2 (S.D. Fla. Oct. 14, 2022) (granting intervention to State of Florida even though the federal defendants shared similar objective, noting that the federal defendants’ “interests ... are aligned with but distinct from the Florida Applicants’ interests”); *see also WildEarth Guardians v. Haaland*, No. 21-cv-175, 2021 WL 12241918, at \*2 (D.D.C. July 14, 2021) (“Generally, the



[federal] government does not adequately represent the interests of an intervenor because the government has an obligation to represent the interests of all its citizens while an intervenor's interests are often more specific.”).

To be sure, the State Intervenor and the existing Federal Defendants do share the same “ultimate objective” of defending the Executive Orders. *See Berg*, 268 F.3d at 823. But the State Intervenor has no difficulty making the compelling showing to rebut the “presumption of adequacy of representation,” *see id.*, for all the reasons stated. After all, “the burden of showing inadequacy is ‘minimal,’ and the applicant need only show that representation of its interests by existing parties ‘may be’ inadequate.” *Id.* (citing *Trbovich*, 404 U.S. at 538 n.10); *see also id.* at 823 (finding presumption of adequacy rebutted where interests were not “sufficiently congruent” and where proposed intervenors would “likely offer important elements to the proceedings that the existing parties would likely neglect”); *Fresno Cnty.*, 622 F.2d at 439 (finding that federal entity “does not represent” a proposed intervenor’s interests “fully,” despite “virtually identical” arguments made by each in opposition to a preliminary injunction); *Issa*, 2020 WL

3074351, at \*3 (finding that “[a]lthough Defendants and the Proposed Intervenor fall on the same side of the dispute” over the implementation of the governor’s executive orders, the “interests in the implementation” differed such that the parties’ “arguments” “turn[ed] on” their different interests).

Therefore, the State Intervenor has met their “minimal” burden demonstrating that the existing parties do not adequately represent their interests. *See Berg*, 268 F.3d at 823.

The State Intervenor is entitled to intervene as of right.

### **III. In the Alternative, the Court Should Grant Permissive Intervention**

The State Intervenor, in the alternative, request that the Court grant permissive intervention under Rule 24(b). Courts grant permissive intervention when the applicant “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “An applicant who seeks permissive intervention must prove that it meets three threshold requirements: (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant’s claims.” *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). “[T]he

independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-question cases when the proposed intervenor is not raising new claims.” *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Here, the State Intervenors have demonstrated that this Motion is timely. *See supra*. By the same token, intervention would not “unduly delay or prejudice the adjudication” of this case. *See* Fed. R. Civ. P. 24(b)(3). Moreover, in this federal-question case, the “independent jurisdictional grounds requirement does not apply.” *Geithner*, 644 F.3d at 844; *id.* (“In federal-question cases there should be no problem of jurisdiction with regard to an intervening defendant ....” (quoting 7C WRIGHT & MILLER, FED. PRAC. & PROC. § 1917 (3d ed. 2010))).

The State Intervenors’ defense of the Executive Orders as constitutional also “shares a common question of law or fact with [Plaintiffs’] action.” *See Donnelly*, 159 F.3d at 412. The State Intervenors are not changing the “question[s] of law or fact” underlying Plaintiffs’

causes of action. Moreover, Plaintiffs' action, if successful, would directly harm the State Intervenor's significant interests.

Therefore, having satisfied all the factors, the State Intervenor's request, in the alternative, permission to intervene.

### **CONCLUSION**

For these reasons, the State Intervenor respectfully request that the Court grant their intervention as of right or, in the alternative, permissive intervention.

Dated: July 8, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 8, 2025, I caused a true and correct copy of the foregoing to be submitted to the Clerk of Court for filing in accordance with Local Rule 24.1(a), which electronic filing by the Clerk will cause the service of the foregoing upon all parties who have entered in the case.

/s/ Christian B. Corrigan

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Brief is compliant with Local Rule 7.1(d)(2)(A) because it contains 3,969 words, according to Microsoft Word, excluding those portions identified in Local Rule 7.1(d)(2)(E).

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