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Superior Court of California,

County of Tulare

10/13/2023

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Case Management Conference

02/22/2024 08:30 AM - Department 02

Attorneys for Plaintiff Derek Raymond Whitfield,
individually and on behalf of others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

DEREK RAYMOND WHITFIELD,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

RUAN TRANSPORTATION
MANAGEMENT SYSTEMS, INC., an Iowa
Corporation; RUAN TRANSPORT
CORPORATION, an Iowa Corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No. VCU302588

**CLASS AND PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") COMPLAINT**

- 1. FAILURE TO PAY WAGES**
- 2. FAILURE TO REIMBURSE
BUSINESS EXPENSES**
- 3. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 4. FAILURE TO PAY FINAL WAGES**
- 5. VIOLATIONS OF THE UCL**
- 6. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY WAGES**
- 7. PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE
BUSINESS EXPENSES**
- 8. PAGA CIVIL PENALTIES FOR
INACCURATE WAGE STATEMENTS**
- 9. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY FINAL WAGES**

DEMAND FOR JURY TRIAL

NATURE OF CLAIM

1
2 1. Plaintiff DEREK RAYMOND WHITFIELD (“Plaintiff”) brings this action on
3 behalf of himself and a proposed Class of California-based truck drivers against Defendants
4 RUAN TRANSPORTATION MANAGEMENT SYSTEMS, INC., RUAN TRANSPORT
5 CORPORATION (“Ruan”), and Does 1 through 10 (“Defendants”) for unlawful employment
6 policies that at times deny proposed Class Members, or some of them, wages and benefits.

7 2. Plaintiff also brings this action as a representative action under the Private
8 Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, to recover civil
9 penalties arising from Defendants’ failure at times to: pay minimum, regular, and overtime
10 wages; reimburse business-related expenses; provide accurate itemized wage statements; and
11 timely pay wages due upon separation of employment.

12 3. Plaintiff gave written notice of these claims to the California Labor and
13 Workforce Development Agency (“LWDA”) on July 19, 2023, and LWDA did not intervene
14 within 65 days of his notice. Plaintiff seeks PAGA civil penalties as a representative of the
15 State of California and has standing as an aggrieved non-exempt employee. Plaintiff seeks to
16 represent all Defendants’ current and former California-based truck drivers who suffered one or
17 more of the alleged violations starting one year and 65 days before the filing of this complaint
18 (“aggrieved employees”). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

19 4. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant
20 to California Labor Code sections 201, 202, 203, 226, 510, 1174, 1194, 1194.2, and 2802;
21 Industrial Welfare Commission (“IWC”) Wage Order 9-2001; and Business and Professions
22 Code sections 17200, *et seq.*, seeking unpaid wages, liquidated damages, equitable relief,
23 prejudgment interest, reasonable attorneys’ fees and costs, and any other relief this Court
24 deems proper.

PARTIES

25
26 5. Plaintiff DEREK RAYMOND WHITFIELD is a resident of Tulare, California.
27 Plaintiff worked as a truck driver for Defendants for approximately 15 years until his
28 employment ended in November 2022.

7. Defendant RUAN TRANSPORT CORPORATION is a corporation registered in Iowa and doing business throughout the State of California. RUAN TRANSPORT CORPORATION is a subsidiary of RUAN TRANSPORTATION MANAGEMENT SYSTEMS, INC. and operates as a full-service transportation company. RUAN TRANSPORT CORPORATION is listed as Plaintiff's employer on his wage statements.

8. Does are persons or entities whose true names, identities, or capacities are unknown to Plaintiff. Plaintiff will amend to allege their true names and capacities when known. Plaintiff is informed and believes each Doe is Ruan's agent, representative, parent or subsidiary, is responsible in some manner for acts, practices and courses of conduct alleged, and harm suffered by Plaintiff and the Class was proximately caused by Ruan and them.

9. Plaintiff is informed and believes and alleges each of the Defendants, including the Doe defendants, acted in concert with the other Defendants, intended to and did participate in the acts, practices, and courses of conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

10. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

11. Venue as to each Defendant is proper in this judicial district, as Ruan is a foreign corporation that has not designated a principal place of business in California. Code of Civil Procedure § 395.5.

12. No federal jurisdiction exists to remove this action to federal court. No federal question is at issue, as the issues are based solely on California law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and Professions Code. No diversity jurisdiction exists sufficient for removal to federal court under 28. U.S.C. sections 1332(a) or 1332(d) because Class Members' individual amounts in controversy do not exceed \$75,000 and the class amount in controversy does not exceed \$5,000,000.

13. As a PAGA representative action, the matter is not subject to removal as PAGA civil penalty actions are not subject to federal jurisdiction. 28 U.S.C. §§ 1332(a)-(d).

CLASS ACTION ALLEGATIONS

14. Plaintiff seeks to represent and certify a Class of:

All Defendants' California-based truck drivers, at any time during the four years before the filing of this Complaint through the date of trial.

15. Plaintiff seeks to certify a subclass of employees defined as:

Unpaid Wages Subclass

All Class Members who performed work or remained under Defendants' control while not clocked in for their scheduled shift.

16. Plaintiff seeks to certify a subclass of employees defined as:

Expense Reimbursement Subclass

All Class Members who incurred business-related expenses, including but not limited to cell phone, equipment, and uniform maintenance expenses.

17. Plaintiff seeks to certify a subclass of employees defined as:

Wage Statement Subclass

All Class Members who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

18. Plaintiff seeks to certify a subclass of employees defined as:

Waiting Time Subclass

All Class Members whose employment ended any time during the three years preceding the filing of this Complaint.

19. Plaintiff seeks to certify a subclass of employees defined as:

UCL Subclass

All Class and Subclass Members who were subject to Defendants' unlawful or unfair business acts or practices.

1 20. Plaintiff reserves the right to amend or modify the Class or subclass
2 descriptions, including by division into further subclasses or limitation to particular issues.
3 California Rule of Court 3.765(b).

4 21. **Commonality**: This action has been brought and may be maintained as a class
5 action pursuant to Code of Civil Procedure section 382 because there is a well-defined common
6 interest of many persons and it is impractical to bring them all before the court.

7 22. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable
8 because they can be identified and located using Defendants' payroll and personnel records.

9 23. **Numerosity**: The potential members of the Class and Subclasses as defined are
10 so numerous that joinder of all members would be unfeasible and impractical. The disposition
11 of their claims through this class action will benefit the parties and this Court. The number of
12 members of the Class and Subclasses is unknown to Plaintiff, but is estimated to be in excess of
13 100 individuals. The number and identity of members can be readily ascertained using
14 Defendants' records.

15 24. **Typicality**: The claims of Plaintiff are typical of the claims of all members of
16 the Class and Subclasses because all members of the Class and Subclasses sustained similar
17 injuries and damages caused by Defendants' common course of conduct in violation of law.

18 25. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses,
19 will fairly protect the interests of the Class and Subclass Members and has no interests
20 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,
21 skilled, and experienced in litigating large employment law class actions.

22 26. **Superiority**: A class action is superior to other available means for the fair and
23 efficient adjudication of this controversy. Individual joinder of all Class Members is not
24 practicable, and questions of law and fact common to the Class predominate over questions
25 affecting only individual Class Members. A Class action will allow those similarly situated to
26 litigate their claims in the most efficient and economical manner for the parties and the judicial
27 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
28 this action that precludes its maintenance as a class action.

28. At all relevant times, Plaintiff and each Class Member were employed by Defendants in California, and Defendants conducted business in California.

29. At times, Defendants failed to provide Plaintiff and others similarly situated and aggrieved, required wages for time worked or subject to Defendants' control off-the-clock, including at the end of shifts when providing information required of truck drivers, and confirming availability for subsequent shifts. At times, Defendants failed to provide Plaintiff and others similarly situated and aggrieved, required wages for time spent on work-related calls received off-the-clock. As a result, Plaintiffs and others similarly situated and aggrieved were not paid some earned wages.

30. At times, Defendants failed to provide Plaintiff and others similarly situated and aggrieved reimbursements for all necessary and reasonable business expenses. These include those incurred when Defendants' contact Plaintiff and others similarly situated and aggrieved

1 on personal cell phones for work-related purposes when off-the-clock; Defendants are aware
2 Plaintiff and others similarly situated and aggrieved must purchase certain items to perform
3 their jobs, including work boots and gloves, but at times did not completely reimburse them for,
4 or provide vouchers for the entire cost of, these items; Defendants required Plaintiff and others
5 similarly situated and aggrieved, or some of them, to wear and maintain uniforms, but did not
6 reimburse them for all costs related to maintaining uniforms.

7 31. At times, Defendants failed to provide accurate itemized wage statements to
8 Plaintiff and others similarly situated and aggrieved since they did not include, among other
9 things, the total number of hours worked and the number of hours worked at each
10 corresponding rate of pay. Because Defendants failed to compensate Plaintiff and others
11 similarly situated and aggrieved, or some of them, for all hours worked, some itemized wage
12 statements provided by Defendants to Plaintiff and others similarly situated and aggrieved were
13 inaccurate. As a result, some wage statements Defendants furnished to Plaintiff and others
14 similarly situated and aggrieved were incomplete and inaccurate and fail to comply with the
15 requirements of Labor Code section 226(a).

16 32. At times, Defendants failed to pay Plaintiff and others similarly situated and
17 aggrieved all wages due upon separation, in violation of California state wage and hour laws.
18 Because, at times, Defendants failed to pay all wages during employment, final wages paid to
19 Plaintiff and others similarly situated and aggrieved, or some of them, were underpaid, as they
20 did not include these amounts.

21 33. Defendants' failure, at times, to: pay wages for time worked off the clock;
22 completely reimburse necessary business expenses; provide accurate, itemized wage
23 statements; and timely provide payment of wages to Plaintiff and others similarly situated and
24 aggrieved upon separation are the result of Defendant's centrally devised and uniformly
25 implemented policies and practices.

26 34. In addition to other remedies, Plaintiff, on behalf of himself and Class Members,
27 seeks declaratory and injunctive relief, restitution, and disgorgement of all benefits obtained by
28 Defendants as a result of violations alleged. Business and Professions Code §§ 17200, *et seq.*

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay Wages

(By Plaintiff and each Member of the Unpaid Wages Subclass)

35. Plaintiff incorporates the preceding paragraphs of this Complaint.

36. By failing to pay wages for hours Plaintiff and the Unpaid Wages Subclass, or some of them, were under their control but not clocked in, including when engaged in necessary post-shift activities, and receiving calls from Defendants on personal cell phones, Defendants failed to pay wages and violated Labor Code sections 218.5, 510, and 1194, 1194.2.

37. Defendants' unlawful acts deprived Plaintiff and Class Members of wages in amounts to be determined at trial, and they are entitled to recover these amounts, with liquidated damages for unpaid minimum wages, and interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

Failure to Reimburse Necessary Business Expenses

(By Plaintiff and each Member of the Expense Reimbursement Subclass)

38. Plaintiff incorporates the preceding paragraphs of this Complaint.

39. By failing to completely reimburse Plaintiff and Class Members, or some of them, or provide them vouchers covering all costs of necessary business-related expenses they incurred, including for use of personal cell phones, equipment, including work boots and gloves, and uniform maintenance expenses, Defendants violated Labor Code section 2802.

40. Defendants' unlawful acts deprived Plaintiff and Class Members, or some of them, of expense reimbursements in amounts to be determined at trial, and they are entitled to recover these amounts, with interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

(By Plaintiff and each Member of the Wage Statement Subclass)

41. Plaintiff incorporates the preceding paragraphs of this Complaint.

42. All employers must maintain accurate records of each employee's hours of work each workday for at least three (3) years, and provide employees accurate, itemized wage statements showing, among other things, total hours worked and number of hours worked at each corresponding rate of pay. Labor Code §§ 226 and 1174.

43. Defendants knowingly failed to comply with these provisions by, among other things, failing to provide accurate itemized wage statements showing total number of hours worked and the number of hours worked at each corresponding rate of pay. Because Defendants failed to compensate Plaintiff and members of the Class, or some of them, for all hours worked, the itemized wage statements provided by Defendants to Plaintiff and other Class Members were inaccurate.

44. Defendants failed to provide Plaintiff and Class Members, or some of them, with required adequate wage statements. Labor Code § 226. Any employee suffering injury due to a willful violation of Labor Code section 226(e) may collect the greater of actual damages suffered or \$50 for the first inadequate pay statement and \$100 for each inadequate statement thereafter.

45. As a consequence of Defendants' knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff and the members of the Wage Statement Subclass are entitled to recover the greater of actual damages or penalties not to exceed \$4,000 for each employee with interest and attorneys' fees and costs.

FOURTH CAUSE OF ACTION

Failure to Timely Pay Wages Due at Separation (By Plaintiff and each Member of the Waiting Time Subclass)

46. Plaintiff incorporates the preceding paragraphs of this Complaint.

47. An employer who discharges an employee must pay all compensation due to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 201.

48. If an employer willfully fails to timely pay wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced. Labor Code § 203. Because Defendants failed to compensate Plaintiff and members of the Class, or some of them, for all hours worked, Defendants failed to timely pay earned wages to former employees.

49. Defendants willfully failed to pay Waiting Time Subclass Members wages due at termination or within 72 hours of resignation, and failed to pay those sums for 30 days after.

50. Defendants' willful failure to pay wages to the Waiting Time Subclass Members violated Labor Code section 203 because Defendants knew wages were due to the Waiting Time Subclass Members, but failed to pay them.

FIFTH CAUSE OF ACTION
Violation of the Unfair Competition Law
(By Plaintiff and each Member of the UCL Subclass)

51. Plaintiff incorporates the preceding paragraphs of this Complaint.

52. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code sections 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

53. Defendants' conduct as described above constitutes unlawful business practices because Defendants violated: the California Labor Code, including but not limited to sections 510 and 1194 (minimum and overtime wages), and 2802 (reimbursement of business expenses); and sections of Wage Order 9-2001.

54. Defendants' conduct as described above constitutes unfair business practices because their denial of lawfully earned wages outweighs any utility of such practices.

55. As a result of Defendants' unlawful and unfair conduct, Plaintiff and members of the Class suffered injury in fact.

56. Plaintiff and members of the Class seek declaratory and injunctive relief, restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

57. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and members of the Class are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

58. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each Subclass Member, of some of them, for the four (4) year period before the filing of this Complaint, and as the primary remedy during the fourth year before the filing of this Complaint. Business and Professions Code § 17205.

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SIXTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Pay Wages
(By Plaintiff and Aggrieved Employees against Each Defendant)

59. Plaintiff incorporates the preceding paragraphs of this Complaint.

60. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code § 1194(a).

61. “[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

62. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

63. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

64. Defendants failed to pay minimum, regular, and overtime wages during the during the applicable statutory period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

65. Defendants’ conduct violates the applicable Wage Order(s) by failing to pay minimum, regular, and overtime wages to employees. Plaintiff will also seek \$50 for the initial pay period an employee was underpaid, and \$100 for each subsequent violation.

SEVENTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Reimburse Necessary Business Expenses
(By Plaintiff and Aggrieved Employees against Each Defendant)**

66. Plaintiff incorporates the preceding paragraphs of this Complaint.

67. By failing to completely reimburse Plaintiff and other aggrieved employees, or some of them, for their business-related expenses, including personal cell phone, equipment, and uniform maintenance expenses, Defendants willfully violation Labor Code section 2802.

68. During the applicable statutory period, Defendants failed to reimburse business-related expenses. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). The amount of the applicable penalty will be proven at trial.

EIGHTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and Aggrieved Employees against Each Defendant)**

69. Plaintiff incorporates the preceding paragraphs of this Complaint.

70. Every employer must, semimonthly or at the time of each payment of wages, furnish each of its employees an accurate itemized statement in writing showing, among other things, total hours worked and the total number of hours worked and the number of hours worked at each corresponding rate of pay. Labor Code § 226(a).

71. Defendants willfully violated Section 226 by providing wage statements to employees that did not accurately reflect all required information, including total hours worked and the number of hours worked at each corresponding rate of pay.

72. Plaintiff will seek civil penalties of \$250 for the initial violation and \$1,000 for each subsequent violation. Labor Code § 226.3.

NINTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon Separation
(By Plaintiff and Aggrieved Employees against Each Defendant)**

73. Plaintiff incorporates the preceding paragraphs of this Complaint.

74. Employers must pay earned wages within certain times. Labor Code §§ 201-202. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code § 203.

75. Defendants willfully failed to pay Plaintiff and other aggrieved employees, or some of them, all final wages, including minimum, regular, and overtime wages, as required. Labor Code § 201-202.

76. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages as required. Labor Code § 203.

77. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

PRAYER FOR RELIEF

Plaintiff prays for the following relief on behalf of himself and the Class and aggrieved employees against Defendants:

1. Certification of this action as a class action and appointment of Plaintiff and Plaintiff's counsel to represent the Class;

2. Provision of class notice to members of the Class as defined above;

3. A declaratory judgment that Defendants knowingly and intentionally violated:

a. Labor Code sections 510 and 1194 by failing to pay wages;

b. Labor Code section 2802 by failing to completely reimburse necessary business-related expenses;

c. Labor Code section 226 by failing to provide accurate, itemized wage statements;

d. Labor Code section 203 by failing to pay waiting time penalties; and,

e. Business and Professions Code sections 17200, *et seq.* by engaging in unlawful or unfair business practices.

4. That Defendants be permanently enjoined from engaging in the unlawful or unfair acts and practices alleged;

5. An order requiring Defendants restore all amounts owed to Plaintiff and Class Members, according to proof, pursuant to Business and Professions Code section 17203;

6. For an award of unpaid wages, including regular wages, minimum, regular, and overtime wages to the extent permissible by law to each affected person;

1 7. For an award of liquidated damages to the extent permissible by Labor Code
2 section 1194.2;

3 8. For penalties incurred under Labor Code section 1197.1 for each underpaid
4 employee per pay period for which the employee was underpaid;

5 9. For penalties permitted pursuant to the Labor Code, and Orders of the Industrial
6 Welfare Commission including, but not limited to penalties under Labor Code section 226(e);

7 10. For the remedies provided by Labor Code section 233 including reasonable
8 attorneys' fees;

9 11. For pre- and post-judgment interest to the extent permitted by law including, but
10 not limited to, Labor Code sections 218.6 and 1194;

11 12. For reimbursement of all necessary expenses incurred in direct consequence of
12 the discharge of duties;

13 13. That this action be maintained as a PAGA Representative Action, and Plaintiff
14 and his counsel be provided with all enforcement capability as if the action were brought by the
15 California Division of Labor Standards Enforcement;

16 14. For recovery of all civil penalties permitted by Labor Code section 2699, for
17 unpaid minimum, regular, and overtime wages, according to proof;

18 15. For recovery of all civil penalties permitted by Labor Code section 2699, for
19 failing to reimburse all necessary business-related expenses, under Labor Code section 2802;

20 16. For recovery of civil penalties permitted by Labor Code section 2699, for
21 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
22 to proof;

23 17. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
24 failing to timely pay all final wages due pursuant to Labor Code sections 201-202;

25 18. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
26 failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

27 19. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to
28 aggrieved employees, subject to approval by the Court, pursuant to Labor Code section 2699(i);

COHELAN KHOURY & SINGER
D.LAW, INC.

Dated: October 13, 2023

By:

Michael D. Singer
Jeff Geraci

Counsel for Plaintiff DEREK RAYMOND WHITFIELD

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER

Dated: October 13, 2023

By:

Michael D. Singer
Jeff Geraci

Counsel for Plaintiff DEREK RAYMOND WHITFIELD