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Kern County Superior Court
By Julia Barrera, Deputy

10 *Attorney for Plaintiff and the Aggrieved Employees*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF KERN**

13 RUBEN ELVIRA NUVIEDO, individually,
14 and on behalf of all other aggrieved
15 employees,

16 Plaintiff,

17 v.

18 PETRISSANS DAIRY L.P., a California
19 limited partnership, JEAN PIERRE
20 PETRISSANS, an individual; and DOES 1
21 through 50, inclusive,

22 Defendants.

CASE NUMBER: BCV-24-101814

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 et seq.]

1 This is a representative action brought by Ruben Elvira Nuviedo, individually and on
2 behalf of all other aggrieved employees (“Plaintiff”), relating to systemic violations of California
3 wage and hour laws by his former employers Petrissans Dairy L.P. and Jean Pierre Petrissans, an
4 individual (“Defendants”). Plaintiff makes the following allegations on information and belief,
5 except as to allegations pertaining to Plaintiff individually, which are based on his personal
6 knowledge.

7 **INTRODUCTION**

8 1. Defendants implemented common policies and practices that have resulted in
9 systematic violations of California’s Labor Code and the applicable Industrial Welfare Commission
10 (“IWC”) Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this
11 representative action to recover civil penalties for the California Labor and Workforce
12 Development Agency (“LWDA”), himself, and all other aggrieved employees—i.e., non-exempt
13 employees who worked for Defendant in California during the statute of limitations period—
14 predicated on Defendant’s failure to provide legally compliant meal periods, rest breaks and
15 recovery periods and failure to provide compensation for missed and otherwise unlawful meal
16 periods, rest breaks and recovery periods, unpaid regular, overtime, and minimum wage
17 compensation, failure to timely pay wages, failure to pay all wages owed and due to discharged or
18 quitting non-exempt employees, failure to maintain required records, failure to provide accurate
19 itemized wage statements, and failure to reimburse for employment-related expenses.

20 2. Defendants operates one or more private, for-profit dairies located in Bakersfield,
21 California.

22 3. As a private, for-profit business, Defendants implemented common policies and
23 practices that resulted in systemic violations of California’s wage and hour laws. Defendants have
24 failed to implement adequate practices to protect the rights of their employees, particularly in
25 light the nature of its business, which is to maximize profits. Moreover, Defendants fail to ensure
26 compliance with California’s wage and hour laws.

27 4. For instance, Defendants have implemented unlawful written policies with respect
28 to meal and rest breaks. Defendants also requires its non-exempt employees, who are informed

1 that the needs of the businesses take top priority, to work through meal and rest breaks, to take
2 untimely meal periods and work through portions of their meal periods without being permitted
3 additional time to complete their meal periods. As a result, Plaintiff and other non-exempt
4 employees have been denied the ability to take the meal and rest breaks that they were and are
5 legally entitled to take.

6 5. Moreover, Defendants have uniformly failed to pay Plaintiff and other non-exempt
7 employees proper overtime wages due the fact that they fail to record the actual time worked by
8 Plaintiff and other non-exempt, hourly employees in favor of Defendants, they fail to calculate
9 the highest regular rate of pay based upon nondiscretionary bonus payments, and willfully turn a
10 blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct
11 consequence of Defendants' understaffing and imposition of an unreasonable amount of
12 workload.

13 **JURISDICTION AND VENUE**

14 6. The Superior Court of the State of California has jurisdiction in this matter because
15 Defendants are licensed to do business under the laws of the State of California and does business
16 in the State of California. No federal question is at issue because Plaintiff's claims are based solely
17 on California law.

18 7. Venue is proper in this judicial district and in Kern County because Defendants
19 maintains one or more dairies in Kern County and Plaintiff worked for Defendants at a location in
20 Bakersfield, California, a city located in Kern County. The other aggrieved employees also worked
21 for Defendants at their dairies located in Bakersfield, California.

22 **THE PARTIES**

23 8. Plaintiff resides in the State of California and is a former employee of Defendant.
24 At all relevant times herein, Plaintiff worked as a dairy hand milking cows, watering and
25 performing general labor duties at Defendants' dairies located in Bakersfield, California.

26 9. On information and belief, Defendant Petrissans Dairy, L.P., is, and at all times
27 relevant herein was, a limited partnership organized and existing under the laws of the State of
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1 California. On information and belief, Defendant Petrissans Dairy, L.P. is authorized to conduct
2 business in the State of California and does conduct business in the County of Kern.

3 10. On information and belief, Defendant Jean Pierre Petrissans is, and at all times
4 material herein was, a male resident and citizen of the State of California, and has been one of the
5 owners and operators of Petrissans Dairy, L.P. Defendant Jean Pierre Petrissans is jointly and
6 severally liable with the Petrissans Dairy, L.P. for the laws alleged to have been violated herein,
7 including, *inter alia*, violations of the California Labor Code, the California Business and
8 Professions Code, and the applicable Industrial Welfare Commission ("IWC") wage orders.

9 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
10 Plaintiff at this time and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
11 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
12 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
13 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
14 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint
15 to allege the true names and capacities of such DOE defendants when ascertained.

16 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
19 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
20 employer and/or joint employer of Plaintiff and the other aggrieved employees.

21 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
22 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, integrated
23 enterprise, proxy, managing agent, and/or principal of the co-Defendants, and in performing the
24 acts mentioned below was acting, at least in part, within the course and scope of that authority as
25 such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or
26 principal with the permission and consent of the above co-Defendants. Plaintiff also alleges that
27 the acts of each Defendant are legally attributable to the other Defendants.

28 14. Plaintiff is informed and believes, and based thereon alleges, that each of the

1 Defendants sued herein were, at all relevant times, the employer, owner, shareholder, principal,
2 joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining
3 Defendants, and were acting, at least in part, within the course and scope of such employment and
4 agency, with the express and implied permission, consent and knowledge, approval and/or
5 ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors,
6 aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts
7 described herein.

8 15. As a direct and proximate result of the unlawful actions of Defendants, Plaintiff and
9 the other aggrieved employees have suffered and continue to suffer penalties in amounts as yet
10 unascertained but subject to proof at trial and within the jurisdiction of this Court.

11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 16. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
13 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all
14 other aggrieved employees, e.g., current and former non-exempt employees of Defendants who
15 are California citizens and performed work for Defendants in the State of California at any time
16 within the period beginning one (1) year prior to the filing of the Complaint in this action, or as
17 otherwise permitted under PAGA, and ending at the time this action settles or proceeds to final
18 judgment (“statute of limitations period”).

19 17. On March 22, 2024, Plaintiff gave written notice by certified mail pursuant to
20 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
21 (“LWDA”) and Defendants, of the specific provisions of the California Labor Code and IWC
22 Wage Order alleged to have been violated, including the facts and theories to support the alleged
23 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
24 than sixty-five (65) days from the March 22, 2024, postmark date of his written notice before
25 filing this action, Plaintiff has complied with all of the requirements set forth in California Labor
26 Code § 2699.3 to commence a representative action under PAGA.

1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

4 18. During the statute of limitations period, as part of Defendants' illegal policies and
5 practices to minimize labor costs and maximize corporate profits, Defendants have required,
6 permitted or otherwise suffered Plaintiff and aggrieved employees to perform work during their
7 meal periods, to completely skip their meal periods, to take late and short meal periods, and
8 Defendants have otherwise failed to provide the required meal periods to Plaintiff and aggrieved
9 employees as required under California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable
10 IWC Order.

11 19. Defendants have implemented several practices that have caused Plaintiff and
12 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
13 Defendants systematically understaff its diaries such that its non-exempt employees are given so
14 much work to complete that they regularly miss or take non-compliant meal periods. As a direct
15 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to
16 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
17 take them after working longer than five (5) hours, to perform work during their meal periods, or
18 return to work after taking less than a thirty (30) minute meal period. Moreover, Plaintiff and the
19 other aggrieved employees were not allowed to take a second meal period after working longer
20 than ten (10) hours or more.

21 20. There are also frequently occasions when Plaintiff and aggrieved employees need
22 to perform other duties immediately before the time during which they are legally entitled to take
23 a meal period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply
24 drop their urgent job duties to take a meal period. Consequently, Plaintiff and aggrieved
25 employees regularly miss meal periods, take late meal periods, return early from meal periods,
26 and even clock out for meal periods but continue working.

27 21. Plaintiff and aggrieved employees need to first secure permission before taking a
28 meal period despite the fact they may be scheduled to take a meal period. However, Plaintiff and

1 aggrieved employees often cannot simply stop working and take their meal period, which often
2 causes them to regularly miss and otherwise take non-compliant meal periods.

3 22. Finally, plaintiff is informed and believes that Employer failed to maintain records
4 relating to meal periods taken and “auto-deducted” meal periods, Defendants created synthetic
5 meal period entries and/or round meal periods to make it appear that Plaintiff and the other
6 aggrieved employees were and are taking full, thirty (30) minute meal periods.

7 23. Despite the foregoing, Defendants have implemented a policy and practice of
8 actively discouraging the issuance of meal period premium payments, and in the process,
9 Defendants have also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage
10 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
11 failing to compensate Plaintiff and aggrieved employees who were not authorized and permitted
12 to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the
13 proper regular rate of pay for each workday that such a meal period was not authorized or
14 permitted.

15 **Failure to Provide Required Rest Breaks**

16 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

17 24. During the statute of limitations period, as part of Defendants’ illegal policies and
18 practices to minimize labor costs and maximize corporate profits, Defendants have failed to
19 authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under
20 California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

21 25. The same common policies and practices that deprive Plaintiff and other aggrieved
22 employees from taking their meal periods, as alleged herein, similarly deprive them of their
23 ability to take their first and second and third rest breaks. As alleged herein, Defendants
24 understaff its dairies creating so much work for Plaintiff and other aggrieved employees that they
25 are frequently unable to take rest breaks, or there is so much work to be performed in such a
26 limited amount of time Plaintiff and the other aggrieved employees are unable to take their rests
27 periods. Moreover, Plaintiff and other aggrieved employees need to secure permission before
28 taking a rest break, which is often denied by supervisors.

1 26. Defendants also violated California Labor Code § 226.7, § 12 of the applicable
2 IWC Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et*
3 *seq.*, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest
4 break, in accordance with the applicable wage order, one additional hour of compensation at the
5 proper regular rate of pay for each workday that a rest break was not provided.

6 **Failure to Provide Required Recovery Periods**

7 **[Cal. Lab. Code §§ 226.7; California Code of Regulations, Title 8, Section 3395]**

8 27. At all times relevant herein, as part of Defendants' illegal payroll policies and
9 practices to deprive its non-exempt employees of all wages earned and due, Defendants failed to
10 permit Plaintiff and the aggrieved employees to take recovery periods as required under Cal. Lab.
11 Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Defendants are required
12 to provide recovery or "cooldown" periods to non-exempt employees like Plaintiff and his
13 coworkers, who work outdoors performing manual labor, in order to prevent heat illness.

14 28. Plaintiff and the other aggrieved employees work outdoors, performing intense
15 manual labor outdoors. The work is performed over the course of many hours in temperatures
16 regularly exceeding 80 degrees Fahrenheit, and often up to 100 degrees Fahrenheit. Despite these
17 work conditions, Defendants failed to implement an adequate policy or practice of providing
18 recovery periods to its non-exempt employees. Defendants have similarly failed to make any
19 effort to comply with heat illness prevention regulations by providing places of shade for
20 recovery periods or by supplying sufficient amounts of drinking water. For example, there are
21 times when Defendants failed to provide Plaintiff and the other aggrieved employees with
22 drinking water during an entire workweek. As with meal and rest breaks, Defendants did not
23 provide Plaintiff and aggrieved employees with any written documents informing them of their
24 rights to take recovery periods, and thus they did not take them.

25 29. Defendants further violated Cal. Lab. Code §226.7, and the California Unfair
26 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to play Plaintiff and
27 aggrieved employees who were not provided with a recovery period, one additional hour of
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1 compensation at the proper regular rate of pay for each workday that a recovery period was not
2 provided.

3 **Failure to Pay Overtime Wages**

4 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

5 30. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
6 Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all
7 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
8 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
9 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
10 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
11 on the seventh consecutive day of work in any workweek.

12 31. Plaintiff and other aggrieved employees are current and former non-exempt
13 employees entitled to the protections of California Labor Code §§ 510, 1194, and § 3 of the
14 applicable IWC Order. During the statute of limitations period, Defendants failed to compensate
15 Plaintiff and other aggrieved employees for all overtime hours worked as required under the
16 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
17 methods: failing to pay overtime at one and one-half (1½) or double the regular rate of pay as
18 provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring,
19 permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to
20 work through meal and rest breaks, but not compensating them for this time, improperly
21 calculating the highest regular rate of pay based on nondiscretionary bonus payments, shift
22 differentials and other remuneration, illegally rounding the hours worked by Plaintiff and the
23 other aggrieved employees to the benefit of Defendants resulting in the underpayment of wages to
24 Plaintiff and the other aggrieved employees; and other methods to be discovered.

25 32. Defendants have knowingly and willfully refused to perform its obligations to
26 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
27 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.
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1 all wages earned for labor in excess of the normal work period shall be paid no later than the payday
2 of the next regular payroll period.

3 37. During the statute of limitations period, Defendants have knowingly and willfully
4 failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by
5 the next regular payroll period as required by California Labor Code § 204, including but not limited
6 to, compensation for missed meal and rest breaks, proper overtime wages due to an unlawful
7 calculation of the regular rate of pay, and for work performed off-the-clock.

8 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

9 **[Cal. Lab. Code §§ 201 - 203]**

10 38. Pursuant to California Labor Code § 201, 202 and 203, Defendants are required to
11 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
12 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
13 at the time of discharge are due and payable immediately.

14 39. Furthermore, pursuant to California Labor Code § 202, Defendants are required to
15 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or
16 her employment, unless the employee provided 72 hours previous notice of his or her intention to
17 quit, in which case the employee is entitled to his or wages at the time of quitting.

18 40. California Labor Code § 203 provides that if an employer willfully fails to pay, in
19 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or
20 who quits, the employers is liable for waiting time penalties in the form of continued
21 compensation to the employee at the same rate for up to 30 workdays.

22 41. During the statute of limitations period, Defendants have willfully failed to pay
23 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
24 with California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide
25 Plaintiff and other aggrieved employees with their final paychecks within the timeframes required
26 under California law. In addition, because Defendants have failed and continue to fail to properly
27 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime
28 wages, and compensation for non-compliant meal and rest breaks, Defendants have also willfully

1 failed and continues to fail to pay accrued wages and other compensation to Plaintiff and other
2 aggrieved employees in accordance with California Labor Code §§ 201 and 202.

3 **Failure to Maintain Required Records**

4 **[Cal. Lab. Code §§ 226(a), 1174(d); § 7 of the Applicable IWC Wage Order]**

5 42. During the statute of limitations period, as part of Defendants' illegal payroll
6 policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and
7 due, Defendants knowingly and intentionally failed to maintain records as required under
8 California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but
9 not limited to the following records: total daily hours worked by each employee; applicable rates
10 of pay; all deductions; hours worked; meal periods; applicable rates of pay based upon
11 nondiscretionary bonus payments; time records showing when each employee begins and ends
12 each work period; and accurate itemized statements. Defendants have knowledge that it was not
13 providing its non-exempt employees with proper meal and rest periods, but knowingly failed to
14 include in the wage statements one (1) extra hour of compensation for each missed meal and rest
15 period. Defendants also illegally and inaccurately recorded and rounded the time in which
16 Plaintiff and other aggrieved employees worked. Defendants has also failed to maintain accurate,
17 itemized wage statements, and other violations of the California Labor Code which have not been
18 discovered.

19 **Failure to Furnish Accurate Itemized Wage Statements**

20 **[Cal. Lab. Code § 226(a), § 7 of the Applicable IWC Wage Order]**

21 43. During the statute of limitations period, Defendants have routinely failed to provide
22 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
23 Defendants' pay stubs violate Labor Code § 226 on their face by, among other things, not providing
24 Plaintiff and other aggrieved employees with proper meal periods and rest breaks but failing to
25 include in their wage statements one (1) additional hour of compensation at their regular rates of
26 pay for each non-compliant meal period, rest break and recovery periods. Defendants also failed to
27 list all hours worked and wages due as a result of its illegal rounding policy or by compensating
28 Plaintiff and the other aggrieved employees based upon their work schedules instead of for all hours

1 actually worked.

2 44. In order to conceal its wage theft, Defendants knowingly and intentionally failed to
3 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
4 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

5 45. Plaintiff and other aggrieved employees suffered injury as a result of Defendants'
6 failure to provide timely and accurate itemized wage statements, which prevented them from
7 discovering the scope and extent of Defendants' violations of California wage and hour laws,
8 prevented them from being able to determine the gross wages earned, the total hours worked, all
9 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period
10 and the corresponding number of hours worked at each hourly rate, and other violations yet to be
11 discovered.

12 **Failure to Indemnify Employees for Necessary Expenditures**

13 **Incurred in Discharge of Duties**

14 **[Cal. Lab. Code § 2802]**

15 46. California Labor Code § 2802(a) requires an employer to indemnify an employee
16 for all necessary expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties, or of his or her obedience to the directions of the employer.

18 47. During the statute of limitations period, Defendants required Plaintiff and other
19 aggrieved employees to indemnify them for usage of their personal cellular phones, mileage and
20 other unreimbursed expenses, in violation of California Labor Code §2802 and the applicable IWC
21 Wage Order and pertinent sections. This practice also resulted in gross underpayment of Plaintiff's
22 and other aggrieved employees' actual gas/mileage expenditures.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

25 **[Cal. Lab. Code § 2698, *et seq.*]**

26 ***(Against all Defendants)***

27 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 47.

49. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendants and one or more of the alleged California Labor Code violations was committed against Plaintiff during the statute of limitations period.

50. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties under the PAGA, for Defendants' violations of the provisions of the California Labor Code and IWC Wage Order alleged herein.

51. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

52. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the State of California, prays for relief against Defendant as follows:

1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
3. For such further relief that the Court may deem just and proper.

DATED: May 31, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By:

Scott E. Wheeler

Justin A. Wheeler