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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

STEPHEN PHILLIPS,

Plaintiff,

v.

**NEWBERG-DUNDEE PUBLIC
SCHOOL 29J**, a local government of the
State of Oregon

Defendant.

Case No. 24CV46320

COMPLAINT

Demand for Jury Trial

Not Subject to Mandatory Arbitration

Fee Authority: ORS 21.160(1)(d)

Fee Amount: \$884.00

Prayer Amount: \$2,500,000.00

Nature of Action

1.

Plaintiff is bringing this action for declaration of rights, status, and other legal relations under his contract of employment with Defendant pursuant to ORS 28.010 *et seq.*, together with injunctive relief. Additionally, he is asserting claims for breach of his contract, including but not limited to, the covenant of good faith and fair dealing implied in every contract in Oregon.

1 **Jurisdiction and Venue**

2 2.

3 Jurisdiction and venue are proper because Plaintiff and Defendant are domiciled in
4 Yamhill County and the contract at issue and all relevant events occurred in Yamhill County.

5 **Parties**

6 3.

7 Plaintiff Dr. Stephen Phillips is an individual Oregonian and resident of Yamhill
8 County. At all times material he has been employed Superintendent of Defendant Newberg-
9 Dundee Public Schools 29J.
10

11 4.

12 Defendant Newberg-Dundee Publich Schools 29J is a school district duly constituted
13 and existing under the laws of the State of Oregon and Yamhill County, Oregon. It is governed
14 by a seven-person board of directors.

15 **Allegations Common to All Claims**

16 5.

17 Plaintiff has been employed in the field of education for twenty-five years. He has
18 entered and remained in this field because it is meaningful work that enables him to make a
19 positive difference by helping set conditions to enable all children to realize their potential and
20 succeed.
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6.

During the 2021-2022 school year, Defendant and the greater Newberg-Dundee community were navigating the disruption and uncertainty of the COVID pandemic. Political tensions were high, and both the school district and the community were a state of conflict. In November of 2021, the conflict heightened when Defendant's school board terminated its superintendent without cause on a divided 4-3 vote.

7.

The termination of the prior superintendent was highly controversial with Defendant's staff and caused the political and other conflicts occurring at the school board and community level to become more acute for staff members and resulted in a substantial number leaving the District or make plans to do so.

8.

In May of 2022, Plaintiff was selected to serve as Defendant's superintendent pursuant to a divided 5-2 vote of the school board. He began work May 25, 2022 pursuant to a short-term contract. Thereafter, he was employed pursuant to written three-year employment contract commencing July 1, 2022.

9.

By any measure, the beginning of Plaintiff's employment was challenging. Upon arriving at the district, the political division within the Defendant's staff and community was immediately apparent. Roughly half of the community and most of the teachers' union politically identifying as "liberal" were extremely distrustful of Plaintiff from the outset

1 because the “conservative” school board had hired him. In fact, following the prior
2 superintendent’s termination, many “liberal” staff members assumed, incorrectly, that Plaintiff
3 would be targeting them. Meanwhile, the other half of the community that identified as
4 “conservative” really supported the Board and was therefore welcoming of Plaintiff and his
5 staff by extension.

6
7 10.

8 From the outset of his employment, Plaintiff focused energy on meeting as many
9 community members and leaders as possible to try and bring people together and find common
10 ground. However, “liberal” community and staff members opposed to the “conservative”
11 school board majority consistently attended meetings to bring up old “wrongs” and criticize
12 Plaintiff and his team.

13 11.

14 Meanwhile, a “liberal” faction of staff upset with school board because of the
15 termination of the prior superintendent refused to let go of highly charged LGBTQ issues that
16 arose before Plaintiff’s arrival. Although Plaintiff attempted to be responsive to these concerns,
17 the faction could not be satisfied and filed a complaint against him and his deputy
18 superintendent Scott Linenberger. An outside investigator, Renee Starr, was engaged to
19 investigate the complaints. The Starr report concluded that neither Plaintiff nor Mr.
20 Linenberger broke any policy, or law, or engaged in discrimination. Despite this, the two
21 “liberal” members of the school board still wanted Plaintiff terminated.
22
23

12.

1
2 In the fall of 2022, Plaintiff organized an initiative to bring a group of community
3 leaders together as sort of a “think tank” to develop ideas on how to bring the community back
4 together. In addition to Plaintiff, the group had eight members consisting of four individuals
5 who identified as “conservative,” and four individuals who identified as “liberal.” The group
6 met monthly to discuss the schools, perceptions of how things were going, and to suggest
7 improvements in areas where it was believed Defendant could do better. The group also
8 specifically discussed past conflicts and how to move forward from these past conflicts. The
9 group met about eight times throughout the school year and had many great conversations
10 about setting aside conflicts, moving Defendant forward, and putting all kids first.
11

12
13 13.

14 In the fall of 2023, after the original “think tank” group disbanded, Plaintiff invited
15 eight (8) more community members to meet with him to engage in conversations focused on
16 healing and moving Defendant and the larger community forward. These meetings were
17 attended by the local Chief of Police, a Parks and Recreation administrator, the President of
18 the teachers’ union, a local pastor, a candidate for county commissioner, a city council
19 member, and other leaders. Members of this group were split fairly evenly along ideological
20 lines and engaged in brainstorming on how to improve the schools and encouraging the
21 community to focus on finding common ground to work towards a better community, rather
22 than continuing to dwell on past conflicts. The group even began drafting a letter to send to
23 the whole community, letter to the editor style, challenging community members to engage

1 with one another more positively, rather than perpetuating conflicts with tribal and isolated
2 thinking. Although this group only met twice and the idea of the letter only went a draft or two
3 before falling by the wayside, it is representative of the types of efforts Plaintiff consistently
4 engaged in to try and bring the district and larger community together following his hire.

5
6 14.

7 The central theme Plaintiff advocated while working to heal divisions and bring the
8 school and community together was that while there may be certain hot button issue people in
9 Newberg will never agree on, the one topic everyone should be able to agree on is core
10 educational principals and student achievement. Regardless of how conservative or liberal
11 people might be, everyone wants their children to excel in the core academic areas. Therefore,
12 parents, staff, the larger community, and the Board should all be able to work together in
13 helping *all* kids do their best and focusing on achievement in areas such as reading, writing,
14 science, and math.

15
16 15.

17 In May of 2023, a slate of five “liberal” candidates successfully ran for office and
18 replaced all but two of the “conservative” members on Defendant’s school board. Ironically,
19 the campaign messaging of the new board members substantially aligned with Plaintiff’s
20 message that Defendant needed to be focusing on core education and helping *all* children
21 succeed. Another campaign message of the newly elected board members was that they did
22 not intend to terminate the superintendent if they were elected.

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16.

The new elected school board members took office July 1, 2023. Since five of the board members were new and the two incumbents only had two years of experience, Plaintiff facilitated having the Oregon School Board Association (“OSBA”) conduct a board training session in the summer of 2023.

17.

Although the situation was stressful, Plaintiff enjoyed trying to bring the community together and was increasingly invested in that effort. Based on the new school board’s public assurance that Plaintiff’s employment was safe, the fact that the outgoing school board had provided him with strong job protections in his contract, and his sense that things were improving at the district, Plaintiff and his wife bought a house in the community in August of 2023.

18.

Although the newly constituted board publicly stated they did not want to replace Plaintiff as Superintendent, there were some contrary indications behind the scenes. While he was not contemporaneously aware of it, Plaintiff has since learned that some members of the school board wanted to terminate Plaintiff because of complaints surrounding his response to the LGBTQ related conflicts that had arisen prior to his arrive, even though the third-party Starr report had cleared him. Apparently, some members also wanted to terminate Plaintiff in response to media reports that Plaintiff and multiple other former employees were named in a

1 high-profile lawsuit against his prior employer, the Jewell School District, without any regard
2 for the facts of that case.

3 19.

4 On November 14, 2023, the district met in executive session to begin the evaluation
5 process. The feedback that Plaintiff received was positive and few suggestions were offered
6 on what to do better. In the public meeting session that followed, the Board approved certain
7 agreements regarding the functional relationship between the Superintendent and the Board.
8 Plaintiff was somewhat surprised by the overwhelming positive nature of the feedback he
9 received and received it as another indication that things were improving.
10

11 20.

12 On January 9, 2024, Plaintiff's employment contract was publicly brought up a school
13 board meeting. The Board expressed concerns that the contract was too "rich" and they wanted
14 to "fix" it. During the meeting, the school board chair, Nancy Woodward, made a motion to
15 non-renew the contract so that it ended on June 30, 2026. The motion died on a 3-3-1 vote with
16 one member abstaining. The Board then delegated authority to two board members to work
17 with Plaintiff on a new contract that would be more favorable to the Defendant.
18

19 21.

20 Plaintiff was not required to renegotiate his contract with Defendant. However, he knew
21 his existing contract was favorable to him, he wanted to make things work with the new board,
22 and he had consistently been reassured by members of the new board that they were happy
23 with his performance and did not want to terminate him. Therefore, he agreed to enter a new

1 contract that was more favorable to the District and the board approved it on February 13,
2 2024.

3 22.

4 At its March 12, 2024 meeting, the school board accepted Plaintiff's recommendation
5 to non-renew a third-year probationary teacher who happened to married to school board
6 member Jeremy Hayden. Although Mr. Hayden was a challenging board member to work with
7 from the outset, his behavior became substantially worse following this event. After this event,
8 Mr. Haden was negative and accusatory in board meetings and email communications. He
9 directly criticized Plaintiff in open session as well as principals who were hired while Plaintiff
10 was superintendent. His behavior was so bad that both principals were worried about their
11 jobs. Although the entire administrative staff considered writing the board a letter to complain
12 about his behavior, they ultimately chose not to do so for fear of retaliation.

14 23.

15 During the spring of 2024, Defendant was working to prepare its next annual budget.
16 At all monthly school board meetings, Defendant's business manager was on the agenda to
17 present to the school board on the budget. During these presentations, the business manager
18 would explain where Defendant was financially at in its budget cycle using print outs from the
19 budget software system. She would also answer questions to the school board's satisfaction.
20 The business manager also invited all board members to sit down with her at their convenience
21 to learn more about the budget and how it works. At this time, the Defendant had two very
22 clean audits from Polly Rogers, and a bond management firm coming to meetings and writing
23

1 letters complimenting the budget manager and her team. From every vantage point, the
2 financial situation appeared to be in good hands and good order.

3
4 24.

5 On May 14, 2024, the business manager informed the board of new concerns regarding
6 the budget and a substantial shortfall. She indicated that more work would need to be done.
7 Plaintiff then directed that Oregon Association of Business Officials (“OASBO”) be contacted,
8 which in turn agreed to have Jackie Olson come in immediately to help sort out the budget
9 issues. Additionally, Plaintiff and the business team began meeting weekly with the school
10 board to provide it with new information as it came in.

11 25.

12 Like the school board, Plaintiff had reasonably relied on information from the business
13 manager regarding the budget and did not know there was a crisis until shortly before the board
14 was informed at the meeting in May. In fact, Defendant’s budget manager has stated in writing
15 that Plaintiff did not have prior knowledge of the budget shortfall and could not have.

16 26.

17 At a school board budget meeting on May 21, 2024, the school board read a statement
18 blaming Plaintiff for the budget situation. Although Plaintiff told members of the school board
19 the statement was not fair or accurate, they proceeded to issue their preferred statement
20 anyway, thereby publicly casting Plaintiff in a false light.
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27.

On or about this same time, Plaintiff met with the school board leadership regarding his future in Newberg letting them know that it was clear from their tone and lack of support that they did not want him to lead the district. During these meetings Plaintiff outlined three available options under his contract: (1) support him as superintendent and work through the situation to support kids even though the school board plainly did not want to do so, (2) attempt to fire him for cause, or (3) terminate him without cause. During these meetings, Plaintiff made clear that his preference was option one (1) and that he did not believe Defendant had any cause to terminate him. However, if the school board really wanted him gone, he would be willing to negotiate a separation agreement to provide for a smooth transition to new leadership and avoid the reputational damage that would result from a no cause termination.

28.

On or about May 29, 2024, students staged a walk-out protest regarding Defendant's budget crisis, calling for Plaintiff's termination. Defendant's school board member, Jeremy Hayden, joined the students in their protest. The following day, on May 30, 2024, at public school board meeting, board member Jeremy Hayden publicly attacked Plaintiff in open session about not taking responsibility for the budget and never owning his faults – contrary to longstanding custom, practice, and usage, as well as district policy such as BDDH.

29.

By June 10, 2024 the stress of the situation was adversely affecting Plaintiff's health. Therefore that afternoon he met with deputy Superintendent Scott Linenberger and Tabitha

1 Renee, the school board's secretary, to inform them he was going out on medical leave and
2 appoint Mr. Linenberger to perform his duties while he was away pursuant to Defendant's
3 policy CI.

4 30.

5 Later in the afternoon on June 10, 2024, Plaintiff also informed school board chair
6 Nancy Woodward, at a meeting where Tabitha Renee was also present, that he would be going
7 out on medical leave and that deputy superintendent Scott Linenberger would assume his
8 duties while he was on leave as per Defendant's policy CI. There was a budget committee
9 meeting schedule for that evening that Plaintiff intended to attend, but Ms. Renee convinced
10 him he needed to go home immediately because he wasn't well and she informed Chair
11 Woodward that Plaintiff was not going to attend meeting. Chair Woodward indicated this was
12 fine, and at her direction, deputy Superintendent Linenberger wrote the board an email
13 informing them Plaintiff was going on medical leave and proceeded to run the budget
14 committee that night.
15

16 31.

17 On June 11, 2024, Defendant's school board met in regular session and announced
18 that Plaintiff was on medical leave. Although Plaintiff had appointed Mr. Linenberger to
19 serve as interim superintendent while Plaintiff was on leave in accordance with policy CI,
20 the school board announced at the meeting that they needed an interim superintendent, and
21 that former superintendent Dr. Paula Radich, who had financially supported the political
22
23

1 campaigns of the newly elected board members, would be serving as the interim in a
2 volunteer capacity.

3 32.

4 The following day, June 12, 2024, Dr. Radich reported to work as interim
5 superintendent. Days later, at Dr. Radich’s direction, the board secretary Tabitha Renee
6 reached out to Plaintiff asking him clean out his office and return his keys. Plaintiff was
7 only on medical leave and planning to return. Additionally, he was not a subordinate to Dr.
8 Radich. Therefore, he declined the request. However, the fact that Defendant was making
9 this request clearly communicated to Plaintiff that he had already been constructively
10 discharged by Defendant.
11

12 33.

13 Subsequently, Defendant engaged an attorney to develop evidence that would establish
14 proper grounds to terminate Plaintiff’s employment for cause. On July 3, 2024, while on
15 medical leave, Plaintiff participated in a zoom interview with Defendant’s attorney, Kyle
16 Abraham. The investigation was not conducted for the purpose of impartially ascertaining facts
17 in response to a specific complaint, but rather, was a fishing expedition to establish grounds to
18 support “for cause” termination. In fact, none of the witnesses Plaintiff identified as having
19 first-hand accounts of relevant events involving the budget, such as Defendant’s business
20 manager, have been interviewed by Defendant.
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1 34.

2 Weeks later, on July 29, 2024, Defendant’s school board voted in open session to
3 provide the requisite one-year notice that it was terminating Plaintiff’s employment *without*
4 *cause* pursuant to Article 10(c) of his employment contract. At the meeting and in a subsequent
5 written communication to Plaintiff, Defendant also indicated that upon his return from medical
6 leave he should report to the interim superintendent, Dr. Paula Radich, who would give him
7 an unspecified job assignment other than superintendent, which would be menial. Following
8 the meeting, school board member Deb Bridges, was overheard laughing with constituents in
9 the board room about how Plaintiff was going to return from leave and find himself the highest
10 paid custodian in the state. During this meeting, the school board member Nancy Woodward
11 expressly stated in open session that Defendant was still looking for a way to terminate Plaintiff
12 for cause.

14 35.

15 The following day, Plaintiff received written notice pursuant to Section 10(c) of his
16 contract that he was being terminated without cause and directing him to report to Dr.
17 Radich, the interim superintendent, for a new work assignment upon his return from medical
18 leave. The written notice also acknowledged that Defendant is still seeking to find grounds to
19 terminate Plaintiff for cause and reserves the right to do so if cause can be established.

21 36.

22 At a meeting of Defendant’s school board on August 27, 2024, the board approved a
23 motion on a 4-2 vote that member James Wolfer work with attorney Kyle Abraham to

1 negotiate a separation agreement with Plaintiff. Plaintiff has not been contacted directly, or
2 through his attorney, by Mr. Wolfer or Kyle Abraham since this motion was approved. This is
3 because Defendant is still undertaking efforts to find a basis for terminating Plaintiff a second
4 time for cause even though his contract has already been terminated without recourse.

5
6 37.

7 Plaintiff's contract of employment with Defendant states in Article 8 that:

8 If at any time in the opinion of the majority of the School Board,
9 the Superintendent's services are unsatisfactory, he shall be
10 notified in writing and given a reasonable opportunity to correct
11 the condition.

12 Plaintiff never received any such notice from Defendant's school board before being
13 terminated without cause.

14 38.

15 Article 10(c) of Plaintiff's contract requires Defendant to pay Plaintiff for 12 months
16 after giving Plaintiff notice of no-cause termination on July 30, 2023. Although this provision
17 grants Defendant discretion to decide whether Plaintiff continues to work as superintendent
18 during the notice period, it does not authorize Defendant to reassign Plaintiff to work in a
19 position within the district other than superintendent. Yet not only does Defendant's school
20 board seek to require Plaintiff to return to work in a non-superintendent role, but they have
21 also intimated to others they plan to require Plaintiff to work in a non-administrative role for
22 the 12-month notice period.
23

1 39.

2 Article 10(c) of Plaintiff's contract provides that once notice of no-cause termination is
3 given under that section, the contract is terminated "without recourse." Therefore, once notice
4 of termination is given, Defendant cannot seek to deprive Plaintiff of the benefits he receives
5 in the event of no-cause termination by terminating Plaintiff a second time for cause. However,
6 Defendant nevertheless seeks to deprive Plaintiff of the financial benefits he is entitled to under
7 Article 10(c) by terminating him a second time "for cause."
8

9 40.

10 Article 10(c) provides that Plaintiff shall be available to serve Defendant as a consultant
11 for an additional 12-months after the 12-month notice of non-cause termination expires.
12 However, Defendant seeks to deprive Plaintiff of this bargained for benefit of his contract.

13 **FIRST CLAIM FOR RELIEF**

14 **(Declaratory Judgment)**

15 41.

16 Plaintiff re-alleges paragraphs 1-40 herein.

17 42.

18 A current controversy exists between Plaintiff and Defendant regarding their respective
19 rights, status, and other relations under the terms of Plaintiff's employment contract.
20

21 43.

22 Pursuant to ORS 28.010 *et seq*, Plaintiff is entitled to a declaration of:
23

- 1 A. Whether Plaintiff's contract grants Defendant authority to require Plaintiff to
2 work in a position other than superintendent in the 12-months following
3 Defendant's notice of no-cause termination pursuant to Article 10(c).
- 4 B. Whether Plaintiff's contract grants Defendant authority to terminate Plaintiff a
5 second time "for cause" pursuant to Article 10(b) after it has already provided
6 notice that it is terminating Plaintiff for "no cause" pursuant to Article 10(c)
7 and such termination is "without recourse."
- 8 C. Whether Defendant has breached the implied covenant of good faith and fair
9 dealing through the actions alleged herein, which are aimed at depriving
10 Plaintiff of the financial benefits he is entitled to receive in the event of no-
11 cause termination under Article 10(c) of his employment contract.

12
13 44.

14 The court should declare:

- 15 A. Plaintiff has not agreed to work for Defendant in a position other than
16 Superintendent in the 12-month period following Defendant's notice of no-cause
17 termination pursuant to Article 10(c) and therefore Defendant lacks authority to
18 reassign him to a different job.
- 19 B. Defendant terminated Plaintiff pursuant to Article 10(c) "without recourse" and
20 therefore lacks authority to terminate Plaintiff a second time for cause pursuant to
21 Article 10(b).
- 22
23

1 45.

2 Pursuant to ORS 28.080, Plaintiff is entitled to further supplemental relief, including
3 but not limited to injunctive relief, based on the declarations herein to the extent the court
4 determines such relief is just and proper.

5 46.

6 Pursuant to ORS 28.100, Plaintiff is entitled an award of his costs and disbursements
7 herein.

8
9 **SECOND CLAIM FOR RELIEF**
10 **(Breach of Implied Covenant of Good Faith)**

11 47.

12 Plaintiff re-alleges paragraphs 1-40 herein.

13 48.

14 As a matter of law, a covenant of good faith and fair dealing is implied in the written
15 employment contract between Plaintiff and Defendant.

16 49.

17 Defendant has breached the covenant of good faith and fair dealing implied in
18 Plaintiff's employment contract by taking the actions alleged herein, which are designed and
19 having the effect of destroying or injuring Plaintiff's reasonable expectations and rights to
20 receive the fruits of his contract. These actions include, but are not limited to:

- 21 A. Publicly blaming Plaintiff for Defendant's budget crisis to prevent the blame from
22 falling on Defendant's school board.
23

- 1 B. Conducting executive sessions to discuss Plaintiff's performance and
2 complaints/criticisms regarding the same, including but not limited to an executive
3 session on July 29, 2024, without properly noticing it under ORS 192.660(b) or (i)
4 and providing the notice to Plaintiff required by OAR 199-040-0030.
- 5 C. Failing to provide Plaintiff with written notice that a majority of the board was
6 dissatisfied with his performance and giving him reasonable opportunity to improve
7 as required by Article 8 of his contract before terminating his employment without
8 cause pursuant to Article 10(c).
- 9 D. Threatening to make Plaintiff work in a position other than that of Superintendent
10 following his return from medical leave after terminating his employment without
11 cause pursuant to Article 10(c).
- 12 E. Initiating an investigation and using public resources to try and find grounds to
13 terminate Plaintiff's employment and threatening to terminate Plaintiff's
14 employment a second time for cause pursuant to Article 10(b) after it had already
15 provided notice that it was terminating Plaintiff's employment without cause and
16 without recourse pursuant to Article 10(c).
- 17 F. Attempting to make it intolerable for Plaintiff to consult with Defendant from July
18 30, 2025 through July 30, 2026 pursuant to Article 10(c) of his contract and receive
19 the corresponding financial consideration the parties mutually agreed he would
20 receive for doing so.
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50.

Defendant's breaches of the implied covenant of good faith and fair dealing have foreseeably and proximately caused Plaintiff damage to his reputation, lost opportunities for other employment, loss of sick leave, impaired Plaintiff's ability to perform his duties under his contract, and threatens to deprive Plaintiff of the remuneration he is entitled to under the terms of his contract.

51.

In the event the Court determines damages would not be a complete and adequate remedy, Plaintiff is entitled to order and judgment declaring Defendant's obligations to Plaintiff under Article 10(c) and the other terms of Plaintiff's contract and compelling Defendant to specifically perform those obligations.

52.

To the extent the Court determines specific performance is unavailable because damages provide a complete and adequate remedy, Plaintiff is entitled to an award of damages from Plaintiff in an amount to be proven at trial, which shall not exceed \$2.5 million.

53.

Plaintiff is entitled to a prevailing party fee and award of his costs and disbursements herein.

WHEREFORE Plaintiff prays for order and judgment as follows:

1. Upon his First Claim for Relief, a declaration of the parties rights, status, and other legal relations under the contract of employment between Plaintiff and Defendant that is

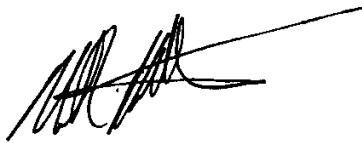
1 consistent with the declaration requested in paragraph 43 of this complaint together
2 with further supplemental relief.

- 3 2. Upon his Second Claim for Relief, order and judgment requiring Defendant to
4 specifically perform its financial obligations to Plaintiff under his contract or,
5 alternatively, awarding Plaintiff damages in an amount proven at trial that does not
6 exceed \$2.5 million.
- 7 3. Designation of Plaintiff as the prevailing party and award of his costs and
8 disbursements herein on both claims for relief.
- 9 4. Further supplemental relief the court determines is just and proper in all the
10 circumstances, or which is subsequently petitioned for by Plaintiff.
- 11 5. Any additional equitable belief the court determines is just and proper.

12 DATED this 24th day of September, 2024

13
14 Respectfully submitted

15 **RIETMANN & KIM, LLP**

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18
19 _____
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