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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

ERIC WEAVER, an individual,

Plaintiff,

vs.

RON GREGORY, individually and as
Acting Chief of Police for Warm Springs
Police Department, CARMEN SMITH,
individually and as Public Safety
Manager for Confederated Tribes of
Warm Springs, ALYSSA MACY,
individually and as Chief Operation
Officer for Confederated Tribes of Warm
Springs.

Defendants.

Case No.

COMPLAINT

(Civil Rights 1st Amendment/14th Amendment,
Whistleblower retaliation, IIED)

42 U.S.C. § 1983
ORS 659A.199

Damages at least \$1,000,000 or an amount to be
proven at trial

JURY TRIAL DEMANDED

INTRODUCTORY STATEMENT

1. This action is filed by Plaintiff under 42 U.S.C § 1983 and ORS Chapter 659A for events from 2018 to the present, alleging violations of the First and Fourteenth Amendments of the United

States Constitution, retaliation for participation in protected activities, violations of the state whistleblower protections under ORS Chapter 659A, and intentional infliction of emotional distress.

2. This Court has jurisdiction over Plaintiff's claims of violations of Federal Constitutional Rights under 28 U.S.C. §§ 1331 and 1343.
3. Venue is proper under 28 U.S.C. § 1391(b), in that one or more of the defendants reside in the District of Oregon and Plaintiff's claims for relief arose in this district.
4. The Confederated Tribes of the Warm Springs has enacted Tribal Code in compliance with the 2011 SB 412 passed by the Oregon Legislature and enrolled into law. The Warm Springs Tribal Code (WSTC) Section 390.130 authorizes "tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants, and employees." WSTC 205.001 provides the "Tribes, its subordinate organization, enterprises, officer, agents, servants and employees may be sued in the Warm Springs Tribal Court or other court of competent jurisdiction" when authorized by federal or tribal law. This court is a court of competent jurisdiction.
5. On or about September 25, 2019 Plaintiff caused a tort claim notice, pursuant to ORS 30.25, to be served in compliance with WSTC 205.006.

PARTIES

6. At all material times, ERIC WEAVER ("Plaintiff") is a citizen of the United States and a resident of Deschutes County, Oregon. At all times material, Plaintiff worked for Defendants at Warm Springs Police Department (the "Department"), a department of the Confederated Tribes of the Warm Springs.
7. At all material times, RON GREGORY ("Defendant GREGORY") was the Acting Chief of

Police for Warm Springs Police Department. Defendant GREGORY was the final policy maker for the Warm Springs Police Department. Defendant GREGORY is sued in his individual and official capacity.

8. At all material times, CARMEN SMITH (“Defendant SMITH”) was the Manager of Public Safety for the Confederated Tribes of Warm Springs (“Warm Springs”). Defendant SMITH is sued in his individual and official capacity.
9. At all material times, Defendant ALYSSA MACY (“Defendant MACY”) was the Chief Operations Officer for Warm Springs. Defendant MACY is sued in her individual and official capacity.
10. All Defendants acted under the color of state and federal law on behalf of Warm Springs at all times relevant to this Complaint.
11. Plaintiff is entitled to an award of attorneys’ fees and costs, pursuant to 42 U.S.C. § 1988.

FACTUAL ALLEGATIONS

12. Plaintiff was a public safety officer for the Warm Springs Police Department from April 5, 2016 until he was terminated on September 11, 2019. Plaintiff is not a member of the Tribe and does not reside on the Tribal land.
13. Plaintiff, during his employment and at all times material, was a tribal police officer pursuant to ORS 181A.680 to ORS 181A.692.
14. Beginning in 2018 Plaintiff began to note discrimination and harassment by management and his fellow officers. The behavior noted by Plaintiff was sexual, racial, and derogatory comments, offensive or unwanted touching, and other conduct in violation of WSTC, Oregon State Statutes, and Warm Springs Police Department Policy.

15. Plaintiff witnessed behavior including, but not limited to, sexual harassment both verbal and in the form of dildos being thrown at him and other officers in the station; one officer stated he would engage in sex with the Plaintiff's wife and engaged in similar verbal behavior including direct confrontations with other officers' spouses, racially derogatory language such as degrading references to Indian culture; Plaintiff was mocked for his learning disability including supervisors making statements such as "what are you, retarded", "you're handicapped" and he was denied a promotion expressly because of his dyslexia. Plaintiff and other officers were routinely exposed to pornographic images in the workplace.
16. Plaintiff verbally reported this conduct to multiple supervisors in his chain of command. Plaintiff's complaints were passed onto Defendant Gregory.
17. On or about January 1, 2019, Defendants SMITH and GREGORY called a Department-wide meeting. Defendants GREGORY and SMITH addressed the entire department; however, they singled out Plaintiff by staring at him repeatedly throughout the meeting. The Defendants told the Department they all needed to "grow up" and to "not worry about the little things." Plaintiff did not believe sexual and racial harassment were little things. Defendant GREGORY further stated, "someone does not need to be sending emails to our chain of command", or words substantially similar.
18. Plaintiff further attempted to report the misconduct to Defendant MACY. Plaintiff sent Defendant MACY three emails between January 2018 and July 8, 2019. Plaintiff received no response from Defendant MACY, nor did she take any remedial action.
19. On or about November 2018, acting Sergeant Scott Lane insisted Sgt. Chase put a written reprimand in Plaintiff's file for conduct for which Plaintiff was denied notice and opportunity

to address. Plaintiff was never provided with the details of this “write up” from his chain of command. On information and belief, this was retaliation for the disclosures alleged herein.

20. On or about July 6, 2019, Plaintiff was involved in a service call which involved a use of force. This incident was reviewed by Sergeant Josh Keyes and Officer Andrew Coffee and reported to management as a potential excessive use of force. On information and belief, this incident was reported in retaliation for one or more disclosures made by Plaintiff and described in this complaint.
21. On or about July 13, 2019, Plaintiff was involved in a service call which involved a use of force. This incident was reviewed by Sergeant Josh Keyes and Officer Andrew Coffee and reported to management as a potential excessive use of force. On information and belief this incident was reported in retaliation for one or more disclosures made by Plaintiff and described in this complaint.
22. On or about July 31, 2019, Plaintiff was involved in a service call which involved a use of force. This incident was reviewed by Sergeant Josh Keyes and Officer Andrew Coffee and reported to management as a potential excessive use of force. On information and belief this incident was reported in retaliation for one or more disclosures made by Plaintiff and described in this complaint.
23. On or about August 16, 2019, Det. Sam Williams was tasked with conducting a use of force investigation of one of the three incidents. Plaintiff was notified of this investigation. Det. Williams was later tasked with investigating all three incidents; however, Plaintiff was never provided notice of those investigations. On information and belief this investigation was

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conducted in retaliation for one or more disclosures made by Plaintiff and described in this complaint.

24. On or about August 16, 2019, Plaintiff was placed on Administrative Leave. The formal notice was silent as to his pay, Plaintiff was told verbally his leave would be without pay and told that the order came from Defendant SMITH. Plaintiff was instructed not to discuss the investigation and that any discussion of the investigation outside of those involved would be grounds for discipline up to and including suspension. On information and belief, the Department had not placed other officers on unpaid leave for past investigations. Plaintiff was not informed of the specific policies he was alleged to have violated. On information and belief, Plaintiff was placed on unpaid leave, instead of paid leave, in retaliation for one or more disclosures made by Plaintiff and described in this complaint.
25. Plaintiff was placed on unpaid leave but was never required to return any of his equipment. The Department instructed him he was not allowed to exercise any police powers but was left with possession of his patrol vehicle, his K9 unit, an AR-15, ballistic vest, sidearm and a large quantity of narcotics issued for the purpose of K9 Drug Detection training. Plaintiff was forced to secure this equipment as best he could at his residence, exposing himself and his family to liability as well as physical danger.
26. Plaintiff contacted his attorneys to notify them of the investigation and was advised not to submit to an interview without the assistance of counsel. On or about August 22, 2019, counsel for Plaintiff wrote to Defendant SMITH to notify him of Plaintiff's representation. Counsel's letter also raised the issue of the unpaid leave and requested records and documents related to

the internal investigation. Such documents are required to be disclosed under Oregon Statutes governing public safety officers. Counsel further asked Warm Springs to direct all communications to their office. No response was provided from Warm Springs nor the Department.

27. Having received no response from Defendant SMITH, on or about September 9, 2019 counsel for Plaintiff wrote to Defendant MACY again requesting information regarding why his leave was unpaid, why the investigators had not sought an interview, requesting the same documents as the August 22 letter and notifying Defendant MACY of the misconduct within the Department which Plaintiff had previously disclosed. Counsel never received a response to this letter.
28. Shortly after being placed on Administrative Leave, Plaintiff was removed from the Department schedule for the remainder of the calendar year. This was done despite the fact the investigation had just begun and had reached no conclusions about Plaintiff's alleged policy violations. On information and belief, this was retaliation for one or more disclosures made by Plaintiff and described in this complaint and was evidence he was being judged in bad faith prior to the conclusion of the investigation.
29. On or about August 28, 2019 Plaintiff contacted Det. Williams via text message and asked, "did anything get figured out about my pay and my admin leave?" Williams replied, "no changes, tried."
30. On or about August 28, 2019, Plaintiff received a voicemail from Det. Williams. Williams acknowledged receipt of notice that Plaintiff was represented by counsel and stated he would

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attempt to contact Plaintiff's attorney. Plaintiff's counsel received no contact from Det. Williams.

31. On or about September 9, 2019, Plaintiff received a voicemail from one of the Warm Springs Police Department Supervisors asking him to come in on September 11, 2019 and meet with the supervisor and Defendant GREGORY. Plaintiff received no written notice of an interview.
32. On or about September 12, 2019, Plaintiff was contacted by a former officer for the Department. This person informed Plaintiff he was contacted by Acting-Sergeant Lane, and disclosed facts related to Plaintiff's leave and the investigation. On information and belief, no discipline was assigned to Sgt. Lane for this breach, despite the warnings given to Plaintiff.
33. On or about September 13, 2019, Plaintiff was contacted by a clerk at the Warm Springs Courthouse who informed Plaintiff that the court had dismissed all his cases because he was no longer an employee.
34. On or about September 14, 2019, Plaintiff received a letter from Defendant GREGORY stating Plaintiff had engaged in an unjustified use of force and had intentionally falsified his report to justify the use of force. Plaintiff had not been interviewed or provided any opportunity to explain or mitigate his conduct. The termination letter falsely stated Plaintiff had refused to cooperate with Det. Williams, and further falsely stated Plaintiff made no effort to contact Defendant GREGORY to reschedule the September 11, 2019 meeting. The letter did acknowledge the Department had received "emails and a phone call from an attorney claimed to represent you in this matter and our Tribal attorney has been notified."
35. The actions of Defendants have caused Plaintiff significant damage, including the loss of his current employment and future career, damage to Plaintiff's credit score, ability to meet his

financial obligations, caused him to fall behind in child support, and caused an aggravation of his diagnosed PTSD. His military disability rating for PTSD has increased from 50% to 70% because of this aggravation. He has incurred out-of-pocket medical expenses no less than \$15,000 and will be larger at the time of trial.

36. The Department refused to pay him his final paycheck for over 15 days after it was due and the stated reason for his termination on his final check was “equipment has not been turned in.”
37. Prior to his termination Plaintiff was assured he would be able to keep his K9 unit (“Bryta”) because she was due to retire. It is common practice for officer handlers to retain their K9 units due to the deep bond formed between the handlers and their dogs. However, once Plaintiff was ordered to return his equipment, he was told he could no longer keep Bryta; instead Bryta was given to Defendant MOORE. In March 2020, Plaintiff was contacted by the vet providing medical treatment to Bryta. The vet informed Plaintiff Bryta was recently seen and she was not in good health because of poor care from Defendant MOORE.

FIRST CLAIM FOR RELIEF:

Violation of Federal Constitutional Rights 42 U.S.C. § 1983

Liberty Interest Deprivation

(All Defendants)

38. Plaintiff re-alleges all paragraphs previously alleged.
39. 42 U.S.C. § 1983, originally part of the Civil Rights Act of 1871, 17 Stat. 13, creates a private right of action. Under the terms of the statute:

“Every person who, under color of [law] ... causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to

the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

42 U.S.C. § 1983

40. During all relevant time periods, Defendants had the practice, policy and/or custom of participating in or tolerating unlawful harassment, bullying, and retaliation of employees of the Department.
41. Defendants’ conduct, as alleged in Plaintiff’s Complaint, was pursuant to Defendants’ practices, policies, and/or customs relating to harassment, bullying, and retaliation of employees of the Department.
42. Defendants GREGORY, SMITH, and MACY were deliberately indifferent to the practices, policies, and/or customs relating to harassment, bullying, and retaliation of employees of the Department. The history and pattern of harassment, bullying, and retaliation of employees of the Department put Defendants GREGORY, SMITH, and MACY on notice of this practice, policy, and/or custom.
43. At all times material to the events outlined in Plaintiff’s Complaint, Defendant GREGORY, as the Chief of Police for the Department, was the final decision-maker within the Department who enforces the practice, policy and/or custom of harassment, bullying and retaliation of employees of the Department.
44. At all times material to the events outlined in Plaintiff’s Complaint, Defendant SMITH, as Public Safety Manager for Warm Springs, was the final decision-maker for Warm Springs Public Safety who enforces the practice, policy and/or custom of harassment, bullying and retaliation of employees of the Department.

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45. At all times material to the events outlined in Plaintiff's Complaint, Defendant MACY, as Chief Operating Officer for Warm Springs, was the final decision-maker for Warm Springs who enforces the practice, policy and/or custom of harassment, bullying and retaliation of employees of the Department.
46. All Defendants acted under color of law when they participated in, authorized, or otherwise failed to prevent, the practices, policies, and/or customs relating to harassment, bullying, and retaliation of employees of the Department and to Plaintiff.
47. Defendants' practices, policies, and/or customs relating to harassment, bullying, and retaliation of employees of the Department caused a violation of Plaintiff's constitutional rights.
48. Defendants GREGORY, SMITH and MACY had insufficient and inadequate procedural safeguards in place to protect Plaintiff's liberty interest under the Fourteenth Amendment.
49. The internal affairs investigation policies, practices, and/or customs used by Defendants to perform internal investigations lacked adequate objective standards and permitted Defendants to apply standards, if any, unevenly and inconsistently and enabled Defendants to use internal affairs investigations as a fabricated pretext to terminate employees for discriminatory, retaliatory, or unlawful reasons.
50. The internal affairs investigation policies, practices, and/or customs used to perform the Internal Affairs investigation of Plaintiff allowed Defendants to terminate Plaintiff's employment for discriminatory, retaliatory, or otherwise unlawful purposes.
51. All Defendants acted under color of law when they participated in, authorized, or otherwise failed to prevent, the practices, policies, and/or customs used in the Internal Affairs

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investigation of Plaintiff and his subsequent termination for discriminatory, retaliatory, or otherwise unlawful purposes.

52. Defendants' termination of Plaintiff was for retaliatory purposes and based on erroneous claims of misconduct by Plaintiff and was disseminated by Defendant MOORE and others, and became widely known throughout the tightly knit law enforcement community and the public as a result.
53. Plaintiff has suffered an actual stigma connected to his discharge from the Department due to the erroneous and retaliatory claims of misconduct and false claims communicated by Defendants that Plaintiff used excessive force and was untruthful. The termination and false claims of misconduct have damaged Plaintiff's reputation.
54. Defendants' conduct in terminating Plaintiff precluded Plaintiff from finding work in the law enforcement profession, his chosen profession.
55. Plaintiff's right to pursue his chosen profession is a protected liberty interest.
56. In engaging in the conduct alleged Plaintiff's Complaint, Defendants acted arbitrarily and capriciously in depriving Plaintiff of his liberty interest in pursuing his chosen profession, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
57. Defendants' practice, policy and/or custom of harassment, bullying, and retaliation was the direct and proximate cause of Plaintiff's damages herein.
58. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered actual economic damages in the form of lost salary and benefits, back pay, front pay, and added financial consideration in the approximate amount of \$500,000, or another amount to be proven at trial.

59. As a direct and proximate cause of Defendants' conduct, Plaintiff has also suffered non-economic damages, in the form of severe emotional distress, mental suffering, anxiety, humiliation, embarrassment, grief, depression, loss of enjoyment of life, increased sleeplessness, increased stress, increased worry, inability to gain employment in the field of law enforcement, and damage to his reputation for which Plaintiff seeks compensation in the approximate amount of \$500,000, or another amount to be proven at trial.
60. Plaintiff is further entitled to an award of all relevant attorney fees and expert fees and costs pursuant to 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

Violation of Federal Constitutional Rights 42 U.S.C. § 1983

Retaliation for Free Speech (First Amendment)

(All Defendants)

61. Plaintiff re-alleges all paragraphs previously alleged.
62. 42 U.S.C. § 1983, originally part of the Civil Rights Act of 1871, 17 Stat. 13, creates a private right of action. Under the terms of the statute:

“Every person who, under color of [law] ... causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

42 U.S.C. § 1983

63. Plaintiff engaged in protected speech by reporting, both internally and externally, the pattern, practice and/or custom of harassment, bullying and retaliation of employees of the Department.
64. Reporting unlawful sexual and racial harassment, bullying and retaliation occurring inside of a law enforcement department is a matter of grave public concern. Such speech relates to matter

of concern to the community. The community rightfully expects its law enforcement to be free from racial and sexual bias, to refrain from bullying, harassment, and retaliation and the fully and faithfully execute the laws of the state.

65. Plaintiff engaged in protected speech on numerous occasions, both verbal and in writing. When Defendant GREGORY ignored his reports, he engaged in further protected speech to Defendants SMITH and MACY. None of the Defendants took any action to address, remedy or prevent the reported unlawful conduct.
66. Plaintiff's protected speech was not a task he was paid to perform and was made in his capacity as a private citizen.
67. Instead of addressing Plaintiff's reports of misconduct and illegality, Defendants acted in concert to subject Plaintiff to an internal affairs investigation and terminate him without just cause and in violation of his rights to due process.
68. The internal affairs investigation policies, practices, and/or customs used by Defendants to perform internal investigations lacked adequate objective standards and permitted Defendants to apply standards, if any, unevenly and inconsistently and enabled Defendants to use internal affairs investigations as a fabricated pretext to terminate employees for discriminatory, retaliatory, or unlawful reasons.
69. The internal affairs investigation policies, practices, and/or customs used to perform the Internal Affairs investigation of Plaintiff allowed Defendants to terminate Plaintiff's employment for discriminatory, retaliatory, or otherwise unlawful purposes.
70. All Defendants acted under color of law when they participated in, authorized, or otherwise failed to prevent, the practices, policies, and/or customs used in the Internal Affairs

investigation of Plaintiff and his subsequent termination for discriminatory, retaliatory, or otherwise unlawful purposes.

71. Plaintiff has suffered an actual stigma connected to his discharge from the Department due to the erroneous and retaliatory claims of misconduct and false claims communicated by Defendants that Plaintiff used excessive force and was untruthful. The termination and false claims of misconduct have damaged Plaintiff's reputation.
72. Defendants' conduct in terminating Plaintiff precluded Plaintiff from finding work in the law enforcement profession, his chosen profession.
73. Plaintiff's right to pursue his chosen profession is a protected liberty interest.
74. In engaging in the conduct alleged in Plaintiff's Complaint, Defendants acted arbitrarily and capriciously in depriving Plaintiff of his liberty interest in pursuing his chosen profession, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
75. Defendants' practice, policy and/or custom of harassment, bullying, and retaliation was the direct and proximate cause of Plaintiff's damages herein.
76. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered actual economic damages in the form of lost salary and benefits, back pay, front pay, and added financial consideration in the approximate amount of \$500,000 or another amount to be proven at trial.
77. As a direct and proximate cause of Defendants' conduct, Plaintiff has also suffered non-economic damages, in the form of severe emotional distress, mental suffering, anxiety, humiliation, embarrassment, grief, depression, loss of enjoyment of life, increased sleeplessness, increased stress, increased worry, inability to gain employment in the field of

law enforcement, and damage to his reputation for which Plaintiff seeks compensation in the approximate amount of \$500,000 or another amount to be proven at trial.

78. Plaintiff is further entitled to an award of all relevant attorney fees and expert fees and costs pursuant to 42 U.S.C. § 1983

THIRD CLAIM FOR RELIEF

Unlawful Retaliation ORS 659A.199

(All Defendants)

79. Plaintiff re-alleges all paragraphs previously alleged.
80. Defendants at all times acted as agents for Plaintiff's employer, Warm Springs. Warm Springs at all times was an employer for the purposes of ORS 659A.199.
81. Warm Springs, by and through its agents, discharged, discriminated, and retaliated against Plaintiff for the reason that Plaintiff, in good faith, reported the unlawful harassment, bullying and retaliation in the Department.
82. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered actual economic damages in the form of lost salary and benefits, back pay, front pay, and added financial consideration in the approximate amount of \$500,000 or another amount to be proven at trial.
83. As a direct and proximate cause of Defendants' conduct, Plaintiff has also suffered non-economic damages, in the form or severe emotional distress, mental suffering, anxiety, humiliation, embarrassment, grief, depression, loss of enjoyment of life, increased sleeplessness, increased stress, increased worry, inability to gain employment in the field of law enforcement, and damage to his reputation for which Plaintiff seeks compensation in the approximate amount of \$500,000 or another amount to be proven at trial.

84. Plaintiff is further entitled to an award of all relevant attorney fees and expert fees and costs pursuant to ORS 659A.885(1).

FOURTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(All Defendants)

85. Plaintiff re-alleges all paragraphs previously alleged.

86. Defendants' conduct, individually and in concert, consisted of extraordinary transgressions of the bounds of socially tolerable conduct and exceeded any reasonable limit of social toleration. The conduct of Defendants included without limitation: sexually harassing Plaintiff including by throwing dildos at his head at the workplace, statements implying fellow employees would engage in sex with Plaintiff's wife and others, racially derogatory language, mocking Plaintiff for having a learning disability.

87. These acts and others alleged in this Complaint were intended to cause Plaintiff severe mental and emotional distress; or in the alternative, such distress was certain or substantially certain to result in Plaintiff suffering severe mental and emotional distress.

88. Plaintiff, in fact, suffers severe mental and emotional distress as a result of Defendants' conduct.

89. Plaintiff is entitled to economic damages and non-economic damages in an amount to be more fully proven at trial, but in any case, no less than \$250,000.

WHEREFORE Plaintiff pray as follows:

1. Finding that Defendants violated Plaintiff's constitutional liberty interest under the Fourteenth Amendment;

2. Finding that Defendants violated Plaintiff's constitutional right to free speech under the First Amendment;
3. Finding that Defendants terminated Plaintiff's in retaliation for engaging in protected speech;
4. Finding that Defendants violated ORS 659A.199 for retaliation for protected disclosures;
5. Finding that Defendants intentionally caused Plaintiff severe mental and emotional distress;
6. Judgment against Defendant for economic losses which will fully compensate Plaintiff for Plaintiff's economic damages in the amount of at least \$500,000.00, or an amount to be determined by a jury;
7. Judgment against Defendants for non-economic losses to Plaintiff for the constitutional and statutory violations herein in the amount of at least \$500,000.00, or an amount to be determined by a jury;
8. Judgment against Defendants for deterrence damages in a fair and reasonable amount to be proven at trial;
9. Equitable relief including, but not limited to, injunctive relief; and
10. Judgment for costs, interests, attorney fees and such other and further relief as the Court deems just and equitable.

DATED this 13th day of May 2020.

THENELL LAW GROUP, P.C.

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