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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

CODY LANE, an individual,

Plaintiff,

vs.

MARION COUNTY, a political subdivision of
the state of Oregon, the MARION COUNTY
SHERIFF'S OFFICE, JASON MEYERS,
individually and in his official capacity as
Marion County Sheriff, and, CRAIG
CUNNINGHAM, individually,

Defendants.

Case No. 6:19-cv-287

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Violations of 42 U.S.C. § 1983, 14th Amendment
Due Process, Equal Protection, violations of 1st
Amendment Liberty Interest, Freedom of
Association, Wrongful Discharge, Intentional
Infliction of Emotional Distress, and Defamation

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Cody Lane ("Plaintiff"), by and through his attorneys, Thenell Law Group, P.C.,
brings this Complaint herein and states and alleges as follows:

INTRODUCTORY STATEMENT

1.

This action is filed by Plaintiff under 42 USC § 1983 and it seeks monetary damages and
injunctive relief for violations of the Plaintiff's First Amendment liberty and property interests and
his freedom of association, the Fourteenth Amendment due process and equal protection and state

1 law claims by Defendants Marion County, the Marion County Sheriff's Office, Jason Meyers, and
 2 Craig Cunningham. Defendants have deprived Plaintiff of due process and equal protection of law
 3 by willfully refusing to reinstate Plaintiff following an employment arbitration decision, by
 4 refusing to pay him the back pay required, by refusing to take the steps ordered to remove him
 5 from the *Brady* list, and by otherwise refusing to "make whole" Plaintiff in accordance with the
 6 arbitral decision. By falsely accusing Plaintiff of dishonesty and violations of County policies and
 7 by willfully refusing to honor the arbitral decision, Defendants have caused additional harm to the
 8 Plaintiff through defamation, the intentional infliction of emotional distress, and wrongful
 9 termination. By continuing to label Plaintiff as a *Brady* list officer, Defendants have defamed the
 10 reputation and character of Plaintiff. Plaintiff seeks compensatory damages from Defendants with
 11 reasonable attorney's fees and costs to redress Defendants' violations of Plaintiff's rights.

12
 13
 14 2.

15 Plaintiff also seeks mandatory, prospective injunctive relief reinstating him in his patrol
 16 position, removing his name from the *Brady* list, as well as any associated labels, so that he may
 17 testify for the prosecution.

18 **JURISDICTION AND VENUE**

19 3.

20 Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, federal question jurisdiction,
 21 28 U.S.C. § 1343, civil rights jurisdiction, for violations of the Constitution, as actionable under
 22 42 U.S.C. § 1983. Specifically, Plaintiff alleges that Defendants have violated and continues to
 23 violate his rights to procedural due process and equal protection under the Fourteenth Amendment
 24 to the United States Constitution and his liberty and association interests under the First
 25 Amendment.
 26

1 4.

2 Venue is proper under 28 U.S.C. § 1391(b), as Defendants reside in the District of Oregon
3 and Plaintiff's claims for relief arose in this district.

4 **PARTIES**

5 5.

6 Plaintiff is a resident of Marion County, Oregon, and is employed by the Marion County
7 Sheriff's Office ("MSCO"), a department within Marion County.
8

9 6.

10 The MCSO is a public body liable for the tortious conduct of its agents and employees
11 pursuant to ORS 30.265. The MCSO is sued for damages and injunctive relief.
12

13 7.

14 Craig Cunningham is a resident of Marion County and is employed by the Marion County
15 Sheriff's Office.

16 8.

17 Jason Meyers ("Defendant Meyers" or "Sheriff Meyers") was the elected Sheriff of Marion
18 County, Oregon in 2010. Defendant Meyers represents MCSO in his capacity as its Sheriff.
19 Defendant Meyers is the final policy maker for MCSO with regard to all matters related to the
20 Plaintiff's employment. Defendant Meyers is sued herein in his official capacity and as an
21 individual.
22

23 **FACTUAL BACKGROUND**

24 9.

25 Plaintiff was a patrol deputy within the MCSO, with over ten years' experience as a peace
26 officer.

1 10.

2 On or about November 24, 2017 Plaintiff was working the graveyard shift between 6:00
3 pm and 6:00 am. That evening the Plaintiff's girlfriend, Jesa Gilbert ("Gilbert"), was celebrating
4 her birthday with her friends. Gilbert's birthday is November 25.

5 11.

6 Plaintiff and Gilbert had texted and called each other during Plaintiff's shift. At
7 approximately midnight Plaintiff stopped at the Red Apple bar, where Gilbert was celebrating with
8 her friends. Plaintiff met Gilbert outside to give her a birthday kiss and wish her happy birthday.

9 12.

10 Later, during the early hours of November 25, 2017, Gilbert asked Plaintiff to follow her
11 home due to her malfunctioning headlight. Plaintiff was in the area on patrol and agreed to follow
12 her home, which was not out of his way. Plaintiff intended to spend his lunch break with Gilbert
13 and was not using MCSO resources for private ends.

14 13.

15 A witness, Mr. Kevin Ely Jr. ("Ely Jr.") at the Red Apple bar, saw Gilbert leave and saw a
16 sheriff patrol vehicle follow her. Ely Jr. later testified that something did not appear right about
17 the situation. Ely Jr. called his father, a police sergeant with the Keizer police department, and
18 later called Sergeant Knutson at the sheriff's office and filed a report.

19 14.

20 Based on the report from Ely Jr., Plaintiff was put under internal investigation and
21 terminated for being untruthful, among other reasons. Specifically, the Sheriff in Plaintiff's
22 Termination Letter stated that the grounds for termination were that Plaintiff "purposefully meant
23 to **deceive or hide** the fact that you were escorting your girlfriend home from a bar." The

1 allegations of untruthfulness were sent to the Marion County District Attorney's Office, who
 2 decided to place Plaintiff on the *Brady* list.

3
 4 15.

5 Plaintiff, through his union, filed a grievance which was arbitrated. The Arbitrator found
 6 serious flaws in the investigation, the conduct of Sergeant Cunningham, the lead investigator, and
 7 the termination. The Arbitrator issued a finding that the termination was wrongful and ordered
 8 Plaintiff reinstated. The Arbitration Decision and Award are attached here as Exhibit 1. The
 9 Arbitrator went on to opine that the Plaintiff should be removed from the *Brady* list and ordered
 10 the County to take steps to make that happen. Specifically, the Arbitrator ruled that "[Plaintiff] is
 11 not a 'Brady Cop.' The MCSO may, if necessary, to have the Grievant removed from the Brady
 12 list, provide a copy of this decision and award to the Marion County Prosecutor's office to justify
 13 the request by the MCSO. Your Arbitrator is confident that the [Plaintiff], once reinstated, shall
 14 continue to serve the MCSO with integrity, honor, honesty, and trustworthiness."
 15

16 16.

17 The Arbitrator adjudicated the termination of Plaintiff for various policy violations of the
 18 MCSO including untruthfulness. The Arbitrator issued a Decision and Award on January 7, 2019.
 19 In his decision the Arbitrator examined at length the interplay between *Brady v. Maryland* and the
 20 arbitral decision-making process to reinstate an employee accused of untruthfulness. The
 21 Arbitrator pointed out that *Brady* imposes on the prosecution a "duty to learn of"¹ and to disclose
 22 to the defense all favorable information. This includes information about the police, notably
 23
 24
 25

26

 1 *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)

1 whether any of the officers, involved in the case being prosecuted, have credible allegations of
 2 dishonesty. Exhibit 1 at 15.

3 17.

4 The Arbitrator further reasoned that “[g]iven *Brady* and established arbitral precedent
 5 regarding dishonest employees, of your Arbitrator found the [Plaintiff] to be untruthful, your
 6 Arbitrator would be unwilling to reinstate [Plaintiff] as a “Brady Cop.” Exhibit 1 at 17.
 7 Consistently throughout the internal investigation, grievance process, and arbitration, Plaintiff has
 8 maintained that he was truthful.
 9

10 18.

11 In evaluating the justification for Plaintiff’s termination, the Arbitrator was required to
 12 review the investigation into the allegation of untruthfulness. It is significant that the Arbitration
 13 decision turned on this factor, which is substantive, and not solely on a procedural shortcoming.
 14 The Arbitrator found serious flaws in the investigation, primarily due to the lead investigator, Sgt.
 15 Cunningham’s investigative synopsis. The Arbitrator identified at least ten significant issues in
 16 Sgt. Cunningham’s investigation (starting at page 34 of Exhibit 1):
 17

- 18 (1) Sgt. Cunningham concluded Plaintiff was following Gilbert at “less than one
 19 vehicle length,” a conclusion unsupported by the evidence;
- 20 (2) Sgt. Cunningham concluded that Gilbert was driving visibly slower than the speed
 21 limit, this was counter to the direct testimony of a witness;
- 22 (3) Sgt. Cunningham asked questions of a witness in a way that suggested he was
 23 more concerned with obtaining exculpatory evidence than discovering the truth;
- 24 (4) Sgt. Cunningham drew conclusions unsupported by the evidence as to the number
 25 of drinks one of the witnesses had consumed;
- 26 (5) Sgt. Cunningham concluded that Gilbert was intoxicated despite testimony that
 directly contradicted this conclusion;

///
 26

- (6) Sgt. Cunningham misstated a witness's testimony in his synopsis to create the impression that Gilbert was intoxicated, and left critical facts out of the synopsis;
- (7) Sgt. Cunningham stated that a witness testified that all the members of Gilbert's party were drinking when in fact that witness testified that she did not see Gilbert drinking at all;
- (8) Sgt. Cunningham included a partial quote in his synopsis that omitted qualifying language;²
- (9) Sgt. Cunningham misstated witness testimony to imply that the witness in fact bought rounds of drinks for Gilbert's party, when that witness did not make the statement;
- (10) Sgt. Cunningham used testimony to attempt to establish Gilbert's intoxication that was unsupported by any objective evidence.

19.

The Arbitrator concluded that Sgt. Cunningham's report contained so many misstatements, conclusions unsupported by evidence, and even conclusions that are directly in conflict with the evidence that "all of the investigators [sic] conclusions become questionable." Nearly all the exculpatory evidence was omitted from the report. The Arbitrator was forced to conclude that the investigation and subsequent finding of untruthfulness were substantively flawed and that there was no evidence of untruthfulness whatsoever. The Arbitrator found that Cunningham's report contained many statements which were misleading, misrepresentations, dishonest and untrue. In fact, Cunningham's conduct during the arbitration hearing was the subject of a complaint. Upon information and belief no internal investigation, or other investigation was started against Cunningham.

² The Arbitrator took pains to emphasize this point by stating in bold faced text "**The partial quoted statement by Sergeant Cunningham for all practical purposes was a nonfact [sic] and was negligent misrepresentation of what Mr. Olson said. Sergeant Cunningham's failure to include these latter words in his quote of Mr. Olson is a substantial, negligent, and unfair representation of the truth and leaves your Arbitrator wonders what other statements, inferences, or conclusions, in favor of [Plaintiff], were not added to the investigative synopsis.**"

20.

Following the arbitral decision and award Marion County District Attorney failed to remove Plaintiff from the *Brady* list. Counsel for Plaintiff's union asked the Arbitrator to clarify the decision, in an email response the Arbitrator reiterated: "[w]ith the utmost respect for you, the MCSO, and the law enforcement community, once again, the decision and award issued on January 7, 2019, speaks for itself. As per the decision and award, [Plaintiff] is not a "Brady Cop" and was not untruthful. A presumption that [Plaintiff] was untruthful and thus cannot testify is misplaced and is contrary to the decision and award issued on January 7, 2019." Exhibit 2.

21.

The sole justification for inclusion on the list is the untruthfulness of Plaintiff. The Arbitrator found that as a matter of fact and of law that Plaintiff was not untruthful. Despite the Arbitrator's order, Defendant MCSO has not restored Plaintiff to his prior position.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Oregon Wrongful Discharge

(MCSO Defendants)

22.

Plaintiff re-alleges all paragraphs previously alleged.

23.

Following Plaintiff's termination by MCSO the parties engaged in arbitration under Plaintiff's employment contract and collective bargaining agreement. The Arbitrator ruled that MCSO did not have just cause to terminate the Plaintiff and ordered the Plaintiff to be reinstated to the position he held prior to his termination.

24.

MCSO has refused to reinstate Plaintiff to his prior position in violation of the Arbitration Award. Plaintiff has no other adequate, just, or speedy remedy for this violation other than to seek redress with the court.

25.

Plaintiff seeks injunctive and declaratory relief in the form of an order that he be immediately reinstated in the position he held prior to his termination. Plaintiff also seeks compensatory damages in an amount to be proven at trial for pain and suffering due to mental anguish, humiliation, loss of self-esteem and dignity as well as any other relief the court sees fit to order.

SECOND CLAIM FOR RELIEF

Oregon Defamation Per Se

(All Defendants)

26.

Plaintiff re-alleges all paragraphs previously alleged.

27.

Defendants MCSO, Meyers, and Cunningham made defamatory statements in the form of allegations of untruthfulness to others including the Marion County District Attorney's Office. The statements were false and constitute defamation per se under Oregon law. Furthermore, Defendants acted with malice as reflected in the manner of the investigation; Cunningham's report contains many intentional misstatements, partial quotes, and quotes taken out of context all of which have the effect of falsely and maliciously painting Plaintiff as a dishonest law enforcement officer.

28.

Following the Arbitrator's finding that Plaintiff was not a "*Brady* Cop" and was not untruthful, all Defendants refused to issue retractions, apologies, clarifications, and refused to remove Plaintiff from the *Brady* list. This defamation has resulted in harm to the Plaintiff's reputation, standing in the community, and has caused him pain and suffering in the form of mental anguish and humiliation as well as loss of self-esteem and dignity.

29.

Defendants have acted with reckless disregard by willfully publishing untrue statements of Plaintiff's untruthfulness. Following the Arbitrator's ruling the Defendants have acted intentionally despite clear evidence that Plaintiff was no untruthful.

30.

Plaintiff seeks injunctive and declaratory relief in the form of an order that he be immediately removed from the *Brady* list. Plaintiff further seeks an order that the Defendants shall contact all parties in receipt of information regarding his inclusion on the *Brady* list and inform them that he was never to have been included in the first place. Plaintiff also seeks compensatory damages in an amount to be proven at trial for pain and suffering due to mental anguish, humiliation, loss of self-esteem and dignity as well as any other relief the court sees fit to order. Plaintiff also seeks punitive damages against Defendant Cunningham for his intentional and malicious conduct.

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THIRD CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(All Defendants)

31.

Plaintiff re-alleges all paragraphs previously alleged.

32.

The Defendants' actions to investigate Plaintiff, to terminate his employment, to include Plaintiff on the *Brady* list, to refuse to reinstate him, and to refuse to remove him from the *Brady* list were intended to, or were certain or substantially certain to, result in severe mental and emotional distress.

33.

These acts in fact caused severe mental and emotional distress including mental anguish, loss of self-esteem and dignity.

34.

The acts of investigating and labeling a law enforcement officer as a liar, despite clear evidence and the reasoned finding of an Arbitrator to the contrary, collectively consists of an extraordinary transgression of the bounds of socially tolerable conduct. The application of the label "liar" in an ordinary social context is severely damaging to any private member of the community. To so label, publicly, a law enforcement officer is outrageous in the extreme. Law enforcement officers are expected to perform a highly dangerous and stressful job and are held to high standards of honesty. All of the credible evidence here would indicate that Plaintiff met or exceeded that high standard. The application of the label "liar" and the continued and intentional refusal to remedy the situation has caused severe mental and emotional anguish.

35.

Plaintiff seeks injunctive and declaratory relief in the form of an order that he be immediately removed from the *Brady* list. Plaintiff further seeks an order that the Defendants shall contact all parties in receipt of information regarding his inclusion on the *Brady* list and inform them that he was never to have been included in the first place. Plaintiff also seeks compensatory damages in an amount to be proven at trial for the infliction of severe mental and emotional trauma. Plaintiff further prays for an order awarding punitive damages due to the particularly aggravated disregard of the Plaintiff's rights.

FOURTH CLAIM FOR RELIEF

First Amendment Freedom of Association in his Profession and Liberty

(All Defendants)

36.

Plaintiff re-alleges all paragraphs previously alleged.

37.

Defendants have refused to reinstate Plaintiff to the position he was in prior to his wrongful termination and have refused to remove him from the *Brady* list. Defendant MCSO has offered Plaintiff a non-peace officer position in the jail and has refused to restore him to the patrol position. The Defendants' actions have deprived Plaintiff of the right to employment and deprivation of his freedom of association.

38.

Defendants refusal to reinstate Plaintiff has also violated his liberty interest as guaranteed by the First Amendment. Plaintiff has exercised his liberty to choose his own profession and Defendants, wrongfully, and without good cause, have deprived Plaintiff of that liberty interest.

39.

Plaintiff seeks injunctive and declaratory relief in the form of an order that he be immediately reinstated in the position he held prior to his termination and that he be immediately removed from the *Brady* list. Plaintiff also seeks compensatory damages in an amount to be proven at trial for pain and suffering due to mental anguish, humiliation, loss of self-esteem and dignity as well as any other relief the court sees fit to order.

FIFTH CLAIM FOR RELIEF

First Amendment Property Interest

40.

Plaintiff re-alleges all paragraphs previously alleged.

41.

Defendants have refused to reinstate Plaintiff to the position he was in prior to his wrongful termination and have refused to remove him from the *Brady* list. Defendant MCSO has offered Plaintiff a non-peace officer position in the jail and has refused to restore him to the patrol position. The Defendants' actions have deprived Plaintiff of the right to employment and deprivation of his freedom of association.

42.

Plaintiff has a property interest in his continued employment as a patrol officer. The collective bargaining agreement in effect between the Plaintiff and Defendant MCSO created a property interest because it allowed for termination of an employee only for good cause. The Arbitrator found that this provision had been violated by the County when it based its termination decision on the Cunningham investigation and report. By terminating and then refusing to reinstate Plaintiff, Defendants have violated his property interests guaranteed by the First Amendment.

1 43.

2 Plaintiff seeks injunctive and declaratory relief in the form of an order that he be
3 immediately reinstated in the position he held prior to his termination and that he be immediately
4 removed from the *Brady* list. Plaintiff also seeks compensatory damages in an amount to be proven
5 at trial for pain and suffering due to mental anguish, humiliation, loss of self-esteem and dignity
6 as well as any other relief the court sees fit to order.
7

8 **SIXTH CLAIM FOR RELIEF**

9 **42 USC § 1983 – Fourteenth Amendment**

10 Count One: Violation of Plaintiff's Procedural and Substantive Due Process Rights

11 (All Defendants)

12 44.

13 Plaintiff re-alleges all paragraphs previously alleged.
14

15 45.

16 By and through the actions and omissions described above, Defendants deprived Plaintiff
17 of his Fourteenth Amendment rights preventing deprivation of his constitutionally protected rights
18 without due process of law, causing him harm.

19 46.

20 Plaintiff has a property interest in his job, as he has a legitimate entitlement to continued
21 employment with his public employer, as well as fair and equal access to overtime and promotional
22 and training opportunities. This claim to entitlement arises out of the Marion County's promises
23 of specific treatment in specific circumstances, including disciplinary action implemented upon
24 existence of just cause, made in County and Department disciplinary policies, the *Brady* best
25 practice policy and the collective bargaining agreement.
26

1 47.

2 Defendants failed to provide adequate notice and opportunity to be heard regarding his
3 termination and his *Brady* listing. The listing effectively blacklisted Plaintiff and continues to
4 affect him to this day. The investigation against Plaintiff was so flawed that it deprived him of due
5 process.
6

7 48.

8 Defendants then deprived Plaintiff of his constitutionally protected interests without due
9 process of law when they refused to put Plaintiff back to full-time and full-duty work, depriving
10 him of overtime pay (an “economic sanction”), drastically changing work duties and shift
11 assignments, curtailing or eliminating training opportunities, and effectively ending his
12 employability as a police officer and his ability to transfer laterally to a different department,
13 thereby directly impacting his interest in pursuing law enforcement as a profession elsewhere.
14 Defendants continue to deprive Plaintiff of these interests without due process to this day.
15

16 49.

17 As a direct and proximate result of the acts and omissions of Defendants complained of
18 herein, Plaintiff has suffered, and continues to suffer, economic damages including lost overtime
19 work, lost training and promotion opportunities, advancement, and disqualification from testifying
20 in the course of his employment. Such injuries are permanent and continuing, and capable of being
21 determined at trial.
22

23 50.

24 As a further direct and proximate result of the acts and omissions complained of herein,
25 Plaintiff has suffered, and continues to suffer mental pain and suffering, humiliation, worry,
26

1 anxiety, fear, loss of earning capacity, and loss of personal and professional reputation, entitling
 2 him to an award of compensatory non-economic damages in an amount to be determined at trial.

3 51.

4 Plaintiff seeks injunctive and declaratory relief in the form of an order that he be
 5 immediately reinstated in his prior position with full pay and that he be immediately removed from
 6 the *Brady* list. Plaintiff also seeks compensatory damages against Defendants including any unpaid
 7 back-pay, overtime pay, as well as compensatory damages for pain and suffering including mental
 8 anguish, loss of self-esteem, dignity and standing in the community.

10 52.

11 Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is entitled
 12 to attorney fees, expert witness costs, litigation costs, and prejudgment interest.

13 Count Two: Violation of Plaintiff's Right to Equal Protection

14 (All Defendants)

15 53.

16 Plaintiff re-alleges all paragraphs previously alleged.

18 54.

19 MCSO has a policy prohibiting untruthfulness in the performance of official duties.
 20 Plaintiff was investigated and wrongfully punished for an alleged violation of this very policy. The
 21 basis for this punishment was the investigation and report completed by Sgt. Cunningham. The
 22 Arbitrator found Sgt. Cunningham to have engaged in dishonesty in his investigation and in his
 23 report.

24 ///

25 ///

1 55.

2 On information and belief, Sgt. Cunningham has not been investigated or punished for his
3 dishonesty in his investigation of Plaintiff, or for the dishonest statements made in his report. Sgt.
4 Cunningham has not been subject to any employer discipline, nor has he been reported to MCDA
5 for untruthfulness, nor has he been included on the *Brady* list of dishonest law enforcement
6 officers.
7

8 56.

9 The Defendants MCSO and Meyers' actions violated the Equal Protection Clause of the
10 Fourteenth Amendment.

11 57.

12 As a further direct and proximate result of the acts and omissions complained of herein,
13 Plaintiff has suffered, and continues to suffer mental pain and suffering, humiliation, worry,
14 anxiety, fear, loss of earning capacity, and loss of personal and professional reputation, entitling
15 him to an award of compensatory non-economic damages in an amount to be determined at trial.
16

17 58.

18 Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is entitled
19 to attorney fees, expert witness costs, litigation costs, and prejudgment interest.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests judgment in favor of Plaintiff and against Defendants, as follows:

1. On each and every one of Plaintiff's claims against Defendants, for economic damages in a sum to be determined at the time of trial;
2. On each and every one of Plaintiff's claims against Defendants, for non-economic damages in a sum to be determined at the time of trial;
3. A judicial declaration that Defendants' actions violated Plaintiff's constitutional rights, as alleged above;
4. A mandatory injunction ordering Defendants to remove Plaintiff from *Brady* List, taking such steps as are reasonably necessary to remedy the ongoing economic harm;
5. A mandatory injunction ordering Defendants to reinstate Plaintiff in his position prior to termination;
6. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 and other applicable law;
7. An award of pre-judgment interest on all liquidated amounts awarded;
8. An award of post-judgment interest from the date of judgment to the date of payment of that judgment amount;
9. A post-trial award of an amount sufficient to offset any adverse tax consequences resulting from payment of the judgment;
10. Punitive damages for the aggravated defamation and intentional infliction of emotional distress; and

1 11. Any other legal or equitable relief this court deems just and proper.

2 DATED this 26th day of February 2019.

3 THENELL LAW GROUP, P.C.

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