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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 BREONNAH FITZPATRICK, an
11 individual and as class representative,

12 Plaintiff,

13 vs.

14 CITY OF LOS ANGELES, a municipal
corporation; CITY OF LOS ANGELES
15 D E P A R T M E N T O F
TRANSPORTATION, a public entity;
16 GENERAL MANAGER SELETA
REYNOLDS, an individual; BRIAN
17 HALE, CHIEF - PARKING
ENFORCEMENT & TRAFFIC
18 CONTROL, individually and in their
official capacities; and DOES 1 through 10,
19 in their individual and official capacities,

20 Defendants.
21
22

Case No. 2:21-cv-6841 JGB
(SPx)

**FIRST AMENDED CLASS
ACTION CIVIL RIGHTS
COMPLAINT FOR
INJUNCTIVE RELIEF AND
DAMAGES**

- 1. Injunctive Relief (42 U.S.C. § 1983 / Art. I § 13 Cal. Const.)
- 2. Damages (Fourth Amendment / 42 U.S.C. § 1983)
- 3. Damages Unlawful Takings (42 U.S.C. § 1983 / Fifth Amendment)
- 4. Violation of Cal. Civil Code §52.1
- 5. Violation of Cal. Constitution, Art. I §13

DEMAND FOR JURY TRIAL

23
24 **I. JURISDICTION**

25 1. Plaintiff's claims arise under 42 U.S.C. §1983 and state law. Accordingly,
26 federal jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343. The
27 Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

28 2. Plaintiff's claims arise out of, *inter alia*, acts of the City of Los Angeles and

1 the City of Los Angeles Department of Transportation, acts which occurred in the City
2 of Los Angeles. Accordingly, venue is proper within the Central District of California.

3 **II. PARTIES.**

4 3. Plaintiff Breonnah Fitzpatrick (“Fitzpatrick”) is the Plaintiff, an individual
5 who lives and works in the City of Los Angeles.

6 4. Defendant City of Los Angeles (“City”) is a municipal corporation organized
7 and existing under the laws of the State of California. Defendant City of Los Angeles
8 Department of Transportation (“LADOT”) is a public entity within the meaning of
9 California law, and is a City agency.

10 5. Plaintiff is informed and believes and based thereon allege that defendant
11 Seleta Reynolds (“Reynolds”), an individual, is the General Manager of LADOT, and
12 a policy maker for LADOT within the meaning of 42 U.S.C. § 1983.

13 6. Plaintiff is informed and believes and based thereon allege that defendant Brian
14 Hale (“Hale”), an individual, is the Chief - Parking Enforcement and Traffic Control
15 for LADOT, and a policy maker for LADOT within the meaning of 42 U.S.C. § 1983.

16 7. Plaintiff is informed and believes and based thereon alleges that *FORMER*
17 defendant Hanks Wilshire Tow, Inc., dba S & J Wilshire Tow (“S & J Wilshire”), is a
18 California corporation. Plaintiff is informed and believes and based thereon alleges that
19 pursuant to a contract with the City, S & J Wilshire tows and impounds vehicles at the
20 direction of City / LADOT officials.¹

21 8. *NOT* a defendant is Official Police Garage - Los Angeles (“OPG-LA”), a non-
22 profit corporation (28 U.S.C. § 501(c)(4)). The members and owners of OPG-LA are the
23 18 Official Police Garages (OPGs) under contract with the City. S & J Wilshire Tow,
24 the company that impounded plaintiffs’ vehicle as stated herein, is one such member.
25 OPG-LA handles much of the reporting and record keeping duties on behalf of its
26 member OPGs that the City requires per the OPGs’ contracts.

27 ¹ Plaintiff has dismissed her claims against Hanks Wilshire Tow, Inc., dba S & J Wilshire Tow, and
28 Bridgecrest Acceptance Corporation. Both were named as defendants in the original complaint.

1 9. Plaintiff is ignorant of the true names and capacities of defendants sued herein
2 as DOES, and therefore sues these defendants by fictitious names. Plaintiff will give
3 notice of their true names and capacities when ascertained. Plaintiff is informed and
4 believes and thereon alleges that defendant DOES are responsible in some manner for
5 the damages and injuries hereinafter complained of.

6 10. Plaintiff is informed and believes and thereupon alleges that at all times
7 relevant herein defendants, including DOE defendants, and each of them, were the
8 agents, servants, couriers and employees of other defendants, and were acting in concert
9 with each other and in furtherance of a common goal and/or objective, were acting
10 within the course and scope of the agency and employment or ostensible agency and
11 employment.

12 11. The complained of acts and omissions were performed by persons within the
13 course and scope of employment with their employers, City and/or LADOT. All acts
14 and omissions were under color of state law.

15 12. Plaintiff timely submitted to the State of California a claim for damages under
16 Cal. Gov't Code § 910.

17 **III. FACTS COMMON TO ALL CLAIMS**

18 *A. LADOT "Unpaid Parking Tickets Vehicle Seizure Policy."*

19 13. Plaintiff is informed and believes and based thereon alleges that defendants
20 City, LADOT, Reynolds and/or Hale have promulgated, promoted and/or sanctioned,
21 a policy, practice or custom, hereinafter called "Unpaid Parking Tickets Vehicle Seizure
22 Policy," or "VSP" for short. Under the VSP, a City or LADOT official directs or causes
23 a vehicle to be seized *without a warrant* in order to coerce the vehicle's registered
24 owner to pay all amounts allegedly due the City for unpaid parking tickets. The VSP
25 directs City / LADOT officials to effect the seizure by one of two methods: (a) by
26 affixing a "boot," a locking metal clamp on the vehicle's wheel to immobilize the
27 vehicle, or (b) directing that the vehicle be towed from the street and impounded in a
28 vehicle impound lot maintained by an "Official Police Garage," or OPG, working under

1 contract with the City.

2 14. Pursuant to the VSP, defendants bar the vehicle's registered owner from
3 reclaiming possession of their vehicle unless and until the owner pays all amounts
4 allegedly due the City for unpaid parking tickets. Pursuant to the VSP, the City /
5 LADOT does *not* seek judicial review of any type to justify either the initial seizure, or
6 the ongoing seizure. Pursuant to the VSP, a vehicle is subject to seizure for unpaid
7 parking tickets even though it is safely parked in a lawful location, poses no danger and
8 does not constitute a traffic hazard.

9 15. If under the VSP, the City / LADOT elects to seize the vehicle by having it
10 towed and impounded in an OPG vehicle storage lot, during the period of vehicle
11 storage the OPG is charging daily storage charges (in addition to the towing and
12 administrative fees) which, per the VSP, must be paid in full before the vehicle will be
13 released. If not paid, the OPG will sell the vehicle at a lien sale to satisfy the unpaid
14 towing, storage charges and other related charges and fees. *See* Cal. Veh. Code
15 §22851(a) (Lien created in favor of the tow company for towing and storage charges.).
16 If the amount recovered by the lien sale is insufficient to pay outstanding charges and
17 fees, the vehicle's (former) registered owner remains liable to the OPG for the
18 difference.

19 *B. The Seizure Of Plaintiff's Vehicle.*

20 16. On or about August 11, 2021, Plaintiff was (and still is) the registered owner
21 of a 2013 Toyota Yaris (blue), license number 8AAZ781. On August 11, 2021,
22 Plaintiff's vehicle was lawfully parked at a safe and legal location on the residential
23 street Rosewood Avenue, around the corner from Plaintiff's residence on North
24 Ardmore, in the City of Los Angeles (Koreatown area). Some time during that day,
25 *without a warrant* City / LADOT officials, acting pursuant to the VSP, directed that
26 OPG S & J Wilshire, tow and impound the vehicle, citing Cal. Veh. Code § 22651(i).
27 In compliance with its contract with the City, S & J Wilshire took possession of
28 Plaintiff's vehicle, towing and storing it in its storage lot as a vehicle impound subject

1 to a City / LADOT hold.

2 17. After the August 11 impound, Plaintiff had been pleading with City / LADOT
3 officials to release her vehicle but to no avail. Both before and after the August 11
4 impound, Plaintiff had explained to City / LADOT officials why she has unpaid parking
5 tickets -- because of her illness in the last year (which required that she be hospitalized)
6 her Toyota was ticketed repeatedly. Plaintiff was unable to pay the tickets because at
7 times she was not working on account of COVID and her medical condition. Despite
8 explaining this to City / LADOT officials and presenting proof of her medical
9 disabilities, officials refused to grant her any relief. Officials were also refusing to
10 release her vehicle from the impound unless and until she pays the outstanding amounts
11 the City demands for the parking tickets.

12 18. After issuance of this Court's September 10, 2021 Order (ECF 22) defendant
13 City of Los Angeles directed the release of Plaintiff's vehicle without requiring payment
14 of fees or charges prior to the vehicle's release. On Friday, September 17, 2021,
15 Plaintiff retrieved and took possession of her vehicle.

16 **IV. CLASS ACTION ALLEGATIONS – PLAINTIFF'S CLASSES.**

17 19. Plaintiff brings this action on her own behalf, and on behalf of the class of all
18 persons similarly situated, pursuant to Rule 23, Federal Rules of Civil Procedure.

19 20. There is an "Injunctive Relief Class" as defined under Rule 23(b)(2) to
20 include all registered owners whose vehicles are presently seized or subject to seizure
21 pursuant to the City / LADOT's Vehicle Seizure Policy, or who may in the future have
22 their vehicles so seized/impounded. This class seeks an injunction commanding
23 defendant City, LADOT, Reynolds and Hale, and each of them, to immediately release
24 vehicles not held pursuant to a warrant, to either the vehicle's registered owner or to a
25 licensed driver designed by the registered owner who can drive the vehicle lawfully.
26 Plaintiff is the proposed Class Representative for the Injunctive Relief Class.

27 21. There is a "Damages Class" as defined by Rule 23(b)(3), consisting of those
28 vehicle owners whose vehicles were seized at any time within the last two years of the

1 original Complaint's filing and continuing up through the present, where such seizures
2 were pursuant and impounded for 30 days pursuant to the City / LADOT's Vehicle
3 Seizure Policy. Plaintiff is the proposed Class Representative for the Damages Class.

4 22. On information and belief, the Injunctive Relief Class numbers at least in the
5 hundreds while the Damages Class numbers in the thousands. The members of the
6 classes are so numerous that joinder is impracticable.

7 23. The classes are ascertainable because the LADOT and non-party OPG-LA
8 maintain paper and computer records tracking and identifying every vehicle seized
9 under the VSP, including the registered owner (name and address), vehicle description,
10 date and location where the vehicle was seized, where the vehicle is being held, the
11 authority under which the vehicle is seized, the date the vehicle was released, whether
12 it was sold at a lien sale and for how much, and the amounts paid for administrative
13 fees, towing and storage charges, and who paid these charges.

14 24. Questions of law and fact common to each class include:

15 A. Whether the VSP is constitutional, under either the Fourth Amendment
16 (unlawful seizure without a warrant), and the Fifth Amendment (Takings without
17 compensation) and the Fourteenth Amendment.

18 B. Whether the VSP violates the Fourth Amendment by directing vehicle
19 impounds without a warrant and in the absence of justification for the warrantless
20 seizures.

21 25. Plaintiff's claims are typical of the claims of members of each class on whose
22 behalf she acts as a class representative, in that as with each class member, Plaintiff's
23 vehicle was seized without a warrant and pursuant to the VSP. As with each class
24 member, until the time her vehicle was released on September 17, Plaintiff was willing
25 and able to safely and lawfully reclaim possession of her vehicle but for the VSP
26 mandatory requirement that Plaintiff first pay all sums allegedly due the City for unpaid
27 parking tickets.

28 26. Plaintiff will fairly and adequately protect the interests of each class on whose

1 behalf she is acting as a class representative. Plaintiff has no interest which is now or
2 may be potentially antagonistic to the interests of each class on whose behalf she is
3 acting as a class representative. As with all class members, Plaintiff's vehicle was seized
4 without a warrant and impounded pursuant to the VSP. As with all class members,
5 Plaintiff sought to reclaim possession of her vehicle immediately. The attorney
6 representing the Plaintiff is an experienced civil rights attorney, and is considered an
7 able practitioner in federal constitutional and statutory adjudications.

8 27. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of separate
9 actions by individual members of each class would create a risk of inconsistent or
10 varying adjudications with respect to individual members of the class and would
11 establish incompatible standards of conduct for the parties opposing the class.

12 28. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of separate
13 actions by individual members of the class would create a risk of adjudications with
14 respect to individual members of the class which would, as a practical matter,
15 substantially impair or impede the interests of the other members of the class to protect
16 their interests.

17 29. The Damages Class qualifies for certification pursuant to the provisions of
18 Fed.R.Civ.P. Rule 23(b)(3) in that 1) the questions of law or fact common to the
19 members of the class predominate over any questions affecting only individual
20 members, and 2) this class action is superior to other available methods for the fair and
21 efficient adjudication of the controversy between the parties.

22 30. Plaintiff is informed and believes and thereon alleges that the interests of
23 members of each class in individually controlling the prosecution of a separate action
24 are low. Most class members would be unable to individually prosecute any action at
25 all. Plaintiff is informed and believes and thereon alleges that the amounts at stake for
26 individuals are so small that separate suits would be impracticable. Plaintiff is informed
27 and believes and thereon alleges that most members of the class will not be able to find
28 counsel to represent them.

1 31. Plaintiff is informed and believes and thereon alleges it is desirable to
2 concentrate all litigation in one forum because the VSP is a Los Angeles City-wide
3 policy presumptively enforced by City / LADOT officials as against all vehicle owners
4 within the City's jurisdiction. It would consume undue and unnecessary resources to
5 litigate the identical issues in different forums.

6 32. Liability can be determined on a class-wide basis regarding what provisions
7 of the VSP are lawful. For instance, a determination of seizing a vehicle without a
8 warrant in order to coerce the vehicle owner's to pay unpaid parking tickets violates the
9 Fourth and Fourteenth Amendments, that determination disposes of *all* Fourth and
10 Fourteenth Amendment claims of *all* class members.

11 33. To the extent it is determined that notice is required for the Plaintiff Class,
12 then, class members will be identified by the records of LADOT and OPG-LA.

13 **VI. APPROPRIATENESS OF EQUITABLE RELIEF.**

14 34. Plaintiff and Injunctive Relief Class members do not have an adequate remedy
15 at law for the injuries alleged herein. The continuing enforcement of the VSP violates
16 Plaintiff's and class members Fourth Amendment rights guaranteeing that all seizures
17 must be reasonable, and causes continuing, sweeping and irreparable harm to Plaintiff
18 and class members by the ongoing deprivation of their vehicles, property that is
19 essential for Plaintiff and class members' livelihood and necessities of life, e.g.,
20 transporting owners to hospitals.

21 35. Plaintiff and Injunctive Relief Class members are also entitled to declaratory
22 relief with respect to the constitutionality of the VSP, and an injunction preventing the
23 enforcement of those aspects determined to be unconstitutional. Such relief is necessary
24 in that an actual and substantial controversy exists between Plaintiff and class members,
25 who contend that the VSP is unconstitutional, and Defendants, who deny such
26 contention and enforce its provisions. Without such a declaration and injunction,
27 Plaintiff faces the ongoing threat of its enforcement.

28 36. Injunctive relief does not raise any mootness issues because the harm alleged

1 may be revisited on the class where it is capable of repetition, yet evading review due
2 to the transitory nature of Plaintiffs' claims. *County of Riverside v. McLaughlin*, 500
3 U.S. 44, 51-52 (1991).

4 **COUNT ONE**

5 **Class-Based Injunctive Relief: Commanding Release and Return of Vehicles AND**
6 **Enjoining Enforcement of the VSP / Impounding Vehicles**

7 **For Unpaid Parking Tickets**

8 **(Against All Defendants)**

9 **(42 U.S.C. § 1983 / Art. I § 13 Cal. Const.)**

10 37. By this reference, Plaintiff, as class representative for members of the
11 Injunctive Relief Class, re-alleges and incorporates all previous and following
12 paragraphs as if fully set forth herein.

13 38. Both the initial seizures and the ongoing impoundments vehicles belonging
14 to members of the Injunctive Relief Class are Fourth Amendment seizures effected
15 without warrants and in the absence of community caretaking justification, i.e., the
16 vehicles do not present a threat to public safety. Specifically, the impounded vehicles
17 do not “impede traffic, threaten public safety, or be[come] subject to vandalism,”
18 *Miranda v. City of Cornelius*, 429 F.3d 858, 862-65 (9th Cir. 2005). Meanwhile, the
19 ongoing seizures without warrants of vehicles belonging to Injunctive Relief Class
20 members, violates the Fourth Amendment, *Brewster v. Beck*, 859 F.3d 1194, 1196-97
21 (9th Cir. 2017). Class members are willing and able to lawfully reclaim possession, and
22 seek possession of their vehicles, but are denied possession on account of the VSP.

23 39. The seizure of vehicles pursuant to the VSP violates the Fourth Amendment
24 to the United States Constitution, and Art. I § 13 of the California Constitution,
25 regardless of whether the initial seizure and removal of the vehicle was constitutionally
26 valid or not.

27 40. The acts alleged herein were the product of a custom, practice and/or policy
28 of defendants City and LADOT, which custom, practice and/or policy caused the

1 constitutional violations alleged herein.

2 **COUNT TWO**

3 Damages Claim -- both Class-based and individually for Plaintiff Fitzpatrick

4 (Against All Defendants)

5 (42 U.S.C. §1983 - Fourth Amendment)

6 41. By this reference, Plaintiff, on behalf of herself and members of the Damages
7 Class, re-alleges and incorporates all previous and following paragraphs as if fully set
8 forth herein.

9 42. The seizures of vehicles belonging to Plaintiff and members of the Damages
10 Class where such seizures were made without a warrant, did not meet the requirements
11 of the community caretaking doctrine, i.e., the vehicles do not present a threat to public
12 safety, violated the Fourth Amendment to the United States Constitution, thereby
13 entitling Plaintiff and class members to recover compensatory damages from all
14 defendants, proximately caused by the seizures.

15 43. The acts alleged herein were the product of a policy or custom of defendants
16 City and LADOT, which policy or custom caused the constitutional violation alleged
17 herein.

18 **COUNT THREE**

19 Damages Claim -- both Class-based and individually for Plaintiff Fitzpatrick

20 (Against All Defendants)

21 (42 U.S.C. §1983 - Fifth Amendment [Takings without Compensation])

22 44. By this reference, Plaintiff, on behalf of herself and members of the Damages
23 Class, re-alleges and incorporates all previous and following paragraphs as if fully set
24 forth herein.

25 45. The seizures of vehicles belonging to Plaintiff and members of the Damages
26 Class, constitute Takings within the meaning of the Fifth Amendment. Furthermore,
27 defendants City / LADOT effect the Takings for a public purpose -- coercing vehicle
28 owners to pay the City sums allegedly due the City for unpaid parking tickets. Seizing

1 vehicles merely for repeated non-payment of parking fees does not, in and of itself,
2 justify the seizure. Thus, the seizures are Takings for which all defendants owe
3 compensation to Plaintiff and members of the Damages class.

4 **COUNT FOUR**

5 Violation of Cal. Civil Code § 52.1 -- both Class-based
6 and individually for Plaintiff Fitzpatrick
7 (As Against All Defendants)

8 46. By this reference, Plaintiff, on behalf of herself and members of the Damages
9 Class, re-alleges and incorporates all previous and following paragraphs as if fully set
10 forth herein.

11 47. Plaintiff is informed and based thereon alleges the impoundments of vehicles
12 belonging to Plaintiff and the Class she represents were done intentionally, at
13 defendants' discretion. Defendants imposed and enforced the continuing impounds so
14 as to punish Plaintiff and the Class she represents, and to force payments to the City.
15 Defendants enforced the VSP in knowing violation of the Fourth and Fifth Amendments
16 to the United States Constitution, and Art. I § 13 of the California Constitution.

17 48. Plaintiff is informed and based thereon alleges defendants Reynolds, Hale
18 and Does knew enforcement of the VSP violated the Fourth and Fifth Amendments, yet
19 took no steps to stop or modify its enforcement.

20 49. Consequently, the rights of Plaintiff and the Class she represents, under the
21 United States and California Constitutions described above were interfered with by
22 threat, intimidation, or coercion in violation of Cal. Civil Code § 52.1, thereby entitling
23 Plaintiff and the Damages Class to recover damages under Cal. Civ. Code § 52.1(b)
24 proximately caused by the impoundment and the attendant violations of law previously
25 described.

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COUNT FIVE

Violation of Cal. Const., Art. I, §13 -- both Class-based
and individually for Plaintiff Fitzpatrick
(As Against All Defendants)

50. By this reference, Plaintiff, on behalf of herself and members of the Damages Class, re-alleges and incorporates all previous and following paragraphs as if fully set forth herein.

51. The seizures and impoundments of Plaintiff’s and Damages Class Members’ vehicles were accomplished without warrants and not justified by an exception to the warrant requirement, *i.e.*, during the impoundment the vehicle did not present a threat to public safety and community caretaking did not justify the initial seizure of the vehicles. Hence, the impounds violated Art. I § 13 of the California Constitution.

52. Therefore, Plaintiffs and members of the Damages Class are entitled to recover damages under Art. I § 13 of the California Constitution.

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

On The First Cause of Action:

53. That the Court certify this case pursuant to F. R. Civ. P. 23(b)(2) as a class action on behalf of a class composed of the Injunctive Relief Class described above;

54. That the Court issue a declaration that the VSP, in the respects set forth herein, is unconstitutional on its face and of no force or effect. Specifically, that this Court declare that the VSP is facially unconstitutional to the extent that it directs vehicle seizures without warrants in the absence of consent, exigent circumstances, emergency or community caretaking;

55. That the Court issue a permanent injunction on behalf of the Injunctive-Relief Class members commanding defendants, and each of them, to release immediately to class members their respective vehicles, upon proof that Plaintiff and class members can lawfully take possession;

1 56. That the Court issue a permanent injunction on behalf of the Injunctive-Relief
2 Class members enjoining defendants from enforcing the VSP;

3 57. That this Court award Plaintiff attorneys fees and costs incurred in this action
4 under 42 U.S.C. § 1988, Cal. Civ. Proc. Code § 1021.5, Cal. Civil Code § 52.1,
5 California’s private attorney general doctrine, and any other appropriate statute.

6 *On The Second and Third Causes of Action:*

7 58. That the Court certify this case pursuant to F. R. Civ. P. 23(b)(3) as a class
8 action on behalf of a class of Plaintiff composed of the Damages Class described above;

9 59. That the Court award Plaintiff and class members, compensatory damages,
10 according to proof;

11 60. That as against defendants Reynolds, Hale and DOES, the Court award
12 punitive damages in an amount sufficient to deter and punish these defendants;

13 61. That this Court award attorneys fees and costs incurred in this action under
14 42 U.S.C. § 1988, and any other appropriate statute.

15 *On The Fourth Causes of Action:*

16 62. That this Court award Plaintiff and class members, damages allowed under
17 Cal. Civ. Code § 52.1(b) & (c), including statutory damages and penalties;

18 63. That this Court award attorneys’ fees and costs incurred in this action under
19 Cal. Civ. Code § 52.1(h), and any other appropriate statute.

20 *On the Fifth Cause of Action:*

21 64. That this Court award Plaintiff and class members, damages allowed under
22 Art. I § 13 of the California Constitution;

23 65. That this Court award attorneys’ fees and costs incurred in this action under
24 Cal. Civ. Proc. Code § 1021.5 and California’s Private Attorney General doctrine, and
25 any other appropriate statute; and

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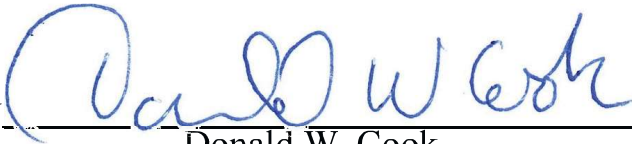
On All Causes of Action:

66. That the Court award costs of suit; and

67. That this Court grant such other and further relief as may be just and proper.

DATED: October 19, 2021

DONALD W. COOK
Attorney for Plaintiff

By 
Donald W. Cook

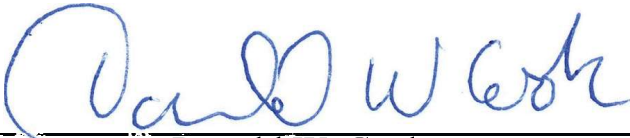
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on her own behalf and on behalf of the Damages Class.

DATED: October 19, 2021

DONALD W. COOK
Attorney for Plaintiff

By 
Donald W. Cook