

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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NICOLE PERKINS,

Plaintiff,

v.

ZIP CAR, INC.,

Defendant.  
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**Civ. No. 23-3315**

**COMPLAINT**

Plaintiff Nicole Perkins, by and through her undersigned counsel, EISENBERG & BAUM, LLP, hereby states her Complaint against Defendant Zip Car, Inc.:

**PRELIMINARY STATEMENT**

1. Defendant Zipcar Inc. (“Defendant” or “Zipcar”) operates a nationwide car rental service. Unlike traditional car rental services, Zipcar members can rent cars by the minute, hour, or day by simply using Zipcar’s mobile app or website. Zipcar members have 24/7 on-demand access to the cars, which are available in hundreds of designated parking areas across New York City, and many other cities across the globe. While this new rental service appears objective and beneficial to all, the benefits are not equally distributed throughout the society. Rather, it perpetuates systemic discrimination and injustice.

2. Plaintiff Nicole Perkins is profoundly deaf and communicates primarily in American Sign Language (“ASL”). Although her New York driver license has a restriction of “Hearing Aid or Full-View Mirror” because of her hearing disability, she is otherwise a competent driver and has a valid New York driver license.

3. Ms. Perkins wanted to join Zipcar’s membership to use its convenient car rental

services like any other nondisabled individuals. But Zipcar has a blanket policy excluding individuals with restricted licenses from joining its membership program. Based on this blanket policy, Zipcar denied Ms. Perkins's membership application in August 2022.

4. By categorically denying her membership application, Zipcar deprived Ms. Perkins the benefits of its car rental service, which is afforded to hearing individuals. Such actions or inactions amount to unlawful discrimination against Ms. Perkins based on her disability of deafness.

5. Based on Ms. Perkins' allegations herein, it is evident that Defendant failed to implement policies, procedures, and practices respecting the rights and needs of deaf individuals.

6. Ms. Perkins seeks to compel Defendant to cease unlawful discriminatory practices. Ms. Perkins also seeks to compel Defendant to implement policies, procedures, and practices that will ensure full and equal enjoyment of Defendant's goods, services, facilities, privileges, advantages, or accommodations for deaf individuals.

7. Ms. Perkins seeks any and all remedies available under law, such as nominal, statutory, compensatory, and punitive damages; declaratory and injunctive; and attorneys' fees and costs to redress Defendant's unlawful disability discrimination against Ms. Perkins in violation of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181, *et seq.* the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 290, *et seq.*; the New York Civil Rights Law ("NYCRL"), N.Y. Civ. Rights Law § 40, *et seq.*; and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101, *et seq.*

### **THE PARTIES**

8. Plaintiff Nicole Perkins brings her action as an individual residing in Queens, NY. Plaintiff is a profoundly deaf individual who primarily communicates in ASL. Plaintiff is substantially limited in the major life activities of hearing and speaking and is an individual with

a disability within the meaning of federal, state, and local civil rights laws.

9. Upon information and belief, Defendant Zipcar, Inc. is a Delaware company registered to do business in New York with a registered address for service at 80 State Street, Albany, NY, 12207.

### **JURISDICTION & VENUE**

10. The Court has jurisdiction over the subject matter of the action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff's claims arising under the laws of the United States, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for Plaintiff's claims arising under state and local laws.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant operates a nationwide car sharing business in this District, has sufficient contacts to be subject to personal jurisdiction in this District, and the acts and omissions giving rise to this Complaint occurred within this District.

### **STATEMENT OF FACTS**

12. Zipcar operates nationwide a car rental service.

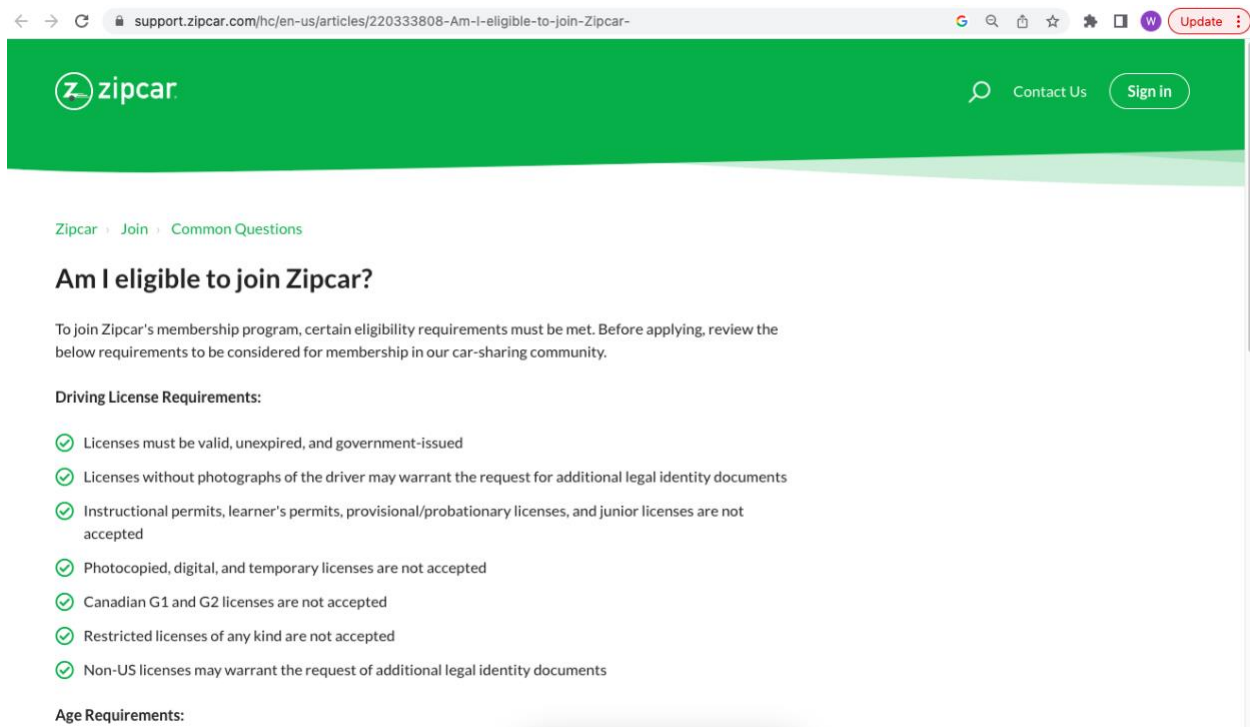
13. According to Defendant, "Zipcar is the world's leading car-sharing network. [Zipcar] provide[s] on-demand access to cars by the hour or the day in cities and campuses around the globe." About, *Zipcar*, <https://www.zipcar.com/about>

14. Zipcar members can rent cars by the minute, hour, or day by simply using Zipcar's mobile app or website.

15. Zipcar members have 24/7 on-demand access to the cars, which are available in hundreds of designated parking areas across New York City.

16. To use Zipcar's car rental service, a person must first join Zipcar's membership program.

17. To join Zipcar’s membership program, certain eligibility requirements must be met, including “Driving License Requirements”:



18. One of the driving license requirements is that “[r]estricted licenses of any kind are not accepted.” Am I Eligible to Join Zipcar?, *Zipcar*, <https://support.zipcar.com/hc/en-us/articles/220333808-Am-I-eligible-to-join-Zipcar->.

19. In other words, Zipcar has a blanket policy excluding all individuals with restricted licenses from joining its membership program.

20. Ms. Perkins is a profoundly deaf individual.

21. Ms. Perkins has a valid, unexpired, and government-issued New York State driver’s license.

22. In New York, if an individual cannot hear, then “a restriction of ‘HEARING AID OR FULL-VIEW MIRROR’ is added to the driver license.” Driver license restrictions for medical conditions, *New York State Department of Motor Vehicles*, <https://dmv.ny.gov/driver->

license/license-restrictions-medical-conditions.

23. Because of her deafness, Ms. Perkins's driver license has an F1 restriction, which is a restriction for "Hearing Aid or Full-View Mirror."

24. In April 2020, Ms. Perkins tried join Zipcar's membership program. Zipcar denied her membership at the time alleging that she did not pay the application of \$25, although she did pay the application fee of \$25 and the payment was processed.

25. On or about August 6, 2022, Ms. Perkins again tried join Zipcar's membership program because Ms. Perkins's apartment offered discounted rental rates for the apartment residents joining Zipcar.

26. Ms. Perkins submitted her driver license as part of her application, but Zipcar denied her application stating that "[t]his driver is not eligible to use Zipcar at this time."

27. After her application was denied, Ms. Perkins contacted Zipcar by using a Video Relay Service<sup>1</sup>.

28. During that call, a Zipcar staff told Ms. Perkins that they cannot approve her account because of her deafness and that is Zipcar's policy. The staff told Ms. Perkins that they cannot rent her a car or give approval to her for security reasons.

29. Ms. Perkins could not join Zipcar's membership.

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<sup>1</sup> Video Relay Service or VRS is a form of Telecommunications Relay Service regulated by the Federal Communications Commission ("FCC"). VRS "allows persons who are deaf or hard-of-hearing to communicate through the telephone system with hearing persons. The VRS caller, using a television or a computer with a video camera device and a broadband (high speed) Internet connection, contacts a VRS [Communication Assistant ("CA")], who is a qualified interpreter. They communicate with each other in sign language through a video link. The VRS CA then places a telephone call to the party the VRS user wishes to call. The VRS CA relays the conversation back and forth between the parties -- in sign language with the VRS user, and by voice with the called party." See FCC, Video Relay Services, <https://www.fcc.gov/consumers/guides/video-relay-services>.

30. Upon information and belief, Zipcar denied Ms. Perkins's membership because of the hearing restriction on her driver's license. Defendant thus denied Ms. Perkins full and equal access to its programs and services.

31. Defendant thus discriminated against Ms. Perkins by categorically denying her membership based on its blanket policy excluding individuals with restricted licenses from joining its membership program.

32. Deaf individuals, including Ms. Perkins, are entitled to full and equal opportunities to participate in and enjoy Zipcar's car rental services as are enjoyed by non-disabled persons.

33. However, Defendant's policies, procedures, and practices have resulted in unequal participation and disparate treatment for Ms. Perkins and deaf individuals.

34. Because of Defendant's unlawful conduct and blanket policy, Ms. Perkins cannot access and enjoy Defendant's on-demand car rental services that it provides to hearing individuals. This experience increases the sense of isolation and stigma for the deaf and hard of hearing.

35. Defendant's failure to provide Ms. Perkins with equal access to its service has caused her harm on the basis of her disability. Defendant's denial of accessible services for her isolates her from the society. This isolation stigmatizes her and causes her unnecessary frustration.

36. Defendant's discrimination against Ms. Perkins caused her to suffer humiliation, anger, frustration, stress, anxiety, and emotional distress.

37. Defendant's discrimination against Ms. Perkins caused her harm, such as loss of opportunities and denial of expectation interests. For example, Ms. Perkins works as a delivery person for Uber Eats, which is a food delivery service. Because she does not own a car, she has had to deliver items by walking or biking. But people delivering by cars make more money than people delivering by walking or biking. Had Zipcar approved her membership application, Ms.

Perkins could have made more money delivering for Uber Eats by using Zipcar.

38. Defendant knew or should have known of its obligations under federal antidiscrimination laws to develop policies to promote compliance with these statutes and to ensure equal participation and treatment of deaf individuals.

39. Based on these facts, Defendant intentionally discriminated against Ms. Perkins and acted with deliberate indifference to her federally protected rights.

40. Based on these facts, Defendant has failed to implement policies, procedures, and practices respecting the rights and needs of deaf and hard of hearing individuals.

41. Based on these facts, Defendant has failed to implement policies, procedures, and practices ensuring that its programs and services are accessible to deaf and hard of hearing individuals.

42. Defendant's willful and knowing action and/or inaction of continued discrimination against Ms. Perkins caused her to suffer from violation of his civil rights.

43. In the future, Ms. Perkins would like to and intends to use Zipcar if it was fully accessible.

44. Defendant's conduct constitutes an ongoing and continuous violation of the law. Defendant has failed to take any prompt and equitable steps to remedy its discriminatory conduct. Unless restrained from doing so, Defendant will continue to violate the law. Its conduct has caused and will continue to cause Plaintiff injury.

**CLAIM I: VIOLATIONS OF TITLE III OF THE AMERICANS WITH DISABILITIES  
ACT**

45. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

46. At all times relevant to the action, Title III of the ADA, 42 U.S.C. § 12181, *et seq.*, has been in full force and effect and has applied to Defendant's conduct.

47. At all times relevant to this action, the United States Department of Justice's regulations implementing Title III of the ADA, 28 C.F.R. Part 36, have been in full force and effect and have applied to Defendant's conduct.

48. Defendant owns, leases, and/or operates a place of public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7).

49. At all times relevant to the action, Plaintiff has been substantially limited in the major life activities of hearing and speaking, and is an individual with a disability within the meaning of the ADA, 42 U.S.C. § 12102(2).

50. Title III of the ADA provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

51. Discriminations may occur under Title III, for example, when public accommodations deny participation—*see* 42 U.S.C. §§ 12182(b)(1)(A)(i); 28 C.F.R. §§ 36.202(a) ; when they deny an individual with disabilities the equal opportunity to participate or benefit from their services—*see* 42 U.S.C. §§ 12182(b)(1)(A)(ii), (b)(1)(C); 28 C.F.R. §§ 36.202(b), 36.203(b) ; when they provide separate benefits—*see* 42 U.S.C. § 12182(b)(1)(A)(iii); 28 C.F.R. § 36.202(c); when they fail to provide their services in the most integrated setting—*see* 42 U.S.C. § 12182(b)(1)(B); 28 C.F.R. § 36.203(a); when they use administrative methods that have the effect of discriminating based on disability—*see* 42 U.S.C. § 12182(b)(1)(D); 28 C.F.R., § 36.204; when they impose eligibility criteria—*see* 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. §§ 36.301(a); when they fail to make reasonable modifications in policies, practices, or procedures—



*see* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. §§ 36.302(a); when they fail to provide auxiliary aides and services—*see* 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. §§ 36.303; and/or when they fail to remove architectural or communication barriers—*see* 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. §§ 36.303.

52. Defendants discriminated against Plaintiff on the basis of her disability, in violation of Title III of the ADA and its implementing regulations.

53. Plaintiff is therefore entitled to injunctive relief, as well as an award of attorneys’ fees, costs, and disbursements pursuant to the ADA, 42 U.S.C. § 12188(a)(1).

**CLAIM II: VIOLATIONS OF THE NEW YORK STATE HUMAN RIGHTS LAW**

54. Plaintiff repeats and re-alleges all preceding paragraphs in support of the claim.

55. At all times relevant to the action, the NYSHRL, Article 15 of the New York Executive Law § 290, *et seq.* has been in full force and effect and has applied to Defendant’s conduct.

56. At all times relevant to the action, Plaintiff has had substantial impairments to the major life activities of hearing and speaking and has been a qualified individual with a disability within the meaning of New York Executive Law § 292(21).

57. At all times relevant to the action, Defendants have been a place of public accommodation within the meaning of N.Y. Exec. L. § 292(9).

58. The NYSHRL extends a cause of action and relief to “any person claiming to be aggrieved” by an unlawful discriminatory practice. N.Y. Exec. L. § 297(9).

59. Pursuant to N.Y. Exec. L. § 296(2)(a), “[i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the . . . disability . . . of any person,

directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . . to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of . . . disability . . . or that the patronage or custom thereof of any person of or purporting to . . . having a disability is unwelcome, objectionable or not acceptable, desired or solicited.”

60. Discriminations may occur under the NYSHRL, for example, when public accommodations refuse to make reasonable modifications in policies, practices, or procedures—*see* N.Y. Exec. L. § 296(2)(c)(i); when they refuse to take such steps as may be necessary to ensure that no individual with a disability is excluded or denied services because of the absence of auxiliary aids and services—*see* N.Y. Exec. L. § 296(2)(c)(ii); and/or when they refuse to remove architectural barriers and communication barriers that are structural in nature—*see* N.Y. Exec. L. § 296(2)(c)(iii).

61. As set forth above, Defendant discriminated against Plaintiff, on the basis of her disability, in violation of the NYSHRL.

62. Plaintiff is therefore entitled to injunctive relief, as well as compensatory damages for the injuries and loss sustained as a result of Defendants’ discriminatory conduct as hereinbefore alleged pursuant to N.Y. Exec. L. § 297(9).

**CLAIM III: VIOLATIONS OF THE NEW YORK CIVIL RIGHTS LAW**

63. Plaintiff repeats and re-alleges all preceding paragraphs in support of the claim.

64. At all times relevant to the action, the New York Civil Rights Law, Article 4 of the New York Civil Rights Law § 40 *et seq.* has been in full force and effect and has applied to Defendants’ conduct.

65. At all times relevant to the action, Plaintiff has had substantial impairments to the major life activities of hearing and speaking and has been a qualified individual with a disability within the meaning of New York Civil Rights Law § 40 *et seq.*.

66. The NYCRL provides that “[n]o person shall, because of . . . disability . . . be subjected to any discrimination in his or her civil rights, or to any harassment . . . by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.”

67. The NYCRL also prohibits disability discrimination, as contemplated by the NYSHRL. *See* N.Y. Civ. Rights Law §§ 40-c & 40-d; N.Y. Exec. Law § 296(2); *see also Ganzy v. Allen Christian Sch.*, 995 F. Supp. 340, 350 (E.D.N.Y. 1997) (“Facts sufficient to sustain a cause of action under New York Executive Law section 296 will support a cause of action under section 40-c of the Civil Rights Law.”).

68. As set forth above, Defendant discriminated against Plaintiff on the basis of her disability, in violation of the NYCRL.

69. Based on Defendant’s discrimination of Plaintiff, Defendant is liable “for each and every violation” of “a penalty of not less than one hundred dollars nor more than five hundred dollars.” N.Y. Civ. Rights Law § 40-d.

70. “At or before the commencement of [this] action under this section,” notice was provided to the New York Attorney General. N.Y. Civ. Rights Law § 40-d.

**CLAIM IV: VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW**

71. Plaintiff incorporates by reference all preceding paragraphs and realleges them in support of this claim.

72. At all times relevant to this action, the N.Y.C. Admin. Code § 8-101 *et. seq.*, has

been in full force and effect and has applied to Defendant's conduct.

73. At all times relevant to this action, Plaintiff has had substantial impairments to the major life activities of hearing and speaking and thus is a qualified individual with a disability within the meaning of N.Y.C. Admin. Code § 8-102.

74. At all times relevant to this action, Defendant has operated a public accommodation within the meaning of N.Y.C. Admin. Code § 8-102(9), and has been a covered entity within the meaning of N.Y.C. Admin. Code §§ 8-102(1) & (17).

75. Pursuant to N.Y.C. Admin. Code § 8-107(4), it shall be unlawful discrimination for “any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of . . . disability . . . of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof.”

76. Pursuant to N.Y.C. Admin. Code § 8-107(15)(a), a covered entity “shall make reasonable accommodation to enable a person with a disability to . . . enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.”

77. Pursuant to N.Y.C. Admin. Code § 8-107(28)(a)(2), it shall be unlawful discrimination for “any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require an accommodation related to disability as provided in subdivision 15 of this section.”

78. “The NYCHRL creates four general causes of action related to disability discrimination” including discrimination, failure to provide reasonable accommodation, and

failure to engage in a cooperative dialogue. *See* the NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Disability at 12-13, [https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR\\_LegalGuide-DisabilityFinal.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.pdf).

79. As set forth above, Defendant discriminated against Plaintiff on the basis of disability, in violation of the NYCHRL.

80. Plaintiff is entitled to damages even if the “only injury is the deprivation of a right granted or protected by [the statute],” N.Y.C. Admin. Code § 8-502(h)(2), because Plaintiff is “claiming to be a person aggrieved by an unlawful discriminatory practice as defined [by the statute].” *Id.* § 8-502(a).

81. Without injunctive relief, there is a clear risk that Defendant’s actions will recur with Plaintiff or other deaf and hard of hearing individuals.

82. Plaintiff is an aggrieved person within the meaning of N.Y.C. Admin. Code § 8-502(a), which extends a cause of action and relief to “any person claiming to be aggrieved” by the discrimination of a person on the basis of his or her disability.

83. Plaintiff is therefore entitled to compensatory damages, punitive damages, injunctive relief, an award of attorney’s fees, costs, and disbursements, pursuant to N.Y.C. Admin. Code § 8-502(a) and (g).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays that this Court grant the following relief against Defendant:

A. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that Defendant’s policies, procedures, and practices have subjected Plaintiff to unlawful discrimination in violation of the ADA, the NYSHRL, the NYCRL, and the NYCHRL;

B. Enjoin Defendant from implementing or enforcing any policy, procedure, or practice that discriminates against deaf and hard-of-hearing individuals;

C. Order Defendant:

i. to develop, implement, promulgate, and comply with a policy/procedure/practice requiring Defendant to provide full and equal access to its goods and/or services for deaf and hard of hearing individuals;

ii. to develop, implement, promulgate, and comply with a policy/procedure/practice to ensure that Defendants will consider the communication needs of deaf individuals who seek Defendant's goods and/or services and will affirmatively work with deaf individuals to provide effective auxiliary aids and services to make its goods and/or services accessible;

iii. to approve Plaintiff's membership application;

iv. to train all of Defendant's employees, staff, and other agents on a regular basis about the rights of deaf or hard of hearing individuals under the ADA, the NYSHRL, the NYCRL, and the NYCHRL;

D. Award to Plaintiff all remedies available under the law, including:

i. Compensatory damages pursuant to the NYSHRL and the NYCHRL;

ii. Statutory damages pursuant to the NYCRL;

iii. Punitive damages pursuant to the NYCHRL;

iv. Reasonable costs and attorneys' fees pursuant to the ADA, the NYSHRL, the NYCRL, and the NYCHRL;

v. Interest on all amounts at the highest rates and from the earliest dates allowed by law;

vi. Any and all other relief, including nominal damages, that this Court finds necessary and appropriate.

Dated: May 2, 2023

Respectfully submitted,

By:



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