

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR**

JAMES R. FREED,
an Individual,

Plaintiff,

vs.

Case No.
Hon.



INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION,
a D.C. Non-Profit Corporation, JESSICA COWLES, an Individual,
VICTOR CARDENAS, an Individual, CORRI SPIEGEL, an Individual,
DIANE STODDARD, an Individual, JEFF TOWERY, an Individual,
JIM MALLOY, an Individual, KENNETH WILLIAMS, an Individual,
MICHAEL KAIGLER, an Individual, MOLLY MEHNER, an Individual,
NATHANIEL PAGAN, an Individual, PAMELA ANTIL, an Individual,
PETER TROEDSSON, an Individual, RAY GONZALES, an Individual,
ROXANNE MURPHY, an Individual, SCOTT COLBY, JR., an Individual,
TROY BROWN, an Individual, VALMARIE TURNER, an Individual,
WILLIAM FRASER, an Individual, ROBERT KRISTOF, an Individual, and
CHRIS MACPHERSON, an Individual.

Defendants.

TODD J. SHOUDY (P41895)
VICTORIA R. FERRES (P78788)
FLETCHER FEALKO SHOUDY & FRANCIS, P.C.
Attorneys for Plaintiff
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ST. CLAIR COUNTY
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There is no other pending or resolved civil action arising out
of the transaction or occurrence alleged in the complaint.

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff James R. Freed, through his attorneys Fletcher Fealko Shoudy & Francis, P.C., and for his Complaint says:

FLETCHER FEALKO SHOUDY & FRANCIS, P.C.

JURISDICTION AND VENUE

1. This is an action for defamation and false light/invasion of privacy arising out of July 2022 statements and publications made by or caused to be made by Defendants regarding Plaintiff James R. Freed.
2. Plaintiff James R. Freed is a resident of the City of Port Huron, County of St. Clair, State of Michigan.
3. Defendant International City/County Management Association is a nonprofit corporation located in Washington, D.C.
4. Defendant Jessica Cowles is a resident of Annapolis, Maryland.
5. Defendant Victor Cardenas is a resident of Novi, Michigan.
6. Defendant Chris Macpherson is a resident of Davenport, Iowa.
7. Defendant Diane Stoddard is a resident of Lawrence, Kansas.
8. Defendant Jeff Towery is a resident of McMinnville, Oregon.
9. Defendant Jim Malloy is a resident of Lexington, Massachusetts.
10. Defendant Kenneth Williams is a resident of Buda, Texas.
11. Defendant Michael Kaigler is a resident of Savannah, Georgia.
12. Defendant Molly Mehner is a resident of Cape Girardeau, Missouri.
13. Defendant Nathaniel Pagan is a resident of Owensboro, Kentucky.
14. Defendant Pamela Antil is a resident of Carlsbad, California.
15. Defendant Peter Troedsson is a resident of Albany, Oregon.
16. Defendant Ray Gonzales is a resident of Thornton, Colorado.
17. Defendant Roxanne Murphy is a resident of Valdez, Alaska.
18. Defendant Scott Colby is a resident of Windsor, Connecticut.
19. Defendant Troy Brown is a resident of Moorpark, California.

20. Defendant Valmarie Turner is a resident of Ashburn, Virginia.
21. Defendant William Fraser is a resident of Monpelier, Vermont.
22. Defendant Robert Kristof is a president of Timisoara, Romania.
23. Defendant Chris MacPherson is a resident of Fredericton, Canada.
24. Venue is proper in St. Clair County Circuit Court under MCL 600.1629 because Plaintiff resides in St. Clair County and the original injury occurred in St. Clair County when Defendants issued or caused to be issued a press release with the offending statements in St. Clair County
25. Jurisdiction of this Court is proper because the amount in controversy in this matter is in excess of Twenty-Five Thousand (\$25,000.00) Dollars exclusive of costs, interest, and attorney fees.

COMMON ALLEGATIONS

a. The Parties

26. Plaintiff James Freed, a public official, has been a well-respected City Manager in Michigan for nearly fifteen years. Mr. Freed currently serves as the Port Huron City Manager, a role he has held since 2014. Prior to becoming the Port Huron City Manager, Plaintiff was simultaneously the city manager of Lakeview and Stanton, Michigan.
27. During the course of his career as a public servant, Mr. Freed has had a reputation for excellence in public service as a municipal executive and has received numerous awards and accolades, including the Michigan Junior Chamber's 2018 Outstanding Young Michigander Award and Crain's Detroit 40 Under 40 in 2016. In 2022, Mr. Freed was recognized by his peers and received the 2022 Community Leadership Award from the Michigan Municipal Executive Association.
28. Defendant ICMA is a professional association of "city and county managers and other employees who serve local government."¹
29. Defendants Spiegel, Stoddard, Towery, Malloy, Williams, Kaigler, Mehner, Pagan, Antil, Troedsson, Gonzales, Murphy, Colby, Jr., Brown, Turner, Cardenas, Fraser, Kristof, and MacPherson, (collectively, the "Defendant Board Members") are employed as municipal executives at various locations throughout the United States and the world and at all times relevant to this lawsuit were members of the Executive Board of Defendant ICMA.

¹ <https://icma.org/about-icma>

30. At all times relevant to this lawsuit, Defendant Jessica Cowles was employed by Defendant ICMA as its "Ethics Advisor".

b. The Background Facts

31. Mr. Freed was a member of Defendant ICMA from approximately 2008 to June 15, 2022.
32. Mr. Freed has also maintained membership in numerous other professional organizations. Notably, Mr. Freed previously served as an ethics committee member for Michigan Municipal Executive Association.
33. In November 2018, Mr. Freed raised ethical concerns to Defendant ICMA regarding Martha Perego, Defendant ICMA's Director of Member Services and Ethics, who, along with Defendant Jessica Cowles, ran the ethics department at ICMA. Specifically, Mr. Freed raised concerned that @icmaethics Twitter account was being used to advocate and support a partisan political agenda. (Exhibit A).
34. Mr. Freed also shared his concerns about the ICMA ethics department and the @icmaethics Twitter account on the Michigan Municipal Executives Association ("MME") listserv, a private listserv in which other Michigan municipal managers regularly exchange ideas and information relating to municipal management.
35. On December 12, 2018, Marc Ott, the ICMA Executive Director, wrote Mr. Freed a letter confirming that he "expressed my disapproval to Martha, counselled her, and provided direction to Marth to disconnect her [Twitter] handle from ICMA ...".
36. As a result of Mr. Freed's complaint, members of the ethics department, including Ms. Cowles, developed deep and personal animosity towards Mr. Freed.
37. Likewise, many Executive Board Members and other members of ICMA who were also members of MME, received the MME listserv email, and supported the same partisan political view point as Ms. Perego, likewise developed a deep and personal animosity towards Mr. Freed. Some began looking for an opportunity to attack Mr. Freed's character and reputation.
38. On January 28, 2019, almost immediately after the issue with Ms. Perego was addressed, Defendant Jessica Cowles, Defendant ICMA's Ethics Advisor and subordinate of Ms. Perego, notified Mr. Freed via telephone that an ethics complaint had been filed against him.
39. The ethics complaint was frivolous and should have been dismissed sua sponte. To protect himself given the obvious retaliatory nature of the complaint, Mr. Freed legally recorded the phone call.

40. After investigating the frivolous complaint for months, on June 14, 2019, Mr. Freed received a letter from Defendant Cowles advising him that the ICMA Committee on Professional Conduct (the "CPC") "voted to close the case finding your conduct did not rise to the level of a violation of the ICMA Code of Ethics." Despite the CPC's finding of no unethical conduct, Defendant Cowles expressed her animosity towards Mr. Freed because he legally recorded the January 28, 2019 telephone call.
41. In mid-2019, Defendant ICMA received another retaliatory ethics complaint regarding Mr. Freed's postings on social media that were allegedly political in nature (i.e. the same complaint Mr. Freed made against Ms. Perego). Instead of dismissing the complaint immediately, Ms. Cowles again subjected Mr. Freed to a months-long investigation. On November 15, 2019, Defendant Cowles advised Mr. Freed via letter that the "CPC ultimately voted to close the case finding your conduct did not give rise to the level of violating the ICMA Code of Ethics."
42. In the Fall of 2021, Mr. Freed published factually true statements regarding the City of Port Huron's successful defense of a complaint that had been issued by the Michigan Occupational Safety and Health Administration ("MIOSHA").
43. During the course of the MIOSHA case, the Michigan Governor made statements and issued a press release alleging that the City of Port Huron, under Mr. Freed's leadership, had engaged in serious violations of COVID-19 protocols.
44. After the City's successful defense, many newspaper articles were written about the case that were critical of the Michigan Governor, which were shared by Mr. Freed on social media and on the MME listserv.
45. In late 2021, Defendant ICMA received another anonymous ethics complaint pertaining to several of Mr. Freed's social media posts and communications on the MME's private listserv (the "Complaint").
46. The Complaint raised the above sharing of articles regarding the MIOSHA case and also raised an email Mr. Freed sent to City staff on November 6, 2021 regarding the OSHA Emergency Temporary Standard ("ETS") relating to employee COVID-19 vaccinations.
47. Mr. Freed had previously hosted a COVID-19 Vaccination Clinic for city employees in April 2021. Mr. Freed is also personally vaccinated against COVID-19.
48. The OSHA ETS, which did not apply to Michigan cities, provided employers with 100 or more employees a choice: (1) they could issue a vaccine mandate to their employees; or (2) they could choose a "testing and masking option" instead, where an employer could require weekly testing and mask use for unvaccinated employees.

49. Mr. Freed's November 6, 2021 email to city staff read:

City Staff,

I know there has been significant news and information floating around regarding OSHA and a forthcoming vaccine mandate for employers with 100 or more employees.

Municipalities do not fall under the jurisdiction of OSHA. However, we do fall under the jurisdiction of MIOSHA, and they will need to promulgate additional rules if they seek to include us in any future mandate.

Hear me now, I will never enforce a vaccine mandate upon my employees. I took an oath to protect and uphold the Constitution when I took this position. I will uphold my oath, come what may.

I earnestly believe that one of the many federal judges across this country will issue an injunction soon. I also believe the U.S. Supreme Court will soundly reject this overreach of the administrative state. Laws are made by duly elected members of the U. S. Congress, Senate and signed by the President, not unelected bureaucrats.

I hope I have made my position on this issue clear to you.

Have a great weekend!

-James Freed [hereinafter the "Email".]

50. Consistent with the purpose of the MME listserv, i.e., to share ideas on how to respond to public issues facing municipal executives, on November 6, 2021, Mr. Freed also shared the Email on the MME listserv.
51. Other municipal managers and members of the MME listserv responded to Mr. Freed's sharing of the Email. One city manager stated, "It's important to recognize that employers, both private and public, have been discussing a potential federal vaccine mandate since the pandemic onset. When you set aside your personal feelings and bias on the matter, it's always been clear that this is likely not legal and unconstitutional -- especially in its current form. That's why most managers have been saying they would not enforce a vaccine mandate, not because of partisan politics."
52. Defendant Jessica Cowles contacted Mr. Freed in late November to early December 2021 to discuss the Complaint via telephone and the two had another hostile exchange over what Mr. Freed saw as continual targeting of him in retaliation for his earlier complaint and attempts to "cancel" him for personal reasons.

53. On December 2, 2021, Defendant Cowles sent a letter to Mr. Freed requesting an enormous amount of information, including loaded questions that had nothing to do with ICMA ethics but made it clear that Ms. Cowles was looking for a reason to attack Mr. Freed's policy decisions on behalf of the City, including her position that the City should have adopted the vaccine mandate and should not have defended itself against the MIOSHA complaint and public attacks made against the City.
54. Mr. Freed responded to Ms. Cowles's inquiry on December 3, 2021, explained the basis and legality of his position on the vaccine mandate, and told her she did not have the right to challenge policy decisions he made within his power as a City Manager.
55. As the deadline for the OSHA ETS approached, and in anticipation that MIOSHA may adopt a similar standard, Mr. Freed took action to create a "vaccine or test policy" for the City of Port Huron and line up firms to perform the testing, which he also shared on the MME listserv to provide guidance for other local government managers.
56. The United States Supreme Court found the OSHA ETS unconstitutional on January 13, 2022, which vindicated Mr. Freed's statements in the Email on November 6, 2021 where he opined that the OSHA ETS would be declared unconstitutional.
57. On February 9, 2022, the CPC, led by Ms. Cowles and/or Ms. Perego, voted to recommend a "public censure" for Mr. Freed for purported conduct in violation of ICMA's Code of Ethics. Ms. Cowles specifically stated that Mr. Freed violated his "commitment to honesty and integrity".
58. Even though the Email was 100% legally correct, the Committee's recommendation of a public censure was based primary upon the Email. The CPC's decision letter stated, "Finally, the CPC reviewed your message to city staff about the COVID-19 vaccine mandate and posting of this message to the MME listserv. The CPC determined (1) a member has an affirmative duty to follow the law as outlined in Tenet 3's commitment to honesty and integrity; (2) a member may choose to resign from their position if they find they cannot implement a law or policy because it conflicts with their personal or professional beliefs; and (3) a manager has a responsibility to ensure their conduct enhances public trust in their position, their organization, and the local government management profession. The CPC concluded that your preemptive declaration to city employees that you will not implement a law, policy, etc., when it is the manager's duty to do so is contrary to the principles in Tenet 3."
59. Mr. Freed requested the CPC reconsider its decision and filed an official appeal to the ICMA Executive Board on February 17, 2022.

60. In the appeal, Mr. Freed explained that the CPC's conclusion that Mr. Freed's "preemptive declaration to city employees that [he] will not implement a law, policy, etc., when it is the manager's duty to do so is contrary to the principles of Tenet 3" was erroneous because Mr. Freed would not have been in violation of any law by choosing to implement a "vaccine or test" policy as opposed to a vaccine mandate, and the United States Supreme Court held that the ETS was unconstitutional. Moreover, it did not apply to Michigan cities, and, thus, there was no legal obligation to follow the ETS anyway.
61. On April 20, 2022, the CPC responded to Mr. Freed's request that it reconsider its decision. The CPC reaffirmed its decision and also "wished to share" with Mr. Freed that they took issue with another portion of the Email, the "statement in your November 4, 2021 email to city employees that you shared on the Michigan Municipal Executives (MME) listserv, 'Laws are made by duly elected members of the U.S. Congress, Senate and signed by the President, not unelected bureaucrats' was inappropriate because it overlooked the fact that the governor is an elected official and it undermined the value of the local government management profession."
62. The April 20, 2022 decision was nonsensical because the Michigan Governor was not involved in the Federal OSHA ETS in any way, and the Supreme Court had already confirmed that Mr. Freed was correct in his belief that the OSHA ETS was unconstitutional because such a sweeping mandate would only be constitutional if it were made "by duly elected members of the U.S. Congress, Senate and signed by the President".
63. The letter did not address the other complaints about Mr. Freed relating to his reposting of the MIOSHA case news articles. Such postings do not violate the ethical rules, as ICMA has repeatedly stated that "ICMA's Code of Ethics does not prohibit members from disagreeing or offering criticism of elected officials" and the guidelines to the ethical rules specifically state "Members share with their fellow citizens the right and responsibility to voice their opinion on public issues."
64. On April 26, 2022, Mr. Freed appealed the CPC's recommendation to Defendant ICMA's Executive Board and requested a hearing.
65. On June 12, 2022, Defendant ICMA's Executive Board held a hearing on the CPC's recommendation.
66. Despite being fully aware of the facts as represented in Mr. Freed's appeal, specifically that Mr. Freed never violated or said he would violate any law and that he had the right to criticize the Governor, the Defendant Board Members voted to publicly censure Mr. Freed.

67. Prior to and during the voting, Defendants made it clear that there was bias against Mr. Freed based upon personal animosity unrelated to the determination of an ethical rule issue.
68. Ms. Cowles and or other members of the ethics department prepared an executive memorandum that was not shared with Mr. Freed but was provided to the Defendant Board Members, which, upon information and belief, continued to disparage Mr. Freed.
69. Defendant ICMA normally only publicly censures individual members for criminal or flagrantly obvious improper conduct. The type of accusation against Mr. Freed (which in this case was not a violation of the rules of ethics), if proven true, would only subject a member to a private censure.
70. However, as stated by Defendant Victor Cardenas to numerous other ICMA members, the members of the Executive Committee decided not to do a private censure because of their personal animosity towards Mr. Freed.
71. Ms. Cowles and the Defendant Board Members, for personal and malicious reasons, wanted to "cancel" Mr. Freed and, acting in concert, directed and took affirmative action that Mr. Freed be publicly censured in an effort to publicly embarrass him for false reasons and with false statements.
72. On July 5, 2022, Defendant Cowles, on behalf of Defendant ICMA and at the direction of Defendant Board Members: (1) issued a press release that included the public censure that was sent to all news organizations covering St. Clair County including the Port Huron Times Herald and other local news media and radio stations (see Exhibit C); (2) sent a letter to Port Huron Mayor Pauline Repp regarding the public censure (see Exhibit D), and (3) took other actions to publish the false accusations against Mr. Freed, including on the ICMA website (see Exhibit E) (collectively, the "Publications").
73. The letter to Mayor Repp and the press release falsely stated that Mr. Freed made a "preemptive declaration to city employees that he would never implement a specific law or policy when it is the manager's duty to do so."
74. The website publication also stated, "The board concluded (1) a member has an affirmative duty to follow the law as outlined in Tenet 3's commitment to honesty and integrity; (2) a member may choose to resign from their position if they find they cannot implement a law or policy because it conflicts with their personal or professional beliefs; and (3) a manager has a responsibility to ensure their conduct enhances public trust in their positions, their organization, and the local government management profession. The board determined his preemptive declaration to city employees that he would never implement a specific law or policy was contrary to the principles in Tenet 3."

75. The statements of fact in the press release were false and made with knowledge of Defendants that they were false.
76. The press release also creates the false impression that Mr. Freed acted illegally, failed to follow a law that he had a duty to follow, acted in a dishonest fashion, and lacked integrity.
77. The local media questioned Mr. Freed as to what law he violated and published news article covering the public censure, which remain available on simple internet searches.
78. In mid-2022, Mr. Freed applied for an open city manager position in Cincinnati, Ohio. News publications regarding his application exclusively focused on his public censure from Defendant ICMA. For example, one article read, "The International City/County Management Association censured Freed and revoked his City Manager credentials last month, according to the Port Huron Times Herald. The censure was over 'a social media post directed at Michigan Gov. Gretchen Whitmer and an email about not pursuing an employee COVID vaccine mandate.'"
79. Mr. Freed sent Defendants requests for retraction on August 25, 2022 (see Exhibit D).
80. Defendants' attorney responded and claimed that Defendant ICMA was not stating that Mr. Freed violated an existing law, but that he violated the rules by saying if such a law were passed in the future he would not follow it. That claim made no sense given the language in the press release.
81. Defendants have refused to retract their statements or further clarify their statements to make it clear that Mr. Freed never acted illegally, never acted in a dishonest fashion, and never failed to follow a law that he had a legal duty to follow.
82. The false and defamatory statements, as well as what a reasonable person would understand to be the meaning of the statements, have harmed Mr. Freed's reputation.

COUNT I

DEFAMATION / DEFAMATION BY IMPLICATION / LIBEL – ALL DEFENDANTS

83. Plaintiff incorporates by reference paragraphs 1 through 84 as if fully restated herein.
84. The above Publications included statements that were made of and concerning Mr. Freed, false in some material respect, were communicated to third parties, and tend to harm Mr. Freed's reputation.

85. The manner in which the press release was worded created a series of fact that creates a defamatory connection between them that were false, constituting defamation by implication.
86. Defendants published the remarks in the Publications to third parties with actual malice and with knowledge of the falsity of the statements or their implication or in reckless disregard of their truth or falsity. These false statements and the implication of the statements were made because of Defendants' personal animosity towards Mr. Freed, with the goal and purpose of harming Mr. Freed's reputation, and with bad faith or ill will.
87. The Publications were not privileged.
88. Defendants were given an opportunity to retract the statements or clarify them to avoid the defamatory implication but refused to do so.
89. The statements constitute defamation per se because they falsely accuse and/or imply that Mr. Freed acted illegally and criminally, and/or were about his business/professional reputation. In the alternative, it constituted defamation per quod.
90. The Publications have resulted in damage to Plaintiff's reputation in the community and economic loss, including, but not limited to:
 - a. Failure to obtain an opportunity for the Cincinnati City Manager Job, which provides a higher compensation package that Mr. Freed currently receives.
 - b. Inability to obtain new employment with higher compensation and, thus, consequential loss of salary and/or wages and/or other compensation.
 - c. Lost opportunity for natural progression to high salaried positions.
 - d. Emotional distress and harm to his feelings.
 - e. *Damage to his professional reputation.*
 - f. Humiliation, mortification, and embarrassment.
 - g. Sleeplessness and anxiety.
 - h. Exemplary damages.
 - i. Punitive damages.
 - j. Other damages that may arise during the course of discovery.
91. Defendants' accusations constitute defamation, defamation per se, and defamation by implication.

WHEREFORE, Plaintiff respectfully requests this Court enter Judgment in his favor and against Defendants in an amount in excess of \$25,000 plus costs, interest and attorney fees.

COUNT II
FALSE LIGHT INVASION OF PRIVACY – ALL DEFENDANTS

92. Plaintiff incorporates by reference paragraphs 1 through 93 as if fully restated herein.
93. Defendants' statements, as set forth above, falsely portrayed Mr. Freed as unethical and lawless.
94. These statements, as well as the implications of these statements, were unreasonable and highly objectionable by attributing to Mr. Freed characteristics, conduct, or beliefs that were false and placed Mr. Freed in a false position and/or light.
95. *Defendants made this false portrayal to the public.*
96. Defendants made these statements with knowledge or reckless disregard for the truth or falsity of the light in which they portrayed Mr. Freed.
97. *The false portrayal of Mr. Freed as unethical and lawless was highly offensive to him as a City Manager who is required to uphold the law and would be highly offensive to a reasonable person.*
98. *The false portrayal of Mr. Freed as unethical and lawless has resulted in damage to Plaintiff's reputation in the community and economic loss, including, but not limited to:*
- a. Failure to obtain an opportunity for the Cincinnati City Manager Job, which provides a higher compensation package that Mr. Freed currently receives.
 - b. Inability to obtain new employment with higher compensation and, thus, consequential loss of salary and/or wages and/or other compensation.
 - c. Lost opportunity for natural progression to high salaried positions.
 - d. Emotional distress and harm to his feelings.
 - e. Damage to his professional reputation.
 - f. Humiliation, mortification, and embarrassment.
 - g. Sleeplessness and anxiety.
 - h. Exemplary damages.
 - i. Punitive damages.
 - j. Other damages that may arise during the course of discovery.

WHEREFORE, Plaintiff respectfully requests this Court enter Judgment in his favor and against Defendants in an amount in excess of \$25,000 plus costs, interest and attorney fees.

COUNT III
CIVIL CONSPIRACY - ALL DEFENDANTS

99. Plaintiff incorporates by reference paragraphs 1 through 100 as if fully restated herein.
100. Defendants, acting in concert and with a single plan to damage Mr. Freed's reputation, and combined together for an unlawful purpose, i.e. to intentionally defame Mr. Freed for personal and malicious reasons, in violation of MCL 750.370.
101. Defendants acted in furtherance of that conspiracy by taking the overt act of causing the defamatory Publications to be made to the media by way of the press release and to the public by way of the ICMA website.
102. The Publications constituted the separate torts of defamation and/or invasion of privacy/false light.
103. As a result, although this is not a separate tort, all Defendants are liable for the defamation and/or invasion of privacy/false light as set forth above

WHEREFORE, Plaintiff respectfully requests this Court enter Judgment in his favor and against Defendants in an amount in excess of \$25,000 plus costs, interest and attorney fees.

Respectfully Submitted:

FLETCHER FEALKO
SHOUDY & FRANCIS, P.C.
Attorneys for Plaintiff

By: _____

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DATED: September 20, 2022

JURY DEMAND

NOW COMES Plaintiff, James R. Freed, by and through his attorneys, Fletcher Fealko Shoudy & Francis, P.C. hereby demands a trial by jury.

Respectfully Submitted:

FLETCHER FEALKO
SHOUDY & FRANCIS, P.C.
Attorneys for Plaintiff

By: 

TODD J. SHOUDY (P41895)
VICTORIA R. FERRES (P78788)

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DATED: September 20, 2022

FLETCHER FEALKO SHOUDY & FRANCIS, P.C.