



**And just like that, the district was sued!**

## NEWS

# South Kitsap School Board member files lawsuit against the board

**Jeff Graham** Kitsap Sun

Published 1:36 p.m. PT Aug. 19, 2021

South Kitsap School Board member Jeff Daily filed a lawsuit against fellow board members on Wednesday over his claim that the board failed to investigate his allegations of misconduct of other members.

Daily's suit, filed in Kitsap Superior Court, contends the school board refused "to address, investigate, remedy or otherwise attend to properly raised allegations of misconduct" against other board members.

The nature and scope of Daily's allegations are not mentioned in the suit. South Kitsap School District spokeswoman Amy Miller said the district would not comment on Daily's lawsuit "since it's a legal matter."

Daily is represented in the suit by Sarah Lippek of Seattle-based Cedar Law, which on its website bills itself as a law firm providing "solutions for students and their families, educators, and schools to resolve disputes so they can maintain focus on the fundamentals of teaching and learning."

Daily serves on the board with members John Berg, Eric Gattenby, Rebecca Diehl and Liz Sebren. Diehl and Sebren are in the last months of their elected terms — neither opted to run for re-election in November. Daily began serving on the school board in 2020.

The lawsuit states that Daily originally hand-delivered written allegations of misconduct to board members during a

meeting in May and that those allegations were ignored. At a board meeting July 21, Daily made a motion in an attempt to have his complaints against several board members recognized and possibly investigated by a neutral party through the district's risk pool. The motion failed 4-1 with Berg, Gattenby, Diehl and Sebren opposing it.

Daily's lawsuit also takes issue with the board's handling of complaints made against him at an April 21 meeting. Members passed a motion seeking to have Daily investigated and possibly censured for policy violations.

"These allegations were handled with dispatch by the Board, and were provided to the District risk pool for investigation," the lawsuit states.

When reached on the phone Thursday, Daily said that the district's investigation against him is complete. He didn't disclose the report's findings but has previously maintained he would like the report be made public.

Based on statements made in the lawsuit, Daily believes he's faced "intense and apparently coordinated resistance" during his time on the board.

"Since the earliest days of his service," the lawsuit reads, "Mr. Daily has experienced difficulty accessing District financial records; a total lack of traction for his attempts to daylight fiscal and financial decisions; hostile treatment by fellow electeds on the Board; and a near constant barrage of attacks on his character, personal style and political opinions."

Often in the minority when voting on various board motions, Daily found himself sided with the majority on a motion he made during Wednesday's meeting regarding Gov. Jay Inslee's mask mandate for all students and employees in K-12 schools across the state.

After a public comment period in which community members shared their displeasure in the mask mandate, the board voted 3-1 (with Daily, Berg and Diehl voting in yes) in favor of asking Superintendent Tim Winter to i with the district's legal counsel into the feasibility of defying the state's mask order.

RECEIVED FOR FILING  
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ALISON H. SONNTAG

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**THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KITSAP**

**JEFFREY DAILY**

Petitioner,

vs.

**SOUTH KITSAP SCHOOL BOARD**

Respondent.

Case No.: 21-2-01233-18

**SUMMONS AND COMPLAINT:**

**APPEAL OF THE FAILURE TO  
ACT AND DECISION OF THE  
SCHOOL BOARD**

**TO THE RESPONDENT, SOUTH KITSAP SCHOOL BOARD:** A lawsuit has been started against you in the above-named court by the petitioner. Petitioner's claims are stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorneys for the plaintiff within twenty (20) days after the service of this summons,

SUMMONS AND COMPLAINT: APPEAL OF THE FAILURE TO  
ACT AND DECISION OF THE SCHOOL BOARD - 1

Cedar Law PLLC  
113 Cherry Street, PMB 96563  
Seattle, Washington 98122  
(206) 607-8277;  
Fax (206) 237-9101

1 excluding the day of service, or a default judgment may be entered against you  
2 without notice. A default judgement is one where plaintiffs are entitled to what it  
3 asks for because you have not responded. If you serve a notice of appearance on the  
4 undersigned attorney, you are entitled to notice before a default judgment may be  
5 entered.  
6

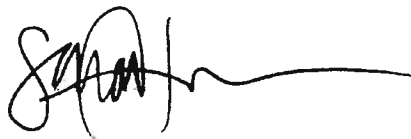
7 You may demand that the plaintiff file this lawsuit with the court. If you do so, the  
8 demand must be in writing and must be served upon the person signing this  
9 summons. Within fourteen (14) days after you serve the demand, the plaintiff must  
10 file this lawsuit with the court, or the service on you of this summons and complaint  
11 will be void.  
12

13 If you wish to seek the advice of an attorney in this matter, you should do so  
14 promptly so that your written response, if any, may be served on time.  
15

16 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the  
17 State of Washington.  
18

19  
20 DATED this 18<sup>th</sup> day of August, 2021:

21 CEDAR LAW PLLC  
22

23   
24

25  
26 By : \_\_\_\_\_  
27 Sarah Lippek, WSBA No. 46452  
28 Attorney for Petitioner

SUMMONS AND COMPLAINT: APPEAL OF THE FAILURE TO  
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113 Cherry Street, PMB 96563  
Seattle, Washington 98122  
(206) 607-8277;  
Fax (206) 237-9101

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The Petitioner, JEFFREY DAILY, by and through his attorney SARAH LIPPEK, whose mailing address is 113 Cherry Street PMB 96563, Seattle, Washington 98104, appeals the failure to act of South Kitsap School Board and a decision of that Board; pursuant to RCW Chapter 28A.645.

**SUMMONS AND COMPLAINT: APPEAL OF THE FAILURE TO  
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Cedar Law PLLC  
113 Cherry Street, PMB 96563  
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Fax (206) 237-9101

1 The failure to act and decision is from the South Kitsap School Board. Their  
2 address is 2689 Hoover Ave SE, Port Orchard, WA 98366.

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4  
5 At issue is the refusal of the School Board to address, investigate, remedy, or  
6 otherwise attend to properly-raised allegations of misconduct. This failure is  
7 manifest both in the Board's failure to act on allegations of misconduct and on the  
8 Board decision of July 21, 2021, declining to adopt Mr. Daily's motion to address  
9 allegations of misconduct.  
10

11  
12 This Appeal is timely filed with the proper court, and timely filed with the  
13 Secretary of the Board for South Kitsap School District.  
14

15  
16 **I. BACKGROUND**

17 Plaintiff Mr. Daily was democratically elected in 2019 as a representative of the  
18 people of south Kitsap County to serve as a member of the South Kitsap School  
19 Board. He entered office in 2020. Mr. Daily was elected by a majority of votes on a  
20 reform platform emphasizing fiscal responsibility and public transparency.  
21

22 Plaintiff Mr. Daily is proud to serve his constituents, and began his service eager  
23 to improve the District's operations. He was unprepared for the level of intense and  
24 apparently coordinated resistance he would face.  
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1 Since the earliest days of his service, Petitioner Mr. Daily has experienced  
2 difficulty accessing District financial records; a total lack of traction for his  
3 attempts to daylight fiscal and financial decisions; hostile treatment by fellow  
4 electeds on the Board; and a near-constant barrage of attacks on his character,  
5 personal style, and political opinions.  
6

## 7 8 **II. PETITIONER'S ALLEGATIONS OF MISCONDUCT**

9  
10 Petitioner Mr. Daily has attempted to use internal Board processes to address his  
11 concerns about potential misconduct on the board. He hand-delivered written  
12 allegations of misconduct to the Board, expecting that reporting misconduct would  
13 cause the President to initiate the process by which complaints are meant to be  
14 handled, according to Board rules.<sup>1</sup> Instead of properly addressing Petitioner Mr.  
15 Daily's allegations, the President invoked a non-statutory procedural 'rule,'<sup>2</sup> found  
16 nowhere in any Board policy or applicable law, to find Petitioner Mr. Daily 'out of  
17 order,' thereby burying his complaints.  
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21 Petitioner Mr. Daily waited for any indication that his allegations would be  
22 afforded the normal attention by the Board. To date, no action appears to have  
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27 <sup>1</sup> See Board policy GP-12 on 'Director Violations.'

28 <sup>2</sup> The Vice President is apparently under the misapprehension that Robert's Rules of Order have the force of law, and that misconduct complaints can be buried on procedural bases despite that no clear procedure is provided.



1 been taken by the Board, by the District, or by the District risk pool or attorneys.  
2 There has been no internal counseling of the Board members accused of misconduct,  
3 no substantive internal review of Petitioner Mr. Daily's allegations, no  
4 investigation of the allegations by the District or any other body, and no indication  
5 that there is any intention to address the allegations in any way. This is the failure  
6 to act from which Petitioner Mr. Daily appeals in the instant action.  
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9

10 Stymied by the refusal of the Board to address his complaints, Petitioner Mr. Daily  
11 made a motion at the Board meeting of July 21, 2021, pleading for the Board to  
12 take their duties seriously and do something about his complaints of misconduct.  
13

14 Petitioner Mr. Daily's motion proposed the following:

- 15 1. That the Board recognize that allegations of misconduct had been brought  
16 be Director Daily against several members, whose names would be omitted  
17 from the public record at that time.
- 18 2. That the Board President update the board on the response to the  
19 allegations of misconduct brought by Director Daily, including informing the  
20 board whether and when the internal counseling conversation occurred; and  
21 the content and results of that conversation.  
22
- 23 3. That if the internal process for handling allegations of misconduct has not  
24 begun, the matter would be referred for investigation by a neutral outside  
25 investigator through the District risk pool.  
26  
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1 4. That allegations of the Board President's own misconduct would be referred  
2 for investigation by a neutral outside investigator through the District risk  
3 pool, as there is no ability for the President to undertake the internal process  
4 in relation to allegations about himself.  
5

6 Board Vice President Berg again 'ruled' the motion 'out of order' on the basis of an  
7 incorrect application of parliamentary custom. The Board then voted on the motion  
8 and it was not approved. This vote completely foreclosed on the possibility that  
9 Petitioner Mr. Daily's complaints of misconduct would ever be properly handled,  
10 either within the Board or by the District. That is the decision of the Board from  
11 which Petitioner Mr. Daily appeals in the instant matter.  
12  
13

### 14 III. ALLEGATIONS AGAINST PETITIONER

15  
16 In stark contrast to the way Petitioner Mr. Daily's allegations were buried, there  
17 has been extensive inquiry into specious allegations brought *against* Petitioner Mr.  
18 Daily by other Board members. Petitioner Mr. Daily has been subjected to a  
19 months-long 'investigation' of a list of allegations that of behaviors that, even if  
20 proven factual, would not constitute violations of any Board or District policy and  
21 would certainly not constitute violations of law.  
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24  
25 The allegations against Petitioner Mr. Daily include: Making public records  
26 requests to the District; using the phrase "This is a total waste of time" at a meeting  
27 of the Board; answering questions emailed to him by constituents; exercising his

1 free speech rights by speaking as a citizen at a City Council meeting; discussing  
2 matters of public concern that had been presented at public meetings of the Board;  
3 being criticized in two anonymous comments in an online survey; and generally  
4 being 'abrasive,'  
5

6  
7 These allegations were handled with dispatch by the Board, and were provided to  
8 the District risk pool for investigation. The investigator, a Ms. Cappel, recently  
9 produced a report of approximately 180 pages regarding the allegations against  
10 Petitioner Mr. Daily. That report is being kept in a single hard copy in a locked  
11 office of the District, and no copy was provided to Petitioner Mr. Daily, neither as  
12 a Board member, nor as the subject of the allegations, let alone as a concerned  
13 public citizen. To date, no copy of the report nor any notice of its completion has  
14 been provided to Petitioner's counsel, despite the District's long awareness that  
15 Petitioner is represented for the purposes of the investigation against him and any  
16 action arising from that investigation. Petitioner Mr. Daily was allowed only to  
17 view the report on the premises.  
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22 It is apparently on the basis of this report, and, frankly, their visible personal  
23 animus, that other Board members are planning a move to censure Petitioner Mr.  
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1 Daily.<sup>3</sup> The a plan to censure Petitioner Mr. Daily is the culmination of 20 months  
2 of open hostility from his fellow Board members.

3  
4 **IV. PLANNED CENSURE OF PETITIONER**

5 As the Court is well aware, censure is a step toward removing an elected official  
6 from the Board. It is an extremely serious undertaking, and rightly rare. This is  
7 because removing a democratically elected official from office *should* be a rare move,  
8 one reserved for cases of corruption or harm. It is shocking that it is necessary to  
9 say so, in the United States of America, but a properly elected public servant should  
10 never be removed from office because of his 'difficult' personality or the exercise of  
11 his rights. It is no exaggeration to say that this appeal is urgent, not only for the  
12 petitioner, but for the state of democracy in the county.  
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15  
16 **V. DEFICIENCY OF UNDERLYING BOARD POLICIES**

17 Undergirding this particular instance of injustice is a pattern of serious deficiency,  
18 not only in the Board's handling of misconduct complaints, but in the very policies  
19 they are meant to follow.  
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27 <sup>3</sup> It is not speculation that members of the Board are planning a censure motion against Mr. Daily – an email thread  
28 with the District risk pool investigator was clearly titled “SKSD [South Kitsap School District] - Censure  
Motion/Director Daily.”

1 The applicable policies that govern misconduct are unclear, vague, and incomplete.  
2 They contain no guidance on how a complaint is to be submitted to the Board; nor  
3 on what bases the Board will evaluate a complaint; nor on when or on what bases  
4 the Board will seek independent investigation. Based on the content of the  
5 investigatory questions asked of Mr. Daily, it appears that the Board is purporting  
6 to enforce various provisions of RCW Chapter 42.52 – but without the required  
7 conforming rules or review processes described in RCW 42.52.200(1) and  
8 42.52.200(2).  
9  
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11  
12 Unfortunately, the result is a Board whose members feel empowered to dismiss  
13 and bury complaints about their own misconduct; to selectively apply ethics rules  
14 to some members and not others; and to weaponize the process to retaliate against  
15 non-conformity. This is a recipe for cronyism, collusion, and a lack of public  
16 scrutiny. The rules that have created this untenable situation must be replaced  
17 with clear, complete rules that conform with the law and that are approved by an  
18 ethics board.  
19  
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21  
22 The full text of the 'Process for Addressing Director Violations' (GP-12) is as  
23 follows:  
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25 **“GP-12 – Process for Addressing Director Violations**

26 The Board, individually and collectively, is committed to full compliance  
27 with the provisions of its own policies. In the event of a director's willful

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1 and continuing violation of policy, the Board may seek remedy by the  
2 following process:

- 3
- 4 1. Conversation in a private setting between the director and the Board  
5 President or other individual member,
  - 6 2. Discussion in a private session between the offending director and the  
7 Board (as permitted by law).
  - 8 3. Consider public censure of the offending director of the Board.
  - 9 4. Remove the offending director from any committee or other Board-  
10 designated responsibility, as appropriate.
  - 11 5. In cases of nonattendance, declare the seat vacant in accordance with  
12 law.”  
13  
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15 While this is described as a ‘process,’ it is not. It is unclear whether the numbered  
16 actions are steps of escalation or a menu of options. There is no indication of how  
17 a complaint of misconduct or reports of ‘violation’ might reach the Board and what  
18 they are meant to do when one does. There is no requirement for a vote, or who  
19 might decide what to do, when, or how. Nor is there any hint as to how the Board  
20 might evaluate whether a ‘violation’ has occurred or not. There is no process of  
21 investigation by a neutral outside party. This complete lack of clarity opens the  
22 door for an unaccountable body that can capriciously punish – and potentially expel  
23 – its own members with no checks or balances.  
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1 It is because of the extraordinary circumstances and heavy implications of this  
2 matter that Petitioner Mr. Daily requests that this Court take speedy and decisive  
3 action, not only to reverse the incorrect actions of the Board, but to forestall their  
4 plan to retaliate against a fellow elected by improper proceedings.  
5

## 6 7 VI. BASES FOR APPEAL

8 Petitioner is entitled to relief pursuant to RCW Chapter 28A.645 because:  
9

- 10 1. The decision and failure to act is inconsistent with the rules  
11 of the Board.
- 12 2. The decision and failure to act is arbitrary or capricious.
- 13 3. The decision and failure to act is retaliatory in nature.
- 14 4. The rules of the Board that govern the handling of misconduct complaints  
15 are not consistent with the law, in violation of RCW 42.52.200(1).
- 16 5. The rules of the Board that govern the handling of misconduct complaints  
17 do not appear to have been properly forwarded to or reviewed by the  
18 appropriate ethics board before they took effect, in potential violation of  
19 RCW 42.52.200(2).

## 22 VII. REQUESTING LEAVE TO MOVE FOR TRO/PRELIMINARY 23 INJUNCTION

24  
25 Petitioner is aware that an emergency temporary injunction would normally be  
26 pursued in a separate *ex parte* action, and he will be initiating that procedure if  
27 necessary. However, for the sake of judicial efficiency and consolidation of related

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1 matters, Petitioner wishes to give this Court opportunity to hear the motion. If  
2 granted leave, Petitioner Mr. Daily will note a hearing before this Court requesting  
3 an emergency temporary injunction staying the Board process of censure against  
4 Petitioner Mr. Daily. Given the persistent pattern of retaliation and misuse of  
5 procedure targeting Petitioner Mr. Daily, he has legitimate concern that the filing  
6 of the instant action will only accelerate and intensify the retaliatory censure  
7 process.  
8

9  
10 **a. Standard for preliminary injunction are met here.**

11 When determining if preliminary injunctive relief is appropriate, the court  
12 analyzes whether the moving party: (1) Has a clear legal or equitable right and (2)  
13 Has a well-grounded fear of immediate invasion of that right by the one against  
14 whom the injunction is sought, and further must find that (3) That the acts  
15 complained of are either resulting in or will result in actual and substantial injury  
16 to the moving party.<sup>4</sup>  
17

18 When deciding if a party has a clear legal or equitable right, the court examines  
19 the likelihood that the moving party will prevail on the merits.<sup>5</sup> While the trial  
20 court must reach the merits of purely legal issues for purposes of deciding whether  
21 to grant or deny the preliminary injunction, it may not adjudicate the ultimate  
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26 <sup>4</sup> Rabon v. City of Seattle, 135 Wn.2d 278, 284, 957 P.2d 621 (1998); citing Tyler Pipe Indus., Inc. v. Department of  
Revenue, 96 Wash.2d 785, 792, 638 P.2d 1213 (1982), reversed on unrelated grounds. See also Kucera v.  
Department of Transp., 140 Wn.2d 200, 209 (2000).

27 <sup>5</sup> Rabon, 135 Wn.2d at 285 (citing Washington Fed'n of State Employees Council 28 v. State, 99 Wn.2d 878, 888,  
665 P.2d 1337 (1983)).



1 merits of the case.<sup>6</sup> A TRO is intended to preserve the status quo until the court  
2 can hear an application for a preliminary injunction.<sup>7</sup>  
3  
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5 In this instance, Petitioner Mr. Daily has a clear legal and equitable right to hold  
6 the office to which he was elected. That right was granted by the highest authority  
7 of the land: The people. The people of the District elected Mr. Daily to serve as in  
8 the office entrusted to him, and their collective democratic will should not be  
9 overturned by the improper and retaliatory actions of a few.  
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12 Petitioner Mr. Daily has a very well-grounded fear that his rights will be violated:  
13 The Board has repeatedly announced its intentions to do so, and the whole troubled  
14 history of this matter illustrates that pattern.  
15  
16

17 The acts complained of will result in actual and substantial injury to Petitioner Mr.  
18 Daily, because if censured, he would be in the course to lose the public office to  
19 which he was elected; and his reputation would be permanently and very publicly  
20 sullied, substantially impacting his ability to run for elected office in the future.  
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27 <sup>6</sup> Rabon, 135 Wn.2d at 285.

28 <sup>7</sup> State ex rel Pay Less Drug Stores v. Sutton, 2 Wn.2d 523, 530, 98 P.2d 680 (1940).

1 For these reasons, a preliminary injunction is appropriate. The issues will of course  
2 be briefed fully if leave is granted.  
3  
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5 THEREFORE, Petitioner asks the Court for judgment:

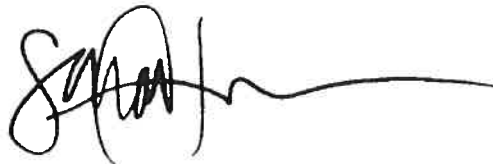
- 6 1. Changing the decision of the School Board to decline investigation of the  
7 misconduct complaints brought by Plaintiff Mr. Daily,  
8
- 9 2. Changing the failure of the board to fail to and granting other relief as  
10 follows:  
11
- 12 3. Striking the rules of the Board related to the handling of misconduct  
13 complaints;  
14
- 15 4. Requiring the South Kitsap School Board to, within 30 days, adopt  
16 provisional rules consistent with the law on ethics in public service in RCW  
17 Chapter 28A.645; to include a clear, fair, consistent, and transparent  
18 procedure by which all misconduct complaints will be handled;  
19
- 20 5. Requiring the South Kitsap School Board to submit the provisional rules for  
21 evaluation by the appropriate ethics board prior to adoption;  
22
- 23 6. Requiring the South Kitsap School Board to, at the direction of the  
24 appropriate board of ethics, revise the provisional rules to align with the law  
25 on ethics in public service in RCW Chapter 28A.645;  
26
- 27 7. Requiring the South Kitsap School Board to, within 30 days of the approval  
28 of the appropriate ethics board, adopt permanently rules for the handling of

1 misconduct complaints consistent with the law on ethics in public service in  
2 RCW Chapter 28A.645;

- 3  
4 8. Granting leave to Petitioner to make a motion, and set a hearing before this  
5 Court, for a preliminary injunction Staying any censure proceedings against  
6 Petitioner Mr. Daily for the pendency of this action;  
7  
8 9. Awarding costs and reasonable attorney's fees to Petitioner upon submission  
9 of a motion for costs and fees and a hearing of that motion;  
10  
11 10. Awarding any further relief this Court deems proper.

12 RESPECTFULLY SUBMITTED this 18th day of August, 2021:

13 CEDAR LAW PLLC  
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19 \_\_\_\_\_  
20 Sarah Lippek, WSBA No. 46452  
21 Lara Hruska, WSBA No. 465  
22