COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

Dollar Tree Stores, Inc.,[1]
Petitioner

v. Docket Nos. LB-22-0039; LB-22-0040

Office of the Attorney General –
Fair Labor Division,
Respondent

Appearance for Petitioners:

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Administrative Magistrate:

Kenneth J. Forton

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[1] Petitioner notes that although the FLD issued the citations to Dollar Tree Stores, Inc., the alleged violations addressed in the citations concerns employees who worked at Family Dollar stores, who were employed by Family Dollar Stores of Massachusetts, LLC, not Dollar Tree Stores, Inc. Therefore, Petitioner asserts, Family Dollar Stores of Massachusetts, LLC is the proper party in this matter. Dollar Tree Stores Inc., now known as Dollar Tree, Inc., was the parent company of Family Dollar during the relevant period. Since Petitioner has not pressed the issue further than to alert the FLD and DALA of the proper party, I construe its papers as agreeing to join Family Dollar Stores of Massachusetts, LLC as another petitioner and citation recipient.

RULING ON CROSS-MOTIONS FOR SUMMARY DECISION

Petitioner Dollar Tree Stores, Inc., d/b/a Family Dollar (Dollar Tree), timely appeals two citations issued by the Fair Labor Division (FLD) of the Attorney General's Office for violations of the Meal Break Law, G.L. c. 149, § 100, affecting a total of 620 adult employees from October 6, 2018 through June 29, 2019. The citations were issued on January 14, 2022.

I held a pre-hearing conference on March 2, 2022. After concluding discovery, the parties requested that DALA resolve the main question of law upon which the citations turn: whether the FLD has been authorized by the Legislature to address violations of the Meal Break Law against adult workers by means of civil citation and monetary penalties, as opposed to by criminal prosecution only. If the FLD is not so empowered, then of course the citations were issued erroneously and they must be vacated. If the FLD has such power, Dollar Tree requests an evidentiary hearing to challenge the alleged violations.

On April 10, 2023, Dollar Tree filed its motion for summary decision, along with 6 exhibits. On May 17, 2023, the FLD filed its opposition to Dollar Tree's motion, its own cross-motion for summary decision, and an affidavit of FLD Senior Investigator Jennifer Pak. On June 16, 2023, Dollar Tree filed its opposition to the FLD's cross-motion, a reply brief in support of its own motion for summary decision, and an affidavit of Jesse Boulos, a Dollar Tree district manager.

The following brief recitation of facts is not in dispute. The FLD conducted an audit of Massachusetts Dollar Tree timekeeping records for the period October 6, 2018 through June 29, 2019 to determine whether managers and assistant managers who were

entitled to meal breaks punched out for those breaks. The FLD found 2,208 instances in which managers or assistant managers entitled to a meal break did not punch out for the break and were the only management employees punched in at the store. The FLD also found 1,694 instances where managers or assistant managers did punch out for meal breaks but were the only management employees punched in at the store. Family Dollar did not dispute these specific audit findings, but it does dispute whether or not the employees were given the meal breaks to which they were entitled.

Assuming that each of the instances discovered in the audit must have been a violation, on January 14, 2022 the FLD issued two civil citations for violations of the Meal Break statute, G.L. c. 149, § 100. The first citation covered 2,208 violations (no meal break, no coverage) affecting 373 employees at $450.00 per violation for a total of $993,600.00. The second citation covered 1,694 violations (employee punched out, no coverage) affecting 247 employees at $300.00 per violation for a total of $508,200.00.

I

Summary decision in administrative proceedings is the functional equivalent of summary judgment in civil proceedings. *Compare* 801 CMR 1.01(7)(h) *with* Mass. R. Civ. P. 56. *See Catlin v. Bd. of Registration of Architects*, 414 Mass. 1, 7 (1992) (citing Mass. R. Civ. P. 56 for summary decision in administrative case). *See also, e.g., Calnan v. Cambridge Retirement Bd.*, CR-08-589 (DALA 2012); *Steriti v. Revere Retirement Bd.*, CR-07-683 (DALA 2009). Summary decision is appropriate where there are no genuine issues of material fact and the case may be decided as a matter of law. *Catlin*, 414 Mass. at 7. *See* 801 CMR 1.01(7)(h); Mass. R. Civ. P. 56. The moving party must demonstrate the absence of any genuine issues of material fact. 801 CMR 1.01(7)(h); *see*

also Mass. R. Civ. P. 56; *Flesner v. Technical Communications Corp.*, 410 Mass. 805, 808 (1991). When parties have moved for summary judgment and there is no real dispute as to the salient facts, or if only questions of law are involved, like here, a court will allow the motion of the party entitled to judgment as a matter of law. *Cassesso v. Comm'r of Correction*, 390 Mass. 419, 422 (1983); *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976).

II

The Attorney General's Fair Labor Division enforces the Commonwealth's Wage and Hour Laws. *See* G.L. c. 149, § 2. Among these laws is the Meal Break Law, G.L. c. 149, § 100. Under the Meal Break Law, no employee may be required to work for more than six hours without at least thirty minutes for a meal. *Id.* Violations by employers are punishable by a fine of not less than $300.00 and not more than $600.00. *Id.*

Historically, the only enforcement mechanism for the Wage and Hour Laws was criminal prosecution. That remained the case until 1998, when the Legislature overhauled G.L. c. 149, § 27C to, inter alia, authorize civil enforcement for certain violations. Acts 1998, c. 236, § 7. Eight years later, the Legislature expanded civil enforcement by enacting G.L. c. 149, § 78A, which authorizes civil citations for additional violations. Acts 2006, c. 426, § 4. The instant civil citations were issued under the authority of G.L. c. 149, § 78A.

A person aggrieved by a civil citation issued under § 78A may appeal to DALA within fifteen days of receiving the citation. G.L. c. 149, § 78A(b). If the petitioner "demonstrates by a preponderance of evidence that the citation was erroneously issued," DALA may vacate or modify the citation as appropriate. *Id.* Otherwise, DALA must

affirm the citation as issued. If the citation is not vacated, the petitioner must comply with DALA's decision within 30 days. *Id.* § 78A(d).

III

A

Two citations are before me on appeal. Both were issued by the FLD to Dollar Tree for alleged violations of the Meal Break Law involving only *adult* employees. Dollar Tree challenges whether the FLD has the authority to issue civil citations in Meal Break cases involving only adults. According to the FLD, civil enforcement is permitted regardless of the age of the affected employees.

This case turns on the proper interpretation of the first sentence of § 78A(a), which provides:

> As an alternative to initiating criminal proceedings to enforce *any violation of sections 56 to 105, inclusive, or a violation of this chapter for improperly employing a minor for which a criminal penalty is provided*, the attorney general may, at his discretion, issue a written warning or civil citation to the person responsible for the violation.

(Emphasis added).

To use Dollar Tree's words, the first sentence of § 78A(a) is not a model of clarity. It is possible to read it at least two different ways. On the one hand, Dollar Tree argues that the phrase "for improperly employing a minor" refers to the entirety of the preceding clause. *See* G.L. c. 149, § 78A(a). Based on this reading, the FLD's authority to issue civil citations is limited to violations of Sections 56 to 105 involving improper employment of minors only. *See id.* Following from that conclusion, the FLD's civil citation authority would extend to enforcement of the Meal Break Law only as concerns minors. *See* G.L. c. 149, § 100.

On the other hand, the FLD contends that the phrase "for improperly employing a minor" refers only to the phrase "a violation of this chapter" and does not modify "any violation of sections 56 to 105, inclusive." *See* G.L. c. 149, § 78A(a). The FLD would therefore have the authority to issue civil citations for *any* violation of §§ 56 to 105, regardless of whether minors are involved, including the Meal Break Law. *See id.*

B

The Appeals Court summed up tidily the process of statutory construction in *Vining v. Commonwealth*, 63 Mass. App. Ct. 690, 692-93 (2005):

> We assume that the legislative purpose is expressed by the ordinary meaning of the words used. Courts are constrained to follow the plain language of a statute when its language is plain and unambiguous, and its application would not lead to an absurd result, or contravene the Legislature's clear intent. Where a statute is ambiguous, we may look to extrinsic circumstances to determine the intent of the Legislature as to its meaning. Accordingly, statutes are to be interpreted . . . in connection with their development, their progression through the legislative body, the history of the times, prior legislation, contemporary customs and conditions and the system of positive law of which they are part.

C

1

To argue that the plain language of § 78A favors their respective interpretations, each party cites competing canons of textual analysis. For example, the series-qualifier canon instructs courts to read modifiers at the end of a series of nouns or verbs as applying to the entire series. *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1164 (2021). Based on this guidance, the modifying clause in the first sentence of § 78A(a), "for improperly employing a minor," would modify both "a violation of this chapter" and "any violation of sections 56 to 105, inclusive." That would mean that a civil citation could be issued only for violations of the Meal Break Law concerning minors.

Alternatively, the last antecedent rule instructs courts to interpret qualifying clauses as modifying only immediately preceding phrases. *Lydon v. Contributory Retirement Appeal Bd.*, 101 Mass. App. Ct. 365, 370 (2022) (citing *New England Survey Sys., Inc. v. Department of Indus. Acc.*, 89 Mass. App. Ct. 631, 638 (2016)). Under this rule, "for improperly employing a minor" would not modify "any violation of sections 56 to 105" because the former phrase does not immediately precede the latter. That would mean that a civil citation could be issued for *any* violation of the Meal Break Law.

The series-qualifier rule is more likely to apply when "the listed items are simple and parallel without unexpected internal modifiers or structure," while the last-antecedent rule is more likely to apply where "it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all." *Id.* at 351. This rule of application tends to support Family Dollar's interpretation that the phrase "for improperly employing a minor for which a criminal penalty is provided" modifies both "any violation of sections 56 to 105, inclusive" and "a violation of this chapter."

Courts interpreting the last antecedent rule have additionally held that commas separating modifying clauses from their antecedents offer some evidence that each of the antecedents should be bound by the modifying clause. *See, e.g., Lydon*, 101 Mass. App. Ct. at 370. The Legislature's use of commas in § 78A(a) does not help clarify its meaning. Although there is a comma after "any violation of sections 56 to 105," it is unclear what significance it has because it may be there only to set off the word "inclusive" or it could be serving to separate the category of violations of sections 56 to 105 from the category of violations of this chapter.

Ultimately, however, "[m]atters of punctuation are not necessarily determinative and should not be allowed to defeat the true purpose and meaning of a statute." *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 432 (1983). In certain cases, punctuation represents merely "preference in style and not the considered judgment of the legislature." *Taylor v. Burke*, 69 Mass. App. Ct. 77, 81 (2007) (citing *Commonwealth v. Maillet*, 400 Mass. 572, 578 (1987)). Further analysis is therefore required. *See U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 454 (1993) ("[A] purported plain-meaning analysis based only on punctuation is necessarily incomplete and runs the risk of distorting a statute's true meaning.").

2

Turning to another old saw of statutory interpretation, courts should avoid interpreting statutory language as redundant whenever possible. *See Blum v. Holder*, 744 F.3d 790, 803 (2014) ("Avoidance of redundancy is a basic principle of statutory interpretation."). If Dollar Tree is correct that "any violation of sections 56 to 105" is limited to violations involving a minor, it follows that the entire succeeding phrase, "or a violation of this chapter for improperly employing a minor," could be interpreted as merely a restatement of the first phrase and would thus serve no additional purpose. *See* G.L. c. 149, § 78A(a); *Blum*, 744 F.3d at 803. Of course, it could also be argued that the redundant language is "any violation of sections 56-105," as those sections are also "violation[s] of this chapter." The succeeding phrase would be broader, covering violations of §§ 1-55 and 57-end.

Dollar Tree responds that it is inappropriate to limit the scope of analysis to only the first sentence of § 78A(a) because statutes are to be read as a whole, rather than

sentence by sentence. *See Chin v. Merriot*, 470 Mass. 527, 532 (2015) ("Although we look first to the plain language of the provision at issue to ascertain the intent of the legislature, we consider also other sections of the statute, and examine the pertinent language in the context of the entire statute."); *Commonwealth v. Welch*, 444 Mass. 80, 85 (2005) ("Apparent ambiguity in the statutory language is resolved by reference to the remaining portions of the statute."). Dollar Tree draws attention to the second sentence of § 78A(a), which provides that the FLD "may impose, for each instance in which a *minor* is required or permitted to work in violation of sections 56 to 105, inclusive, a separate civil penalty." (Emphasis added). For Dollar Tree, the Legislature's use of the word "minor" serves as evidence that it intended to limit the FLD's civil citation authority to violations involving only minor employees. *See id.* The FLD counters that the second sentence of § 78A(a) refers to "separate civil penalt[ies]," which does not alter the civil citation authority granted in the first sentence. *See id.* The parties present no additional evidence to support these interpretations.

As can be ascertained from the preceding arguments, canons of statutory interpretation can be contradictory. There is almost always an opposing canon to which each side in a dispute can appeal. *See* Karl Llewellyn, The Common Law Tradition: Deciding Appeals 521-35. Consequently, it is not very often that these kinds of arguments are sufficiently persuasive to be dispositive. This is not one of those rare instances.

3

Based on the preceding analysis, I conclude that § 78A is ambiguous. *See Town of Falmouth v. Civ. Serv. Comm'n*, 447 Mass. 814, 818 (2006) ("When a statute is

capable of being understood by reasonably well-informed persons in two or more different senses, it is ambiguous.") It is therefore wise to move on to the purpose and history of the Meal Break Law and § 78A. *See Atlanticare Med. Ctr. v. Comm'r of Div. of Med. Assistance*, 439 Mass. 1, 6 (2003) ("We interpret the words used in a statute with regard to both their literal meaning and the purpose and history of the statute within which they appear."); *Lydon*, 101 Mass. App. Ct. at 368 ("Where there exists ambiguity in the statutory language such that it lacks precision, we turn to the legislative history to effectuate the legislative intent, and give the statute a reasonable construction.")

D

1

The original purpose of the Meal Break Law was to provide adequate meal breaks for women and children in the workforce. G.L. c. 149, § 100 was enacted in 1887 as part of legislation entitled "An Act To Secure Uniform and Proper Mealtimes for Children, Young Persons and Women Employed in Factories and Workshops." Acts 1887, c. 215, § 2. The original statute read: "No child, young person or woman shall be employed in a factory or workshop, in which five or more children, young persons and women are employed, for more than six hours at one time without an interval of at least half an hour for a meal." *Id.*

Between 1887 and 1974, the Meal Break Law was amended eight times, generally making changes to which categories of employers were subject to the law. Acts 1894, c. 508, § 27; Acts 1909, c. 514, § 68; Acts 1917, c. 110; Acts 1939, c. 280; Acts 1947, c. 357, § 3; Acts 1957, c. 723; Acts 1958, c. 461; Acts 1968, c. 323, § 4. Only in 1974 did the Legislature extend meal break protections to adult men by switching the language to

gender- and age-neutral terms: "No *person* shall be required to work for more than six hours . . . without an interval of at least thirty minutes for a meal." Acts 1974, c. 356 (emphasis added).

At present, § 100 is one of only two statutes between §§ 56 and 105 of Chapter 149 that do not explicitly reference minors. G.L. c. 149, § 100. The other one, G.L. c. 149, § 103, now mandating seats for all employees, also began as applicable to women and was later expanded to cover children. *See* Acts 1882, c. 150, § 1; Acts 1912, c. 96. Section 103 similarly became gender- and age-neutral in 1974, the same year the Meal Break Law was amended. Acts 1974, c. 327. This helps explain what looks like the Legislature's odd choice to place these sections that no longer specifically protect children amidst a sea of labor laws that cover only children.

2

In the absence of clear statutory language, the title and placement of § 78A must also be seriously considered. Section 78A was enacted in 2006 as part of legislation entitled "An Act Relative to Child Labor." Acts 2006, c. 426, § 4. While statute titles do not control the meaning of statutes, they may provide some evidence of legislative intent to courts tasked with resolving ambiguity in the statutory language. *American Family Life Assurance Co. v. Comm'r of Ins.*, 388 Mass. 468, 474 (1983); *see also Baldiga v. Board of Appeals of Uxbridge*, 395 Mass. 829, 835, (1985) (the title of an act or statutory provision may be helpful in clarifying ambiguity); *Commonwealth v. Jarrett*, 359 Mass. 491, 495 n.5 (1971) ("The title of an act is in a legal sense a part of it, and under some circumstances resort may be had to the title as an aid in determining the legislative intent although it cannot control the plain provisions of the act.") Dollar Tree argues that the

title of the legislation demonstrates the Legislature's intent to limit civil citation authority to violations involving minors. Additionally, in debate on the House floor, Representatives communicated their desire to effectuate "a dramatic increase in the enforcement of our child labor laws." House Session, State House News Service (June 6, 2006). *See, e.g., Commonwealth v. K.W.*, 490 Mass. 619, 631-32 (2022) (quoting and relying on statements made by legislators as evidence of legislative intent); *Lazlo L. v. Commonwealth*, 482 Mass. 325, 333 n.13 (2019) ("We think it helpful to look to the statements of proponents of legislation in order to discern its purpose.")

Not surprisingly, given the title of the legislation, the Legislature chose to place the newly enacted § 78A in the middle of the body of laws dealing with child labor in Chapter 149, directly following § 78, the penalty statute that governs enforcement of violations of §§ 60 to 74, all of which deal with the employment of minors.

3

Additional proposed amendments to § 78A support the conclusion that the section does not authorize civil citations in cases concerning adults. Petitioner draws attention to a 2011 legislative proposal entitled "An Act Clarifying the Meal Break Law to Allow for Private Enforcement." In a November 3, 2011 letter from the FLD to the Senate Joint Committee on Labor & Workforce Development, the FLD supported the proposal in acknowledgement of the fact that "the only explicit statutory authority to enforce the meal break law rests with the AGO and is by way of criminal prosecution." Petitioner additionally cites a 2021 Senate Bill No. 1179, also supported by the FLD, which would have inserted the Meal Break Law into G.L. c. 149, § 27C, the other section granting

authority to issue civil citations. *See* Remarks of Attorney General Maura Healey, Hearing of the Joint Committee on Labor and Workforce Development (June 8, 2021).

The Legislature has had several opportunities to amend the statute to conform it to the FLD's contemporary interpretation. It has chosen not to. We may presume that the Legislature has been aware of the FLD's consistent interpretation from 2006 until just recently that § 78A does not apply to violations against adults. *Cf. Town of Falmouth v. Civ. Serv. Comm'n*, 447 Mass. 814, 821 n.8 (2006) (Legislature may be charged with knowledge of an administrative agency's adoption of the postmark rule 25 years prior). The absence of legislative objection to that interpretation is "telling." *Pavian, Inc. v. Hickey*, 452 Mass. 490, 494-495 (2008). *See also Luciano v. Stoneham Retirement Bd. and PERAC*, CR-14-616 (DALA Sept. 7, 2018) (that Legislature has considered several bills that would include civilian emergency dispatchers in Group 2 only reinforces that they belong in Group 1, where they are currently classified, until the Legislature chooses to act).

4

Dollar Tree next argues that § 78A is a penal statute and must therefore be construed strictly, not by the "supposed intention of the legislature as derived from doubtful words." *See Herrick v. Essex Reg'l Retirement Bd.*, 77 Mass. App. Ct. 645, 648-49 (2010); *see also Lazlo L. v. Commonwealth*, 482 Mass. 325, 333 (2019) (defining penal statute as any statute designed to punish offenders). The case law has assumed but has not decided that the rule of lenity applies to criminally enforceable labor law provisions when pursued in noncriminal proceedings. *See Donis v. Am. Waste Servs., LLC*, 95 Mass. App. Ct. 317, 331 (2019) (citing *Cook v. Patient Edu, LLC*, 465 Mass.

548, 556 (2013)). If the rule of lenity does apply, it likely supports the interpretation more restrictive of the FLD's authority to impose administrative penalties.

5

The Legislature's grant of civil enforcement authority also allows the FLD to enforce certain wage and hour laws without a grand jury (or criminal complaint), Brady obligations, proof beyond a reasonable doubt, and criminal law's other procedural and constitutional protections. The employer's due process is limited to an appeal at which the employer bears the burdens of proof and persuasion. As discussed above, the Legislature's goal was to dramatically increase enforcement. But, the Legislature did not give the FLD unbridled authority as to all labor law violations. It reserved the authority for certain types of violations. Moreover, there may be special policy reasons to grant civil enforcement powers in cases involving minors, who may be less likely to complain and testify.

Taken together, a fair reading of the statutes, amendments, proposed amendments, and other legislative materials suggests that violations against children, not violations generally, were the Legislature's target when it gave the FLD civil enforcement authority in § 78A.

E

The FLD argues that reading § 78A to exclude the authority to issue civil citations for violations involving adults would create a loophole in enforcement, allowing employers to escape accountability for those violations when their conduct does not rise to the level of criminal liability. According to the FLD, this interpretation would lead to

an absurd result or frustrate the beneficial purpose of the statute. *See Bellata v. Zoning Bd. of Appeals of Brookline*, 481 Mass. 372, 378 (2019).

This argument must fail for two reasons. First, as established earlier, the stated purpose of § 78A is to provide for greater enforcement of child labor laws. It does not appear that violations involving adults were meant to be covered by § 78A.

Second, interpreting § 78A's civil enforcement to apply only to minors could hardly be called a loophole where a majority of the violations covered by Chapter 149 are enforceable only by criminal prosecution. In fact, enforcement via civil citation is authorized sparingly throughout the chapter.

Section 78A is one of only two penalty statutes in Chapter 149 that grant the FLD the authority to issue civil citations. As discussed supra, the other statute is G.L. c. 149, § 27C(b)(1), which similarly authorizes the use of civil citations as an enforcement alternative to criminal proceedings for violations of certain wage and hour laws enumerated at § 27C(a)(1).[2] Taken together, these two penalty sections provide for enforcement by civil citation for violations dealing with labor contracts, public works projects, wages, and the employment of minors.

Excluded from civil enforcement, however, are the remaining 273 sections of Chapter 149. For instance, provisions governing workplace health and safety, labor organizations and labor disputes, and discrimination in the workplace are all unenforceable via civil citation. *See, e.g.*, G.L. c. 149, §§ 18A (sanitary and safety conditions for longshore and waterfront operations); 20 (coercion of agreement not to

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[2] G.L. c. 149, §§ 20E, 148C, 152A, and 190 self-authorize civil enforcement under the authority of § 27C.

join a labor organization); 43 (nondiscrimination of applications for employment). Similarly, civilly unenforceable are statutes governing employee time, schedules, and leave, and statutes regulating construction projects and industrial homework (production of goods in the employee's home). *See, e.g.*, G.L. c. 149, §§ 31 (eight-hour days for towns and public works); 44A (competitive bids on construction); 144 (unlawful industrial homework).[3]

Based on the numbers of provisions enforceable both criminally and civilly versus those enforceable only criminally, I conclude that, in fact, the Legislature prefers to enforce most violations only by criminal prosecution with its attendant due process protections. Therefore, it should not appear especially unusual that the Legislature limited civil enforcement of the Meal Break Law to minors only.

IV

There is no doubt that if the Dollar Tree employees had been minors, the FLD would have been authorized under § 78A to issue the disputed citations. However, it is for the Legislature to decide whether it would like to extend civil enforcement of the Meal Break Law to cases involving adults. Until then, I must conclude that the FLD's civil enforcement actions against Petitioner for alleged violations of the Meal Break Law lacked the force of law and must be vacated accordingly.

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[3] The complete list of Chapter 149 sections unenforceable via civil citation is as follows: G.L. c. 149, §§ 1-20e, 21-25, 27D-27, 28-54, 105A-148, 148D-152, 153-159B, 173-189, 191-203.

ORDER

For the foregoing reasons, Petitioner's motion for summary decision is granted, and the FLD's cross-motion for summary decision is denied. The citations are vacated as erroneously issued.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth J. Forton
Administrative Magistrate

Dated: OCT 17 2023