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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

01/28/2022

Clerk of the Court

BY: KAREN VALDES

Deputy Clerk

CGC-22-597903

10 ARVA ANDERSON, on behalf of the State
11 of California, as a private attorney general,

12
13 Plaintiff,

14 vs.

15 THC - ORANGE COUNTY, LLC, a Limited
16 Liability Company; and DOES 1 through 50,
17 inclusive,

18 Defendants.
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Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Arva Anderson (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant THC - Orange County LLC
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant THC - Orange County LLC (“DEFENDANT”) is a Limited Liability
24 Company that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT provides healthcare services, including medical and surgical care
27 services.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from July of 2021 to
2 October of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
10 of November 8, 2020 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
15 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
16 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives
17 rise to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and
18 all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code
19 § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

3 10. The agents, servants and/or employees of the Defendants and each of them acting
4 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
5 agent, servant and/or employee of the Defendants, and personally participated in the conduct
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
8 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
10 agents, servants and/or employees.

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
17 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
18 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
19 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
20 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
21 should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
23 testing or any other testing and/or examination required as a condition of employment.
24 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
25 practice of rounding the actual time worked and recorded by PLAINTIFF and other
26 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
27 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than
28 they would have been paid had they been paid for actual recorded time rather than "rounded"

1 time. Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF and other
2 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
3 condition of employment, required these employees to submit to mandatory temperature checks
4 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
5 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
6 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
7 by working without their time being correctly recorded and without compensation at the
8 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
9 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
10 records.

11 12. State law provides that employees must be paid overtime and meal and rest break
12 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
13 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
14 to specific elements of an employee's performance.

15 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
16 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
17 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
18 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
19 hourly basis with incentive compensation when the employees met the various performance
20 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
21 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
22 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
23 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
24 break premium pay. Management and supervisors described the incentive program to potential
25 and new employees as part of the compensation package. As a matter of law, the incentive
26 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
27 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
28 overtime compensation and meal and rest break premiums to PLAINTIFF and other

1 AGGRIEVED EMPLOYEES by DEFENDANT.

2 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
4 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
6 for more than five (5) hours during some shifts without receiving a meal break. Further,
7 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
8 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
9 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
10 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
11 other AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES
12 therefore forfeit meal breaks without additional compensation and in accordance with
13 DEFENDANT's corporate policy and practice.

14 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
15 were also required from time to time to work in excess of four (4) hours without being provided
16 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
17 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
18 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
20 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
21 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
22 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
23 to provide employees with off-duty rest periods, which the California Supreme Court defined
24 as time during which an employee is relieved from all work related duties and free from
25 employer control. In so doing, the Court held that the requirement under California law that
26 employers authorize and permit all employees to take rest period means that employers must
27 relieve employees of all duties and relinquish control over how employees spend their time
28 which includes control over the locations where employees may take their rest period.

1 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
2 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
3 AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on
4 DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot
5 leave the work premises during their rest period.

6 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
7 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
8 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
9 DEFENDANT was required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
10 all time worked, meaning the time during which an employee was subject to the control of an
11 employer, including all the time the employee was permitted or suffered to permit this work.
12 DEFENDANT required these employees to work off the clock without paying them for all the
13 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
14 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
15 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
16 time worked by working without their time being accurately recorded and without compensation
17 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
18 off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
19 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
20 1197, and 1197.1.

21 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
23 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
24 provides that every employer shall furnish each of his or her employees with an accurate
25 itemized wage statement in writing showing, among other things, gross wages earned and all
26 applicable hourly rates in effect during the pay period and the corresponding amount of time
27 worked at each hourly rate. PLAINTIFF and other AGGRIEVED EMPLOYEES were paid on
28 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during

1 the pay period and the total hours worked, and the applicable pay period in which the wages
2 were earned pursuant to California Labor Code Section 226(a). The wage statements
3 DEFENDANT provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to
4 identify such information. More specifically, the wage statements failed to identify the accurate
5 total hours worked each pay period. When the hours shown on the wage statements were added
6 up, they did not equal the actual total hours worked during the pay period. Aside, from the
7 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
9 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

11 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
12 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
13 wages are paid not more than seven calendar days following the close of the payroll period.
14 Cal. Lab. Code § 210 provides:

15 [I]n addition to, and entirely independent and apart from, any other penalty provided in
16 this article, every person who fails to pay the wages of each employee as provided in
17 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
18 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
19 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
20 for each failure to pay each employee, plus 25 percent of the amount unlawfully
21 withheld.

19 19. DEFENDANT from time to time failed to pay PLAINTIFF and other
20 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
21 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Regular Retro \$\$”
22 and “Sup PD Sk Retro \$\$” payments which were regular wage payments.

23 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
24 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
25 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
26 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
27 underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates
28 of pay.

1 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime
3 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
4 of employment.

5 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
6 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
7 non-discretionary incentive wages which increased their regular rate of pay. However, when
8 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED
9 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
10 Code Section 246.

11 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
12 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
13 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
14 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
15 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
16 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

17 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
18 to collect or receive from an employee any part of wages theretofore paid by said employer to
19 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
20 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
21 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
22 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
23 and thereby failed to pay these employees all wages due at each applicable pay period and upon
24 termination.

25 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
28 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

1 2802, employers are required to indemnify employees for all expenses incurred in the course
2 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 26. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
11 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
12 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANT to use
13 their personal cellular phones. As a result, in the course of their employment with
14 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
15 business expenses which included, but were not limited to, costs related to the use of their
16 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

17 27. All of the conduct and violations alleged herein occurred during the
18 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
19 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
20 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
21 2018 AJDAR 12157 (Certified for Publication 12/19/18).

22 **JURISDICTION AND VENUE**

23 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10.

25 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
28 in this County and/or conducts substantial business in this County, and (ii) committed the

1 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
2 EMPLOYEES.

3 **FIRST CAUSE OF ACTION**

4 **For Violation of the Private Attorneys General Act**

5 **[Cal. Lab. Code §§ 2698, *et seq.*]**

6 **(By PLAINTIFF and Against All Defendants)**

7 30. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 31. PAGA is a mechanism by which the State of California itself can enforce state
10 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
11 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
14 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
15 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
16 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
17 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
18 subject to arbitration.

19 32. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, brings this Representative Action on behalf of the State of California with respect to herself
22 and all individuals who are or previously were employed by DEFENDANT in California and
23 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
24 of November 8, 2020 until a date as determined by the Court (the "PAGA PERIOD").

25 33. On November 8, 2021, PLAINTIFF gave written notice by electronic mail to the
26 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to

1 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
3 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 34. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay overtime wages and sick
8 pay wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and
9 (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
10 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512,
11 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
12 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives
13 rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks recovery of only
14 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
15 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
16 the other AGGRIEVED EMPLOYEES.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 B) An award of attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §2699.

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28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 Dated: January 28, 2022 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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4 By: /s/ Norman Blumenthal
Norman B. Blumenthal

5 Attorneys for Plaintiff
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