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Superior Court Of California,
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By _____, Deputy
Case Number:
34-2021-00300162

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

LORRAINE BLONDIN-SMITH, on behalf
of the State of California, as a private
attorney general,

Plaintiff,

vs.

EPN ENTERPRISES INC., a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

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, 246, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B).

BY FAX

1 Plaintiff Lorraine Blondin-Smith (“PLAINTIFF”), on behalf of the people of the State
2 of California and as an “aggrieved employee” acting as a private attorney general under the
3 Labor 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 EPN Enterprises Inc. (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit individuals 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 EPN Enterprises Inc. (“DEFENDANT”) is a California Corporation
24 that at all relevant times mentioned herein conducted and continues to conduct substantial and
25 regular business throughout California.

26 5. DEFENDANT provides staffing solutions for nurses.

1 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
2 employee entitled to overtime pay and meal and rest periods from October of 2018 to June of
3 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
4 a non-exempt employee paid in whole or in part on an hourly basis and received additional
5 compensation from DEFENDANT in the form of non-discretionary incentive wages.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to herself
9 and all individuals who are or previously were employed by DEFENDANT in California and
10 who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the
11 time period of February 12, 2020 until a date as determined by the Court (the "PAGA
12 PERIOD").

13 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 246,
17 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
18 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
19 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
20 within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
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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 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. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
14 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
15 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
16 calculate minimum and overtime wages for time worked by PLAINTIFF and other
17 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
18 compensation. Specifically, long before, and hours after her work day, PLAINTIFF answered
19 calls from the nursing staff, reviewed various cases and generally was asked to immediately
20 render nursing advice at all hours. This additional time worked was work performed subject to
21 DEFENDANT's control and for DEFENDANT's benefit. Consequently, all this time
22 constitutes "hours worked" and is therefore compensable. DEFENDANT's policy and practice
23 to not pay employees for compensable work time is evidenced by DEFENDANT's business
24 records. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
25 due them for working without compensation at the correct minimum wage and overtime rates.
26 DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
27 compensation for all time worked in accordance with applicable law is evidenced by
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1 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
2 purposefully avoid the payment of the correct compensation as required by California law which
3 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
4 complied with the law.

5 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and
6 pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
7 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
8 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
9 all time worked, meaning the time during which an employee was subject to the control of
10 an employer, including all the time the employee was permitted or suffered to permit this
11 work. DEFENDANT required these employees to work off the clock without paying them
12 for all the time they were under DEFENDANT's control. DEFENDANT, as a matter of
13 established company policy and procedure, administered a uniform practice of rounding the
14 actual time worked and recorded by PLAINTIFF and AGGRIEVED EMPLOYEES, always
15 to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF
16 and AGGRIEVED EMPLOYEES were paid less than they would have been paid had they
17 been paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and
18 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
19 is evidenced by DEFENDANT's business records. Additionally, DEFENDANT required
20 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
21 duty meal break. PLAINTIFF was from time to time interrupted by work assignments. As a
22 result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
23 overtime compensation by working without their time being accurately recorded and without
24 compensation at the applicable minimum wage and overtime rates. To the extent that the
25 time worked off the clock did not qualify for overtime premium payment, DEFENDANT
26 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.
27 Code §§ 1194, 1197, and 1197.1.

1 13. State and federal law provides that employees must be paid overtime at one-
2 and-one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED
3 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to
4 specific elements of an employee’s performance.

5 14. The second component of PLAINTIFF’s and other AGGRIEVED
6 EMPLOYEES’ compensation was DEFENDANT’s non-discretionary incentive program
7 that paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on
8 their performance for DEFENDANT. The non-discretionary incentive program provided all
9 employees paid on an hourly basis with incentive compensation when the employees met the
10 various performance goals set by DEFENDANT. However, when calculating the regular
11 rate of pay in order to pay overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES,
12 DEFENDANT failed to include the incentive compensation as part of the employees’
13 “regular rate of pay” for purposes of calculating overtime pay. Management and supervisors
14 described the incentive program to potential and new employees as part of the compensation
15 package. As a matter of law, the incentive compensation received by PLAINTIFF and other
16 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to
17 do so has resulted in a underpayment of overtime compensation to PLAINTIFF and other
18 AGGRIEVED EMPLOYEES by DEFENDANT.

19 15. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
21 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
23 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
24 compensation as required by California law which allowed DEFENDANT to illegally profit
25 and gain an unfair advantage over competitors who complied with the law. To the extent
26 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
27 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.
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1 16. As a result of their rigorous work schedules, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks
3 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
4 EMPLOYEES were from time to time required to perform work as ordered by
5 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
6 meal break. Further, DEFENDANT failed to provide PLAINTIFF and AGGRIEVED
7 EMPLOYEES with a second off-duty meal period from time to time in which these
8 employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF
9 and the other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
10 additional compensation and in accordance with DEFENDANT's corporate policy and
11 practice.

12 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were from time to time also required to work in excess of four (4) hours
14 without being provided ten (10) minute rest periods. Further, these employees were denied
15 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
16 to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
17 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
18 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
19 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were periodically denied their proper rest periods by
22 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California
23 Wage Order requires employers to provide employees with off-duty rest periods, which the
24 California Supreme Court defined as time during which an employee is relieved from all
25 work related duties and free from employer control. In so doing, the Court held that the
26 requirement under California law that employers authorize and permit all employees to take
27 rest period means that employers must relieve employees of all duties and relinquish control
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1 over how employees spend their time which includes control over the locations where
2 employees may take their rest period. Employers cannot impose controls that prohibit an
3 employee from taking a brief walk - five minutes out, five minutes back. Here,
4 DEFENDANT's policy restricted PLAINTIFF and other AGGRIEVED EMPLOYEES from
5 unconstrained walks and was unlawful based on Defendant's rule which stated PLAINTIFF
6 and other AGGRIEVED EMPLOYEES could not leave the work premises during their rest
7 period.

8 18. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
9 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
10 Specifically, PLAINTIFF and other non-exempt employees earned non-discretionary
11 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
12 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
13 PLAINTIFF and other AGGRIEVED EMPLOYEES their base rates of pay.

14 19. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
15 employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(a) expressly
17 requires employers to pay employees all wages owed within eleven (11) days of the close of
18 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
19 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close
20 of the payroll period.

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

3 21. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
4 her employees with an accurate itemized wage statement in writing showing, among other
5 things, gross wages earned and all applicable hourly rates in effect during the pay period and
6 the corresponding amount of time worked at each hourly rate. DEFENDANT from time to
7 time failed to provide to PLAINTIFF and the CALIFORNIA AGGRIEVED EMPLOYEES
8 wage statements that identify the correct gross and net wages earned, the applicable number
9 of hours worked and rates of pay. Aside, from the violations listed above in this paragraph,
10 DEFENDANT failed to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an
11 itemized wage statement that lists all the requirements under California Labor Code 226 *et*
12 *seq.*

13 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
14 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
15 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence
16 of discharging their duties on behalf of DEFENDANT. Under California Labor Code
17 Section 2802, employers are required to indemnify employees for all expenses incurred in
18 the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
19 employer shall indemnify his or her employee for all necessary expenditures or losses
20 incurred by the employee in direct consequence of the discharge of his or her duties, or of
21 his or her obedience to the directions of the employer, even though unlawful, unless the
22 employee, at the time of obeying the directions, believed them to be unlawful."

23 23. In the course of their employment PLAINTIFF and other AGGRIEVED
24 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
25 personal vehicles as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
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1 associated with the use of their personal vehicles and personal home offices for
2 DEFENDANT's benefit. As a result, in the course of their employment with
3 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
4 business expenses which included, but were not limited to, costs related to the use of their
5 personal vehicles and personal home offices all on behalf of and for the benefit of
6 DEFENDANT.

7 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
8 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which
9 failed to accurately calculate and record the correct overtime rate for the overtime worked
10 by PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
11 employees' overtime hour rates is the DEFENDANT's burden. As a result of
12 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
13 failed to properly calculate and/or pay all required overtime compensation for work
14 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
15 regulations promulgated thereunder as herein alleged.

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

21 22 **JURISDICTION AND VENUE** 23

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

26 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant
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1 times maintained offices and facilities in this County and/or conducts substantial business in
2 this County, and (ii) committed the wrongful conduct herein alleged in this County against
3 PLAINTIFF and the AGGRIEVED EMPLOYEES.

4
5 **FIRST CAUSE OF ACTION**

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

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

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

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10 28. PLAINTIFF realleges and incorporates by this reference, as though fully set
11 forth herein, the prior paragraphs of this Complaint.

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

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23 30. PLAINTIFF, and such persons that may be added from time to time who
24 satisfy the requirements and exhaust the administrative procedures under the Private
25 Attorney General Act, brings this Representative Action on behalf of the State of California
26 with respect to herself and all individuals who are or previously were employed by
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1 DEFENDANT in California and who were classified as non exempt employees
2 (“AGGRIEVED EMPLOYEES”) during the time period of February 12, 2020 until a date as
3 determined by the Court (the "PAGA PERIOD").

4 31. On February 12, 2021, PLAINTIFF gave written notice by electronic mail to
5 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
6 employer of the specific provisions of this code alleged to have been violated as required by
7 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
8 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
9 now commence a representative civil action under PAGA pursuant to Section 2699 as the
10 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
11 defined.

12 32. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
15 properly record and provide legally required meal and rest periods, (c) failed to pay
16 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
17 reimburse employees for required expenses, and (f) failed to provide wages when due, all in
18 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
19 *et seq.*, 210, 221, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
20 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
21 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
22 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
23 Labor Code Private Attorney General Act of 2004 as the representative of the State of
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
2 EMPLOYEES.

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4 **PRAYER FOR RELIEF**

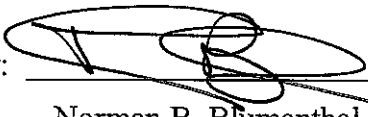
5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
6 severally, as follows:

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

9 A) Recovery of civil penalties as prescribed by the Labor Code Private
10 Attorneys General Act of 2004; and,
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12 B) An award of attorneys' fees and cost of suit, as allowable under the
13 law, including, but not limited to, pursuant to Labor Code §2699.
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15 Dated: May 4, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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17
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19 By: 

20 Norman B. Blumenthal
21 Attorneys for Plaintiff
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