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

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

14 OCTAVIO IBARRA, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 LETTER RIDE, LLC, a Limited Liability
20 Company; and DOES 1 through 50,
21 inclusive,

22 Defendants.

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 28 2021

BY


MICHAEL WELCH II, DEPUTY

Case No. **CIV SB 2127546**

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, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
1198.5, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

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

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Letter Ride, LLC
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, 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 himself 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 Letter Ride, LLC (“DEFENDANT”) is a Limited Liability Company
24 that at all relevant times mentioned herein conducted and continues to conduct substantial
25 business in the state of California.

26 5. DEFENDANT provides transportation and delivery services.

27 6. PLAINTIFF was employed by DEFENDANT in California from December of
28

1 2020 until January of 2021 and was at all times classified by DEFENDANT as a non-exempt
2 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
3 payment of minimum and overtime wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to
7 himself and all individuals who are or previously were employed by DEFENDANT in
8 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
9 during the time period of April 29, 2020 until a date as determined by the Court (the "PAGA
10 PERIOD").

11 8. PLAINTIFF, on behalf of himself 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, 351,
15 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
16 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
17 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
18 employees within the meaning of Labor Code § 2699, *et seq.*

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

28 10. The agents, servants and/or employees of the Defendants and each of them acting

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

8 9 **THE CONDUCT**

10 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
11 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
12 meaning the time during which an employee is subject to the control of an employer, including
13 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
14 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they were
15 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
16 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
17 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
18 should have been PLAINTIFF's off-duty meal break. Also, DEFENDANT, as a matter of
19 established company policy and procedure, administered a uniform practice of rounding the
20 actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always
21 to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and
22 the AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been
23 paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and practice
24 not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is
25 evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to pay
26 PLAINTIFF and other AGGRIEVED EMPLOYEES the proper minimum and overtime wages.

27 12. State law provides that employees must be paid overtime and meal and rest break
28 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other

1 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that is tied
2 to specific elements of an employee's performance.

3 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
4 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
5 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
6 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
7 hourly basis with incentive compensation when the employees met the various performance
8 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
9 overtime and premiums for meal and rest break violations to PLAINTIFF and other
10 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
11 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
12 premium pay for meal and rest break violations. As a matter of law, the incentive compensation
13 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the
14 "regular rate of pay." The failure to do so has resulted in an underpayment of overtime
15 compensation and meal and rest break premium pay to PLAINTIFF and other AGGRIEVED
16 EMPLOYEES by DEFENDANT.

17 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
18 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
19 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees regularly earn
20 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
21 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
22 pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

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

27 16. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
28 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-

1 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
2 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
3 paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as opposed
4 to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

5 17. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
6 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
7 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
8 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
9 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
10 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

11 18. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
13 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
15 for more than five (5) hours during some shifts without receiving a meal break. Further,
16 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
17 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
18 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
19 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
20 and in accordance with DEFENDANT's corporate policy and practice.

21 19. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
22 were also required from time to time to work in excess of four (4) hours without being provided
23 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
24 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
25 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
26 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
27 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
28 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour

1 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
2 to provide employees with off-duty rest periods, which the California Supreme Court defined
3 as time during which an employee is relieved from all work related duties and free from
4 employer control. In so doing, the Court held that the requirement under California law that
5 employers authorize and permit all employees to take rest period means that employers must
6 relieve employees of all duties and relinquish control over how employees spend their time
7 which includes control over the locations where employees may take their rest period.
8 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
9 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
10 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
11 DEFENDANT's rule which stated PLAINTIFF and the AGGRIEVED EMPLOYEES could not
12 leave the work premises during their rest period. As a result of PLAINTIFF being required to
13 be present on the premises he was from time to time required by DEFENDANT to work during
14 what should of been his off duty rest period.

15 20. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
16 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
17 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
19 all time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required these employees to work off the clock without paying them for all the
22 time they were under DEFENDANT's control. Specifically, PLAINTIFF worked through his
23 various meal and rest breaks. This work also was done off-the-clock. PLAINTIFF and
24 AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing
25 mandatory drug testing or any other testing and/or examination required as a condition of
26 employment. As such, DEFENDANT knew or should have known that PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES were under compensated for all time worked. As a result,
28 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by working without

1 their time being accurately recorded and without compensation at the applicable minimum wage
2 and overtime wage rates. To the extent that the time worked off the clock did not qualify for
3 overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked
4 off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

5 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
7 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
8 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
9 2802, employers are required to indemnify employees for all expenses incurred in the course
10 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
11 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
12 employee in direct consequence of the discharge of his or her duties, or of his or her
13 obedience to the directions of the employer, even though unlawful, unless the employee, at
14 the time of obeying the directions, believed them to be unlawful."

15 22. In the course of their employment PLAINTIFF and other AGGRIEVED
16 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
17 personal cellular phones as a result of and in furtherance of their job duties as employees for
18 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
19 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
20 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
22 were not limited to, costs related to the use of their personal cellular phones all on behalf of
23 and for the benefit of DEFENDANT.

24 23. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
25 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which
26 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code
27 § 226 provides that every employer shall furnish each of his or her employees with an
28 accurate itemized wage statement in writing showing, among other things, gross wages

1 earned and all applicable hourly rates in effect during the pay period and the corresponding
2 amount of time worked at each hourly rate. PLAINTIFF and the AGGRIEVED
3 EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all
4 applicable hourly rates during the pay period and the total hours worked, and the applicable
5 pay period in which the wages were earned pursuant to California Labor Code Section
6 226(a)(2). The wage statements DEFENDANT provided to PLAINTIFF and other
7 AGGRIEVED EMPLOYEES failed to identify such information. Aside, from the violations
8 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized
9 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
10 result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

20 25. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in
22 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
23 requires employers to pay employees all wages owed within seven (7) days of the close of
24 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
25 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
26 the payroll period.

27 26. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT

1 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
2 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT
3 is intended to purposefully avoid the payment for all time worked as required by California
4 law which allows DEFENDANT to illegally profit and gain an unfair advantage over
5 competitors who complied with the law. To the extent equitable tolling operates to toll
6 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
7 should be adjusted accordingly.

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

17 28. All of the conduct and violations alleged herein occurred during the PAGA
18 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
19 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 29. This Court has jurisdiction over this Action pursuant to California Code of
24 Civil Procedure, Section 410.10.

25 30. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
27 employs AGGRIEVED EMPLOYEES across California, including in this County, and
28

1 committed the wrongful conduct herein alleged in this County against 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 31. PLAINTIFF realleges and incorporates by this reference, as though fully set
8 forth herein, the prior paragraphs of this Complaint.

9 32. 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
11 the state's labor law enforcement agencies. An action to recover civil penalties under
12 PAGA is fundamentally a law enforcement action designed to protect the public and not to
13 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
14 but to create a means of "deputizing" citizens as private attorneys general to enforce the
15 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
16 public interest to allow aggrieved employees, acting as private attorneys general to recover
17 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
18 claims cannot be subject to arbitration.

19 33. PLAINTIFF, and such persons that may be added from time to time who
20 satisfy the requirements and exhaust the administrative procedures under the Private
21 Attorney General Act, brings this Representative Action on behalf of the State of California
22 with respect to himself and all individuals who are or previously were employed by
23 DEFENDANT in California and who were classified as non-exempt employees
24 ("AGGRIEVED EMPLOYEES") during the time period of April 29, 2020 until a date as
25 determined by the Court (the "PAGA PERIOD").

26 34. On April 29, 2021, PLAINTIFF gave written notice by electronic mail to the
27 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
28 employer of the specific provisions of this code alleged to have been violated as required by

1 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
2 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
4 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 35. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
8 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
9 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
10 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
11 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
12 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
13 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
14 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
15 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
16 Attorney General Act of 2004 as the representative of the State of California for the illegal
17 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

18
19 **PRAYER FOR RELIEF**

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

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

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

26 B) An award of attorneys' fees and cost of suit, as allowable under the

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

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: September 27, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

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5 By: 
6 Norman B. Blumenthal
7 Attorneys for Plaintiff
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