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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

DARRICK FLOYD, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

CONTAINMENT SOLUTIONS, INC., a
Corporation; CONTAINMENT SOLUTIONS
SERVICES, INC., a Corporation;
NATIONAL OILWELL VARCO, L.P., a
Limited Partnership; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-22-100390

**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 Darrick Floyd (“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 his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants Containment Solutions, Inc.,
8 Containment Solutions Services, Inc., and National Oilwell Varco, L.P. (referred to as
9 “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
10 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
11 **not seek to recover anything other than penalties as permitted by California Labor Code**
12 **§ 2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
13 does not seek underlying general and/or special damages for those violations, but simply the
14 civil penalties permitted by California Labor Code § 2699.

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

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

23 **THE PARTIES**

24 4. Defendant Containment Solutions, Inc. is a corporation that at all relevant times
25 mentioned herein conducted and continues to conduct substantial business in the state of
26 California.
27

28 5. Defendant Containment Solutions Services, Inc. is a corporation that at all

1 relevant times mentioned herein conducted and continues to conduct substantial business in the
2 state of California.

3 6. Defendant National Oilwell Varco, L.P. is a limited partnership that at all relevant
4 times mentioned herein conducted and continues to conduct substantial business in the state of
5 California.

6 7. Defendants Containment Solutions, Inc., Containment Solutions Services, Inc., and
7 National Oilwell Varco, L.P. are the joint employers of PLAINTIFF as evidenced by paycheck
8 and by the company PLAINTIFF performed work for respectively, and are therefore jointly
9 responsible as employers for the conduct alleged herein, and are therefore collectively referred
10 to herein as "DEFENDANT."

11 8. DEFENDANT provides equipment and components used in oil and gas drilling
12 and production operations, oilfield services, and supply chain integration services to the
13 upstream oil and gas industry.

14 9. PLAINTIFF has been employed by DEFENDANT in California since 1981 and
15 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
16 basis, and entitled to the legally required meal and rest periods and payment of minimum and
17 overtime wages due for all time worked.

18 10. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, brings this Representative Action on behalf of the State of California with respect to
21 himself and all individuals who are or previously were employed by Containment Solutions, Inc.
22 and/or Containment Solutions Services, Inc. and/or and National Oilwell Varco, L.P. in
23 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
24 during the time period of August 17, 2020 until a date as determined by the Court (the "PAGA
25 PERIOD").

26 11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
27 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
28 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's

1 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
2 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
3 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
4 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
5 the meaning of Labor Code § 2699, *et seq.*

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

15 13. The agents, servants and/or employees of the Defendants and each of them acting
16 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
17 agent, servant and/or employee of the Defendants, and personally participated in the conduct
18 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
19 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
20 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
22 agents, servants and/or employees.

23 **THE CONDUCT**

24 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
28

1 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
2 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
3 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
5 should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED
6 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
7 testing or any other testing and/or examination required as a condition of employment.
8 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
9 practice of rounding the actual time worked and recorded by PLAINTIFF and other
10 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
11 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than
12 they would have been paid had they been paid for actual recorded time rather than "rounded"
13 time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and other
14 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
15 condition of employment, required these employees to submit to mandatory temperature checks
16 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
17 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
18 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
19 by working without their time being correctly recorded and without compensation at the
20 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
21 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
22 records.

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

27 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
28 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF

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

14 17. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
15 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
16 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
17 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
18 more than five (5) hours during some shifts without receiving a meal break. Further,
19 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
20 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
21 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
22 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
23 other AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES
24 therefore forfeit meal breaks without additional compensation and in accordance with
25 DEFENDANT's corporate policy and practice.

26 18. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 are also required from time to time to work in excess of four (4) hours without being provided
28 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at

1 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
2 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
3 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
4 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
5 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
6 in lieu thereof. DEFENDANT failed to compensate PLAINTIFF and other AGGRIEVED
7 EMPLOYEES for their rest periods as required by the applicable Wage Order and Labor Code.
8 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
9 PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure
10 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally required paid
11 rest periods is evidenced by DEFENDANT's business records. Additionally, the applicable
12 California Wage Order requires employers to provide employees with off-duty rest periods,
13 which the California Supreme Court defined as time during which an employee is relieved from
14 all work related duties and free from employer control. In so doing, the Court held that the
15 requirement under California law that employers authorize and permit all employees to take rest
16 period means that employers must relieve employees of all duties and relinquish control over
17 how employees spend their time which includes control over the locations where employees
18 may take their rest period. Employers cannot impose controls that prohibit an employee from
19 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts
20 PLAINTIFF and other AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful
21 based on DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED
22 EMPLOYEES cannot leave the work premises during their rest period.

23 19. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
24 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
25 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
27 meaning the time during which an employee was subject to the control of an employer,
28 including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT requires these employees to work off the clock without paying them for all the
2 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
3 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
4 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
5 worked by working without their time being accurately recorded and without compensation at
6 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
7 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
8 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
9 1197.1.

10 20. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
12 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
13 provides that every employer shall furnish each of his or her employees with an accurate
14 itemized wage statement in writing showing, among other things, gross wages earned and all
15 applicable hourly rates in effect during the pay period and the corresponding amount of time
16 worked at each hourly rate. PLAINTIFF and other AGGRIEVED EMPLOYEES were from
17 time to time paid on an hourly basis. As such, the wage statements should reflect all applicable
18 hourly rates during the pay period and the total hours worked, and the applicable pay period in
19 which the wages were earned pursuant to California Labor Code Section 226(a)(2). The wage
20 statements DEFENDANT provided to PLAINTIFF and other AGGRIEVED EMPLOYEES
21 failed to identify such information. More specifically, the wage statements failed to identify the
22 accurate total hours worked each pay period. When the hours shown on the wage statements
23 were added up, they did not equal the actual total hours worked during the pay period.
24 Additionally, DEFENDANT violated Section 226(a)(9) by failing to identify the correct rates
25 of pay and number of hours worked, including for the "Retro Pay Flat" item of pay, which is
26 a wage payment. Further, DEFENDANT violated Cal. Lab. Code Section 226(a)(8) by failing
27 to list the correct legal entity that is the employer of PLAINTIFF. Aside, from the violations
28 listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage

1 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
2 DEFENDANT from time to time provides PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

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

12 22. DEFENDANT from time to time fails to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
14 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage
15 payment.

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

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

26 25. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
27 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
28 non-discretionary incentive wages, including but not limited to, incentives, shift differential pay,

1 and bonuses which increased their regular rate of pay. However, when sick pay was paid, it was
2 paid at the base rate of pay for PLAINTIFF and other AGGRIEVED EMPLOYEES, as opposed
3 to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

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

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

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

28 29. In the course of their employment PLAINTIFF and other AGGRIEVED

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

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

15 **JURISDICTION AND VENUE**

16 31. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure, Section 410.10.

18 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
20 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the
22 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
23 EMPLOYEES.

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1 to 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
3 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 37. 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
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
7 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
8 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse employees
9 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
10 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2),
11 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
12 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
13 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
14 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
16 and the other AGGRIEVED EMPLOYEES.

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

1 Dated: February 16, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
2 LLP

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5 By: /s/ Nicholas De Blouw
6 Nicholas J. De Blouw
7 Attorneys for Plaintiff
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