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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

05/17/2022

Clerk of the Court

BY: LAURA SIMMONS

Deputy Clerk

CGC-22-599665

10 CAMREE LYNN, on behalf of the State of
11 California, as a private attorney general,

12
13 Plaintiff,

14 vs.

15 BLUE LINK WIRELESS, 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), and the applicable Wage Order(s).

1 Plaintiff Camree Lynn (“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 her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Blue Link Wireless, LLC (referred to as
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 Blue Link Wireless, 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 owns and operates wireless phone stores in California.

27 6. PLAINTIFF was employed by DEFENDANT in California from August of 2021
28

1 to January 15, 2022 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 herself
7 and all individuals who are or previously were employed by DEFENDANT in California and
8 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
9 of March 10, 2021 until a date as determined by the Court (the "PAGA PERIOD").

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

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

27 10. The agents, servants and/or employees of the Defendants and each of them acting
28 on behalf of the Defendants acted within the course and scope of his, her or its authority as the

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

7 8 THE CONDUCT

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

1 timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED
2 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
3 by working without their time being correctly recorded and without compensation at the
4 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the
5 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
6 records.

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

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

26 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
28 and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED

1 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
2 for more than five (5) hours during some shifts without receiving a meal break. Further,
3 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
4 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
5 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
6 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
7 the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
8 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
9 corporate policy and practice.

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

1 their rest period.

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

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

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

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

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

19 19. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
20 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
21 Lab. Code § 204(d).

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

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

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

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

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

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

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

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

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

18 **JURISDICTION AND VENUE**

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

21 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
23 employs AGGRIEVED EMPLOYEES across California, including in this County, and
24 committed the wrongful conduct herein alleged in this County against AGGRIEVED
25 EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

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

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

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

5 30. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

17 32. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to herself
20 and all individuals who are or previously were employed by DEFENDANT in California and
21 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
22 of March 10, 2021 until a date as determined by the Court (the "PAGA PERIOD").

23 33. On March 10, 2022, PLAINTIFF gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
25 employer of the specific provisions of this code alleged to have been violated as required by
26 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
27 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
28 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of

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

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

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
18 severally, as follows:

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

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

23 B) An award of attorneys' fees and cost of suit, as allowable under the
24 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).

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Dated: May17, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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