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7 **U.S. FEDERAL DISTRICT COURT**
8 **DISTRICT OF MINNESOTA**

9
10 ANTHONY A. CLARKE

11 Plaintiff,

12
13 v.

14 UNITED STATES,

15 Defendant.
16
17

Civil File No. _____

COMPLAINT

JURY TRIAL DEMANDED

18
19 Plaintiff Anthony A. Clarke, for its Complaint against Defendant, states and alleges as
20 follows:

21 **INTRODUCTION**

22 1. Plaintiff Anthony A. Clarke is a citizen of the United States. Notwithstanding that
23 objectively verifiable fact, officer of the United States Immigration and Customs Enforcement
24 (“ICE”) directed the unlawful arrest and detention of plaintiff in immigration custody based on
25 their purported, but groundless, belief that plaintiff was an alien subject to removal from the
26 United States.
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1 2. As a result of the officers' actions and inactions, plaintiff's liberty was unjustly restricted
2 for approximately one and a half months in jail. ICE also restricted his liberty for an additional
3 sixteen months by requiring plaintiff to regularly report to its offices during the pendency of
4 removal proceedings in Immigration Court. Failure to report would have resulted in plaintiff
5 being taken into custody by ICE.
6

7 3. Plaintiff brings this is an action under the Federal Tort Claims Act, 28 U.S.C. sections
8 1346(b), 2671 et seq.

9 **JURISDICTION AND VENUE**

10 4. This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§
11 1331 & 1346(b).
12

13 5. On September 10, 2010, plaintiff submitted an Administrative Tort Claim to ICE, U.S.
14 Department of Homeland Security. Plaintiff never received a decision on the matter. Plaintiff
15 has therefore exhausted all available administrative remedies.

16 6. Venue is properly with this District under 28 U.S.C. § 1402(b) as the acts that are the
17 subject of this Complaint occurred within the District, in Hennepin and Sherburne Counties,
18 Minnesota, and in Minneapolis and Bloomington, Minnesota.
19

20 7. Venue is properly with this District under 28 U.S.C. § 1332(a) as certain acts that are the
21 subject of this Complaint occurred in unknown locations in South Dakota.

22 **PARTIES**

23 8. Plaintiff Anthony A. Clarke, who is 53 years old, is and was at all times relevant to this
24 Complaint a resident of Columbia Heights, Minnesota, and Minneapolis, Minnesota.
25

26 9. Defendant United States of America is the appropriate defendant under the
27 Federal Tort Claims Act.
28

1 18. In or around November 19, 1975, plaintiff's mother naturalized as a United States citizen.

2 19. Because his mother naturalized before plaintiff's 18th birthday, and because plaintiff had
3 been admitted for lawful permanent residence in the United States, plaintiff "derived" United
4 States citizenship by operation of then existing law, 8 U.S.C. § 1432(a); Immigration &
5 Nationality Act § 321(a) (repealed 2000).
6

7 20. On or around June 25, 1996, plaintiff received a statutory stay of adjudication for a
8 controlled substance violation under Minnesota Statute § 152.025, subdivision 2(1) in Hennepin
9 County.

10 21. On or around June 25, 1999, the controlled substance offense was dismissed because
11 plaintiff met the conditions of the stay.
12

13 22. On or around September 2, 2004, plaintiff was arrested by local authorities for Driving
14 after Cancellation in violation of Minnesota Statute § 171.24. Plaintiff was taken into custody in
15 Hennepin County, Minnesota.

16 23. On or around September 2, 2004, ICE Special Agent Ulrich Palmer Denig and Special
17 Agent Brenner met with plaintiff in the Hennepin County Jail.
18

19 24. Between September 2 and 9, 2004, unknown ICE officers, including, but not limited to,
20 Special Agent Ulrich Palmer Denig and Special Agent Brenner, investigated plaintiff's
21 background to determine whether he was an alien subject to removal from the United States.

22 25. All aliens who are admitted to the United States for lawful permanent residence,
23 including plaintiff, his brothers and his mother, are identified by an alien number called an "A
24 number." Each "A number" has a corresponding paper file, or "A file," containing documents
25 related to the alien's entry and naturalization.
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1 26. A cursory review of plaintiff's A file and/or his siblings' or his mother's A file
2 demonstrates that plaintiff obtained derivative citizenship of the United States when his mother
3 naturalized in 1975.

4 27. At the time that the ICE officers investigated plaintiff's background, plaintiff's A file and
5 the A files of his mother and siblings were readily available to the ICE officers.
6

7 28. Notwithstanding the objectively verifiable fact of plaintiff's citizenship, on or around
8 September 9, 2004, ICE Special Agent Ulrich Palmer Denig created Form I-213, Record of a
9 Deportable/Inadmissible Alien, regarding plaintiff. The document incorrectly alleged that
10 plaintiff was a legal permanent resident. This document incorrectly listed plaintiff's nationality
11 as Jamaican. It also incorrectly listed his mother's nationality as Jamaican. On this form, Special
12 Agent Palmer Denig asserted that plaintiff was removable from the United States based on the
13 1996 controlled substance violation under 8 U.S.C. §§ 1227(a)(2)(B)(i) and 1227(a)(2)(A)(iii);
14 Immigration & Nationality Act §§ 237(a)(2)(B)(i) and 237(a)(2)(A)(iii), conviction for a
15 controlled substance violation and conviction for an aggravated felony, respectively.
16

17 29. On or around September 9, 2004, ICE Assistant Special Agent in charge Mary L.
18 Hernandez issued Form I-862, Notice to Appear ("NTA"), a document that is a charging
19 instrument for the initiation of administrative proceedings to remove an alien from the United
20 States. In the NTA, ICE officers falsely claimed that plaintiff is not a citizen of the United
21 States. The ICE officers further claimed that, because plaintiff had criminal convictions that
22 would render a non-citizen removable from the United States, plaintiff should be removed from
23 the United States.
24

25 30. There was no legal cause for the issuance of an immigration detainer or a Notice to
26 Appear against plaintiff.
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1 31. On or around September 20, 2004, an unknown ICE officer mailed the NTA to plaintiff.
2 Plaintiff did not sign the return receipt.

3 32. On or around October 14, 2004, an unknown ICE officer filed the NTA with the
4 Immigration Court in Bloomington, Minnesota, on January 26, 2005, which commenced removal
5 proceedings. Attorneys from ICE's Office of Chief Counsel proceeded to represent ICE against
6 plaintiff in these proceedings.
7

8 33. On or around January 26, 2005, Immigration Judge Kristin W. Olmanson held a hearing
9 and found plaintiff removable from the United States. She issued an in absentia removal order
10 against plaintiff, who was not present at the proceedings in Immigration Court.
11

12 34. Plaintiff remained in the United States.

13 35. On or around May 28, 2008, plaintiff went to the office of U.S. Citizenship and
14 Immigration Services ("CIS") in Bloomington, Minnesota, to provide biometric information in
15 connection with an I-90 application, which is a form filed to obtain a replacement "green card."
16 Plaintiff understood that this step was necessary in order to obtain the necessary documentation
17 of his citizenship. Plaintiff marked that he was an American citizen on Applicant Information
18 Worksheet that he gave to an unknown CIS employee. Plaintiff also provided his current address.
19

20 36. In between May 28 and June 11, 2008, unknown ICE officers, investigated plaintiff's
21 background to determine whether he was an alien subject to removal from the United States.

22 37. As discussed in paragraphs 23 through 25 of this Complaint, notwithstanding the
23 objectively verifiable fact of plaintiff's citizenship, on or about June 11, 2008, multiple unknown
24 ICE officers conducted a fugitive operations initiative to arrest plaintiff at his home at 1401 46th
25 Ave. NE, Columbia Heights, Minnesota.
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1 38. Unknown ICE officers attempted to gain entry to plaintiff's home early in the morning.
2 Plaintiff's sister Christine Clarke, a U.S. citizen, heard the ICE officers beating on the door.
3 Without opening the door, Ms. Clarke asked the officers if they were serious. An unknown ICE
4 officer said there was an issue in the neighborhood and showed a picture. Ms. Clarke said that no
5 one fitting that description was in her home, but before she knew it, the unknown ICE officers
6 had barged into her home uninvited and under false pretenses.
7

8 39. One unknown officer falsely claimed to be searching for a fugitive of Hispanic descent
9 and said they believed that he had broken into her home. One unknown ICE officer was showing
10 Ms. Clarke pictures of someone she did not know. The other unknown officers conducted an
11 illegal search of the home and detained its residents, including plaintiff's three or four-year-old
12 nephew, and guests.
13

14 40. Unknown ICE officers found plaintiff sleeping in his bed. Plaintiff did not know who
15 they were or why they were in his home. An unknown ICE officer stated that plaintiff had to
16 leave with them. Unknown ICE officers apprehended plaintiff, handcuffed him and removed him
17 from his bedroom. Unknown ICE officers made plaintiff remove everything from his pockets, so
18 he had no contact information for any family or friends.
19

20 41. During plaintiff's arrest, Ms. Clarke repeatedly stated that plaintiff was a U.S. citizen and
21 that nearly everyone in the family was a citizen. She asked the unknown ICE officers why they
22 were taking her brother. One unknown ICE officer said that they would not be there if he were a
23 citizen. Ms. Clarke also told the unknown ICE officer that their mother was a U.S. citizen and
24 stated her name. An unknown ICE officer asked Ms. Clarke what her immigration status was
25 and where she was from. When she said she was American, the unknown ICE officer replied,
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28

1 “yeah, right.” Ms. Clarke asked an unknown ICE officer where they were taking plaintiff, and
2 the officer replied, “Don’t worry. That’s not your business.”

3 42. Unknown ICE officers took plaintiff to the ICE office in Bloomington, Minnesota. From
4 there, plaintiff was transferred to immigration detention at Sherburne County Jail in Elk River,
5 Minnesota.

6
7 43. On June 11, 2008, unknown ICE officer(s) ran a background check of plaintiff using the
8 Federal Bureau of Investigation’s database, the Integrated Automated Fingerprint Identification
9 System (IAFIS). This database listed Mr. Clarke’s citizenship as “United States.” ICE ignored
10 or disregarded this information.

11 44. On June 11, 2008, an unknown ICE deportation officer drafted a Form I-213 Record of
12 Deportable/Inadmissible Alien regarding plaintiff and his apprehension. It is replete with false
13 information and inaccuracies.

14
15 45. In Form I-213, the unknown ICE officer falsely wrote that Ms. Clarke granted the
16 unknown ICE officers permission to enter her home.

17 46. The Form I-213 also falsely states that plaintiff made “no claim to United States
18 citizenship.” However, it also mentions plaintiff’s twin brother, Alexander Anthony Clarke, and
19 his A number. Plaintiff had mentioned his twin brother to ICE officers in order to assert his
20 claim to U.S. citizenship. An unknown ICE officer evidently checked Alexander Clarke’s record
21 in the CIS database and found that the file was retired.

22
23 47. CIS retains retired A files for 75 years after the date of retirement

24 to fulfill the business requirements of DHS, which includes adjudication of
25 decisions, law enforcement uses, protection of national security, responding to
26 requests within DHS, as well as those requests from other government agencies
27 requiring historical and/or biographical information on the individuals of interest.
28

1 The information is retained for the specified period because the relationship
2 between USCIS and the individual may span an individual's lifetime.¹

3 Thus, the information about plaintiff's brother remained available to ICE.

4 48. The Form I-213 also mentions that the unknown ICE deportation officer drafting the
5 document had spoken to plaintiff's family members and explained plaintiff's situation. The I-213
6 is silent on the family's repeated assertions of plaintiff's U.S. citizenship through his mother.

7 49. While in detention, plaintiff repeatedly stated that he was a U.S. citizen. His sister
8 Christine Clarke also called ICE and jail authorities frequently between June 11 and July 24,
9 2008, to learn about her brother's status. She repeatedly stated that he was a U.S. citizen and that
10 he should not be subject to an immigration detainer or removal proceedings. His twin brother
11 also attempted to speak with jail authorities to learn about plaintiff's condition and to offer proof
12 of his own status as a U.S. citizen.

13 50. On unknown days in between June 11 and July 24, 2008, one or more unknown ICE
14 officers tried to meet with plaintiff. Plaintiff repeatedly informed the officer(s) that he is a
15 United States citizen and that he should not be subject to an immigration detainer or removal
16 proceedings.

17 51. Despite plaintiff's representations to the ICE officers that he was a citizen, the ICE
18 officers failed to conduct an appropriate investigation and willfully and/or recklessly ignored
19 available facts demonstrating plaintiff's citizenship.

20 52. Plaintiff was held in immigration custody, first, in Sherburne County Jail near Elk River,
21 Minnesota. For a brief period of time, plaintiff was transferred to an unknown location in South
22 Dakota, but was ultimately returned to Sherburne County Jail.

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¹ U.S. Department of Homeland Security, "Privacy Impact Assessment for the Central Index System," June 22,
2007, available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_cis.pdf.

1 53. While held in custody in Minnesota and South Dakota, plaintiff had court dates relating
2 to removal proceedings in the Immigration Court.

3 54. On or around June 27, 2008, plaintiff's attorneys filed a motion to reopen the
4 Immigration Court proceedings against him.

5 55. While ICE officers made no effort to look into plaintiff's claims of U.S. citizenship, they
6 did take extensive measures to secure travel documents to remove plaintiff to Jamaica.
7

8 56. On June 17, 2008, an unknown ICE deportation officer sent a letter to the Consul General
9 of Jamaica requesting his assistance in securing a valid travel document. In support of that
10 request, ICE sent a copy off his birth certificate, documents pertaining to pending removal
11 proceedings, photographs and fingerprints. The letter also lists his mother's name, again
12 demonstrating that ICE had all the information necessary to investigate plaintiff's claim to U.S.
13 citizenship, but refused to do so.
14

15 57. On July 9, 2008, an unknown ICE deportation officer sent another letter to a Mr. Blies at
16 the Consulate General of Jamaica providing "visa information" about plaintiff.

17 58. On or around July 11, 2008, Immigration Judge Olmanson granted the motion to reopen
18 immigration proceedings. She set a hearing for July 22, 2008.
19

20 59. On an unknown day in between June 11 and July 24, 2008, plaintiff was transferred to an
21 unknown detention facility in South Dakota. ICE detained plaintiff there for an unknown number
22 of days, hundreds of miles away from his family, friends and attorneys.

23 60. On multiple occasions in between June 11 and July 24, 2008, plaintiff complained to his
24 jailors about extreme tooth pain. He made written requests for medical attention to his jailors.
25

26 61. On all occasions, plaintiff was told that ICE approval was a prerequisite for medical
27 treatment.
28

1 62. ICE did not approve medical care for plaintiff, prolonging his pain and anguish while in
2 custody.

3 63. Once care was approved on an unknown date, it was limited. Plaintiff had teeth pulled
4 and still has dental problems due to ICE's neglect and indifference to his requests for dental care.
5

6 64. Only on or around July 18, 2008, at or around 11:35am Central Daylight Savings time, an
7 unknown ICE officer checked the CIS database Central Index System for information about
8 plaintiff's mother, Murdell Melvina Barnes. This record clearly shows that plaintiff's mother
9 became a U.S. citizen on November 19, 1975, when plaintiff was a minor. This information
10 proved that plaintiff had derived citizenship as a matter of law. Nonetheless, ICE failed to
11 release plaintiff after learning this information. ICE also did not notify the Immigration Court
12 about this information.
13

14 65. On or around July 22, 2008, unknown ICE officers failed to transport plaintiff to the
15 Immigration Court in Bloomington, Minnesota, or otherwise arrange for remote video
16 appearance from the detention center for his scheduled hearing with Immigration Judge Kristen
17 W. Olmanson. This failure further delayed plaintiff's proceedings and denied him the chance to
18 present his case to the Immigration Judge in a timely fashion.
19

20 66. Six days after confirming the fact that plaintiff was a U.S. citizen as a matter of law, on
21 or around July 24, 2008, after 43 days of illegal detention, ICE Deportation Officer Jennifer E.
22 Skwira authorized plaintiff's release from custody on his own recognizance on Form I-220A.
23

24 67. ICE's order required plaintiff to continue reporting to ICE on a monthly basis and attend
25 all scheduled removal hearings in Immigration Court, or risk being placed back in custody.
26 Plaintiff remained extremely fearful of being placed into custody again by ICE or even deported
27 to Jamaica, a country he had left as a child.
28

1 68. Plaintiff remained subject to ICE's order from his release on July 24, 2008, until the
2 proceedings against him were terminated on December 14, 2009, totaling 508 days.

3 69. After plaintiff's release, ICE continued to pursue removal proceedings against him
4 through their representatives in the Office of the Chief Counsel.
5

6 70. On or around July 29, 2008, plaintiff appeared in Immigration Court before Immigration
7 Judge Olmanson. His attorneys filed a motion to terminate immigration proceedings. Assistant
8 Chief Counsel Daniel Pornschloegl objected to the motion, noting that his office had been very
9 kind to release plaintiff from custody. He asserted that plaintiff should remain under the
10 jurisdiction of the court pending adjudication of plaintiff's request for a Certificate of Citizenship
11 from CIS on Form N-600.
12

13 71. ICE Attorney Pornschloegl never acknowledged ICE's independent confirmation of
14 plaintiff's mother's status and the corollary that plaintiff had derived citizenship as a matter of
15 law. *See* 8 U.S.C. § 1432(a); Immigration & Nationality Act § 321(a) (repealed 2000).
16 Immigration Judge Olmanson denied plaintiff's motion and immigration proceedings continued
17 pending adjudication of plaintiff's N-600 application with CIS. This application merely confirms
18 citizenship status.
19

20 72. ICE's insistence on continuing immigration proceedings against Mr. Clarke was baseless
21 and capricious, especially considering ICE had independently confirmed plaintiff's status as a
22 U.S. citizen as a matter of law. Immigration Judge Olmanson continued the proceedings until
23 December 18, 2008.
24

25 73. On or around December 17, 2008, the Immigration Court rescheduled the hearing to May
26 21, 2009, of its own accord.
27
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1 74. On or around May 21, 2009, plaintiff attended a master calendar hearing in Immigration
2 Court in front of Immigration Judge Olmanson. The judge granted plaintiff's request for a
3 continuance and set a subsequent hearing date on February 18, 2010.

4 75. On or around December 7, 2009, CIS issued a Certificate of Citizenship to plaintiff. This
5 certificate clearly states that plaintiff acquired citizenship on November 19, 1975—the date his
6 mother naturalized.

7 76. On or around December 10, 2009, plaintiff's attorney Sheila Stuhlman filed a motion to
8 terminate proceedings with the Immigration Court.

9 77. On or around December 14, 2009, ICE Chief Counsel Barry Chait and Deputy Chief
10 Counsel Ann M. Tanke filed a response of non-opposition to the motion to terminate
11 proceedings due to plaintiff's U.S. citizenship.

12 78. On or around December 14, 2009, Immigration Judge Olmanson terminated the
13 proceedings against plaintiff without prejudice.

14 79. On April 23, 2008, attorneys for ICE agreed to terminate the removal proceedings against
15 plaintiff on the ground that plaintiff is a citizen of the United States.

16 80. As a direct and proximate result of the conduct of the ICE officers and attorneys, plaintiff
17 suffered substantial damages, including physical pain and suffering, emotional distress and harm,
18 embarrassment, loss of the enjoyment of life, lost wages and other financial losses, and lost
19 liberty.

20 81. Plaintiff's lost liberty spanned approximately eighteen months, as follows:

- 21 a. While being held in ICE custody for 43 days, as a result, suffered financial harms,
22 physical and mental anguish, denial of necessary medical care and the loss of
23 liberty.

1 89. The actions of the ICE officers constitute the tort of false arrest under the laws of the
2 State of Minnesota.

3 90. Under the Federal Tort Claims Act, defendant United States of America is liable for these
4 actions.

5
6 **Count II**

7 **Plaintiff v. Defendant United States of America**

8 **Federal Tort Claims Act – False Imprisonment**

9 91. Plaintiff realleges and incorporates herein by reference the allegations set forth in
10 paragraphs 1-90 of this Complaint.

11 92. The actions of the ICE officers and attorneys that resulted in the issuance of an
12 immigration detainer and a Notice to Appear against plaintiff were without probable cause and
13 unlawful, and, as a result, plaintiff was held in custody and had his liberty restrained without any
14 legal basis.

15 93. ICE officers and attorneys continued to restrain Plaintiff's liberty after releasing him
16 from custody by requiring him to remain under ICE's supervision and make regular reports to
17 ICE.
18

19 94. The actions of the ICE officers and attorneys constitute the tort of false imprisonment
20 under the laws of the State of Minnesota.

21 95. Under the Federal Tort Claims Act, defendant United States of America is liable for these
22 actions.
23

24
25 **Count III**

26 **Plaintiff v. Defendant United States of America**

27 **Federal Tort Claims Act – Malicious Prosecution**
28

1 96. Plaintiff realleges and incorporates herein by reference the allegations set forth in
2 paragraphs 1-95 of this Complaint.

3 97. The actions of the ICE officers and attorneys that resulted in the issuance of an
4 immigration detainer and a Notice to Appear caused the prosecution of removal proceedings
5 against plaintiff without probable cause and with malice, particularly after ICE had confirmed his
6 mother's status as a U.S. citizen and failed to disclose this fact to plaintiff or the Immigration
7 Court.
8

9 98. The removal proceedings brought against plaintiff were terminated in plaintiff's favor.

10 99. The actions of the ICE officers and attorneys constitute the tort of malicious prosecution
11 under the laws of the State of Minnesota.
12

13 100. Under the Federal Tort Claims Act, defendant United States of America is liable
14 for these actions.

15 **Count IV**

16 **Plaintiff v. Defendant United States of America**

17 **Federal Tort Claims Act – Negligence**

18 101. Plaintiff realleges and incorporates herein by reference the allegations set forth in
19 paragraphs 1-100 of this Complaint.
20

21 102. The ICE officers and attorneys owed a duty to plaintiff, breached their duty to
22 plaintiff, and, as such, were a direct and proximate cause and a substantial factor in bringing
23 about plaintiff's damages outlined above.

24 103. The actions of the ICE officers constitute the tort of negligence under the laws of
25 the State of Minnesota.
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1 112. The ICE officers and attorneys acted intentionally and recklessly toward plaintiff
2 when they failed to verify his claims of U.S. citizenship during plaintiff's detention, continued to
3 detain him for 6 days after verifying his deceased mother's status, supervised plaintiff after his
4 release and continued removal proceedings against plaintiff even after verifying his mother's
5 citizenship status.
6

7 113. The conduct of the ICE officers and attorneys was extreme and outrageous given
8 the repeated assertions of plaintiff and his family of plaintiff's U.S. citizenship.

9 114. This conduct was the cause of severe emotional distress for plaintiff.

10 115. The actions of the ICE officers and attorneys constitute the tort of intentional
11 infliction of emotional distress under the laws of the State of Minnesota.
12

13 116. Under the Federal Tort Claims Act, defendant United States of America is liable
14 for these actions.

15 **Count VII**

16 **Plaintiff v. Defendant United States of America**

17 **Federal Tort Claims Act – Violation of Common Law Duty to Protect**

18 117. Plaintiff realleges and incorporates herein by reference the allegations set forth in
19 paragraphs 1-116 of this Complaint.
20

21 118. The ICE officers and attorneys were aware of plaintiff's particular status or
22 unique situation, had knowledge of the potential for the particular harm which plaintiff suffered,
23 and voluntarily assumed, in light of the knowledge, to protect plaintiff from the precise harm
24 which was occasioned.
25

26 119. The actions of the ICE officers and attorneys constitute a violation of the common
27 law duty to protect under the laws of the State of Minnesota.
28

1 120. Under the Federal Tort Claims Act, defendant United States of America is liable
2 for these actions.

3
4 **Wherefore**, plaintiff respectfully requests:

5
6 A. Compensatory damages;

7 B. Reasonable attorneys' fees and costs;

8 C. Such other and further relief as may appear just and appropriate.

9 Dated: September 9, 2011

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13 Angela Bortel

14 Attorney for Plaintiff
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