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Superior Court of California,
County of Alameda

05/19/2023 at 11:37:06 AM

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

ERIC McELROY, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

GEORGIA-PACIFIC CORRUGATED LLC,

Defendant.

Case No. 23CV034158

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

1 Plaintiff Eric McElroy, on behalf of the State of California and Aggrieved Employees
2 (collectively “Plaintiff”), complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant Georgia-Pacific Corrugated
5 LLC (“Defendant” or “Georgia-Pacific”) on behalf of the State of California to collect statutory
6 penalties as a result of Defendant’s systematic violations of California labor law with respect to
7 Defendant’s non-exempt, hourly workers in California (“the Aggrieved Employees”).

8 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
9 who have worked for Defendant in California at any time from May 8, 2021, until the final resolution
10 of this action.

11 3. This action stems from Defendant’s policies and practices of: (1) failing to compensate
12 Plaintiff and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and Aggrieved
13 Employees all minimum wages owed; (3) failing to pay Plaintiff and Aggrieved Employees overtime
14 wages as required by California law for hours worked over eight hours in a day and/or forty hours in
15 a week; (4) failing to authorize and permit Plaintiff and Aggrieved Employees to take rest breaks which
16 they are entitled by law; (5) failing to provide meal breaks to Plaintiff and Aggrieved Employees as
17 required under California law; (6) failing to provide Plaintiff and Aggrieved Employees accurate,
18 itemized wage statements; and (7) and failing to timely pay Plaintiff and Aggrieved Employees full
19 wages upon termination or resignation.

20 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
21 attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
22 Private Attorneys General Act (“PAGA”).

23 **PARTIES**

24 5. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
25 employees who worked for Defendant as Wet End Operators, Production Assistants, Machine
26 Operators, Technicians, Laborers, Forklift Operators, Maintenance Technicians, and other positions
27 performing similar job duties during all relevant times throughout California at any time from May 8,
28 2021, until the final resolutions of this action. Defendant employs and/or employed Plaintiff and

1 Aggrieved Employees.

2 6. Plaintiff is an individual over the age of eighteen, and at all times relevant to this
3 Complaint was a resident of the State of California. Plaintiff was employed as a laborer by Defendant
4 at is La Mirada warehouse location in California from February 2022 until June 2022.

5 7. Plaintiff is informed, believes, and thereon alleges that Georgia-Pacific is a corporation
6 headquartered in Atlanta, Georgia, and is registered to do business in California. Georgia-Pacific may
7 be served with process by serving its registered agent, United Agent Group, Inc., 5901 W Century
8 Blvd., Suite 750, Los Angeles, California 90045.

9 8. Plaintiff is informed, believes, and thereon alleges that Defendant manufactures and
10 distributes paper products, building products, and related chemicals throughout the United States,
11 including in California. Plaintiff is informed, believes, and thereon alleges that Defendant employs
12 Aggrieved Employees, among other employees, throughout the United States, including in California,
13 and including in Alameda County.

14 9. Defendant employs and/or employed Plaintiff and Aggrieved Employees because
15 Defendant, directly or indirectly, controls the employment terms, pay practices, timekeeping practices,
16 and daily work of Plaintiff and Aggrieved Employees.

17 10. Plaintiff is informed, believes, and thereon alleges that Defendant exercises control
18 over Plaintiff and Aggrieved Employees with respect to their employment.

19 11. At all material times, Defendant has done business under the laws of California, has
20 had places of business in California, including in this County, and has employed Aggrieved Employees
21 in this County and elsewhere in California. Defendant is “person[s]” as defined in Labor Code § 18,
22 and “employer[s]” as that term is used in the Cal. Lab. Code and the IWC Wage Orders regulating
23 wages, hours, and working conditions.

24 12. Defendant Georgia-Pacific Corrugated LLC, according to its website, manufactures
25 and distributes tissue, pulp, packaging, building products and related chemicals and employ member
26 throughout the State of California and in the United States.

27 **JURISDICTION AND VENUE**

28 13. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.

1 The Court also has jurisdiction over Defendant because Defendant does business in the State of
2 California, is authorized to do business in California, and is registered with the California Secretary
3 of State.

4 14. Venue is proper in this judicial district pursuant to Cal. Code Civ. Proc. §§ 393 and/or
5 395.5. Defendant conducts business, has jobsites, and employs Aggrieved Employees in this County,
6 as a result, the causes of action asserted arose in whole or in part in this County.

7 **FACTUAL ALLEGATIONS**

8 15. Defendant operates facilities throughout the United States and California. Defendant
9 employs thousands of hourly non-exempt workers across these facilities.

10 16. Defendant manufactures and distributes paper, building products, and chemicals
11 throughout the United States and California, including La Mirada, California. Defendant employs
12 hundreds of similarly situated non-exempt workers across these facilities.

13 17. Plaintiff worked at the Georgia-Pacific warehouse in La Mirada, California as a non-
14 exempt laborer from February 2022 through June 2022. Plaintiff was paid at an hourly rate of \$20.00.
15 While Plaintiff's shifts varied in length, Plaintiff typically worked approximately 7.5 hours per shift
16 and 5 days per week, totaling 37.5 hours per week.

17 18. Like Plaintiff, on information and belief, Aggrieved Employees are current and former
18 non-exempt employees of Defendant throughout California. Plaintiff is informed, believes, and
19 thereon alleges that Aggrieved Employees perform work similar to Plaintiff, in that they support
20 Defendant's operations. Defendant paid Aggrieved Employees, including Plaintiff, on an hourly rate
21 basis.

22 19. Plaintiff is informed, believes, and thereon alleges that the policies and practices of
23 Defendant have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless
24 of particular job assignment or facility location in California.

25 20. On information and belief, Aggrieved Employees are required to follow and abide by
26 common work, time, pay, meal and rest break policies and procedures in the performance of their jobs
27 and duties.

28 21. On information and belief, at the end of each pay period, Aggrieved Employees receive

1 wages from Defendant that are determined by common systems and methods that Defendant selects
2 and control.

3 22. Plaintiff worked more than eight (8) hours in a day and forty (40) hours in a week
4 during the one year before Plaintiff's PAGA notice was submitted with the LWDA.

5 23. Upon information and belief, Aggrieved Employees worked more than eight hours per
6 day and more than 40 hours during the one year before Plaintiff's PAGA notice was submitted with
7 the Labor and Workforce Development Agency ("LWDA").

8 24. Plaintiff alleges that Defendant failed to pay Plaintiff and Aggrieved Employees all
9 wages, including minimum wages and overtime wages owed, by failing to pay for off-the-clock work
10 . Plaintiff McElroy alleges that he and Aggrieved Employees were required by Defendant to work off-
11 the-clock, including during meal periods, and were not paid for this time.

12 25. As a matter of policy and/or practice, Defendant also fails to authorize and/or permit
13 Plaintiff and Aggrieved Employees to take compliant rest breaks. Plaintiff alleges that he was required
14 to take rest breaks off-the clock and was not paid for his rest breaks. Plaintiff is informed, believes,
15 and thereon alleges that this policy and practice applies to all Aggrieved Employees throughout
16 California.

17 26. As a matter of policy and/or practice, Defendant also fails to provide Plaintiff and
18 Aggrieved Employees the opportunity to take compliant meal breaks. Plaintiff alleges that he and
19 Aggrieved Employees were often denied the opportunity to take timely, full, uninterrupted duty-free
20 meal breaks.

21 27. Additionally, and beyond Defendant's failure to provide meal periods, Defendant
22 adjusts Plaintiff and Aggrieved Employees' time records in order to avoid paying meal break
23 premiums. Specifically, Plaintiff was told to report timely meal breaks in the timekeeping system and
24 then Defendant would provide the actual meal period later in the shift beyond the fifth hour of work,
25 but would not pay Plaintiff the required premium. Plaintiff alleges that this happened to other
26 Aggrieved Employees as well.

27 28. Plaintiff also alleges that Defendant failed to pay Plaintiff and Aggrieved Employees
28 all wages, including minimum wages, owed, including failing to pay for off-the-clock work performed

1 during meal periods. Plaintiff alleges that he and Aggrieved Employees were required by Defendant
2 to work off-the-clock, including during meal periods, and were not paid for this time.

3 29. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system
4 and practices are used across all Defendant's facilities.

5 30. Defendant's common course of wage-and-hour abuse results in routinely failing to
6 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
7 Defendant has failed to properly record the missed meal and rest breaks of Plaintiff and Aggrieved
8 Employees, premium payments owed for such non-compliant meal and rest breaks as well as the time
9 worked off-the-clock during meal periods.

10 31. Defendant does not provide Aggrieved Employees, including Plaintiff, whose
11 employment has ended, with full payment of all compensation owed at the end of their employment.
12 As these workers are owed for unpaid minimum wages, overtime wages, and premium pay when their
13 employment ends, and these amounts remain unpaid under Defendant's policies and practices,
14 Defendant fails to pay all compensation due upon termination. As a consequence, Defendant is subject
15 to waiting time penalties.

16 32. Despite these recurring violations, Defendant does not provide Plaintiff and Aggrieved
17 Employees premium pay for missed meal periods and rest periods.

18 33. Plaintiff is informed, believes, and thereon alleges that the same rest break and meal
19 break polices are used across all Defendant's facilities throughout California.

20 34. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
21 is willful, and is not based on a good faith and reasonable belief that its conduct complies with
22 California law. Defendant's conduct causes significant damages to non-exempt hourly employees in
23 an amount to be determined at trial.

24 35. Defendant's conduct is willful, is carried out in bad faith, and causes significant
25 damages to non-exempt hourly employees in an amount to be determined at trial. Defendant has
26 employed hundreds of people similarly situated to Plaintiff throughout its locations in California. On
27 information and belief, Defendant's conduct described above has occurred at all relevant times and is
28 ongoing.

1 **FIRST CAUSE OF ACTION**

2 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

3 36. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
4 herein.

5 37. Cal. Lab. Code § 2699(a) provides:

6 Notwithstanding any other provision of law, any provision of this code that provides
7 for a civil penalty to be assessed and collected by the Labor and Workforce
8 Development Agency or any of its departments, divisions, commissions, boards,
9 agencies or employees, for a violation of this code, may, as an alternative, be recovered
10 through a civil action brought by an aggrieved employee on behalf of himself or herself
11 and other current or former employees.

12 38. Cal. Lab. Code §§ 201 and 202 require employers to immediately pay wages earned
13 and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after
14 he or she quits, at the latest.

15 39. Cal. Lab. Code § 203 provides, in relevant part:

16 If an employer willfully fails to pay, without abatement or reduction, in accordance
17 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
18 or who quits, the wages of the employees shall continue as a penalty from the due date
19 thereof at the same rate paid or until an action therefor is commenced; but the wages
20 shall not continue for more than 30 days.

21 40. Cal. Lab. Code § 256 provides: “The Labor Commissioner shall impose a civil penalty
22 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

23 41. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
24 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
25 compliance with Cal. Lab. Code §§ 201-202 and in the amounts established by Cal. Lab. Code § 203.

26 42. Cal. Lab. Code § 226(a) provides:

27 Every employer shall, semimonthly or at the time of each payment of wages, furnish
28 each of his or her employees, either as a detachable part of the check, draft, or voucher
paying the employee's wages, or separately when wages are paid by personal check or
cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
total hours worked by the employee, except for any employee whose compensation is
solely based on a salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
Commission, (3) the number of piece-rate units earned and any applicable piece rate
if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
deductions made on written orders of the employee may be aggregated and shown as
one item, (5) net wages earned, (6) the inclusive dates of the period for which the

employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

43. Cal. Lab. Code § 226(e)(1) provides, in relevant part:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

44. Cal. Lab. Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

45. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendant, as alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Cal. Lab. Code § 226(e)(1).

46. On March 10, 2023¹, pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2) Plaintiff served the LWDA and Defendant with notice of his intent to file additional claims to those brought in *Diaz v. Georgia Pacific*, Case No. HG21092866. On the same day, Plaintiff served Defendant's registered agents with a courtesy copy of the notice via certified mail. At least sixty-five calendar days have passed without response from the LWDA. On May 19, 2023, Plaintiff served the LWDA and Defendant with his intent to file the claims included in this complaint, in a separate complaint from the *Diaz* complaint, because the LWDA made no response after sixty-five days from the March 10, 2023 notice was served to the LWDA and Defendant. As such, Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code § 2699.3(a).

47. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved

¹ The notice is erroneously dated in February 2023, but the date of submission to the LWDA was March 10, 2023.

1 Employees, and herself as set forth in Cal. Lab. Code § 2699.

2 48. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
3 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
4 of attorneys' fees and costs as set forth below.

5 49. Wherefore, Plaintiff requests relief as hereinafter provided.

6 **SECOND CAUSE OF ACTION**

7 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

8 50. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
9 herein.

10 51. Cal. Lab. Code § 2699(f) provides:

11 For all provisions of this code except those for which a civil penalty is specifically
12 provided, there is established a civil penalty for a violation of these provisions, as
13 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
14 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
per pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

15 52. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed by employees
16 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
17 commission basis or method of calculation."

18 53. Cal. Lab. Code § 204(a) provides that "[a]ll wages ... earned by any person in any
19 employment are due and payable twice during each calendar month...."

20 54. IWC Wage Orders 1-2001(2)(G) defines hours worked as "the time during which an
21 employee is subject to the control of an employer and includes all the time the employee is suffered
22 or permitted to work, whether or not required to do so."

23 55. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
24 conditions that violate the Wage Order.

25 56. Cal. Lab. Code § 510 provides, in relevant part:

26 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
27 workday and any work in excess of 40 hours in any one workweek and the first eight
28 hours worked on the seventh day of work in any one workweek shall be compensated
at the rate of no less than one and one-half times the regular rate of pay for an employee.
Any work in excess of 12 hours in one day shall be compensated at the rate of no less

1 than twice the regular rate of pay for an employee. In addition, any work in excess of
2 eight hours on any seventh day of a workweek shall be compensated at the rate of no
3 less than twice the regular rate of pay of an employee. Nothing in this section requires
4 an employer to combine more than one rate of overtime compensation in order to
5 calculate the amount to be paid to an employee for any hour of overtime work.

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57. Cal. Lab. Code § 1182.12 provides, in relevant part:

(a) Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d). (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

...

(D) From January 1, 2020, to December 31, 2020, inclusive, —thirteen dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive, —fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

...

(3) For purposes of this subdivision, “employer” means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, “employer” includes the state, political subdivisions of the state, and municipalities.

58. Cal. Lab. Code § 1197 provides:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

59. Cal. Lab. Code § 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

60. Cal. Lab. Code §§ 226.7 and 512 and IWC Wage Orders 1-2001 require Defendant to authorize, permit, and/or make available timely and compliant meal and rest periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and IWC Wage Order 1-2001 prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from

1 employing an employee more than ten hours per day without providing the employee with a second
2 meal period of not less than thirty minutes. Cal. Lab. Code § 226.7 and IWC Wage Order 1-2001 also
3 require employers to authorize and permit employees to take ten minutes of net rest period time per
4 four hours, or major fraction thereof of work, and to pay employees their full wages during those rest
5 periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-
6 minute rest period, the employee is considered “on duty” and the meal or rest period is counted as time
7 worked under the applicable wage orders.

8 61. To the extent than any violation alleged herein does not carry penalties under Cal. Lab.
9 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff and
10 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
11 by Cal. Lab. Code § 2699(f). Plaintiff seeks penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff
12 and Aggrieved Employees for violations of Cal. Lab. Code provisions including, but not limited to,
13 Cal. Lab. Code §§ 201-203, 204, 226, 226.7, 510, 512, 1182.12, 1194, 1197, 1198, and IWC Wage
14 Order 1-2001, and any other violation alleged herein does not carry penalties under Cal. Lab. Code §
15 2699(a).

16 62. On March 10, 2023², pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2) Plaintiff
17 served the LWDA and Defendant with notice of his intent to file additional claims to those brought in
18 *Diaz v. Georgia Pacific*, Case No. HG21092866. On the same day, Plaintiff served Defendant’s
19 registered agents with a courtesy copy of the notice via certified mail. At least sixty-five calendar days
20 have passed without response from the LWDA. On May 19, 2023, Plaintiff served the LWDA and
21 Defendant with his intent to file the claims included in this complaint, in a separate complaint from
22 the *Diaz* complaint, because the LWDA made no response after sixty-five days from the March 10,
23 2023 notice was served to the LWDA and Defendant. As such, Plaintiff satisfied the administrative
24 prerequisites to commence this civil action in compliance with Cal. Lab. Code § 2699.3(a).

25 63. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
26 Employees, and themselves as set forth in Cal. Lab. Code § 2699(g)(i).

27 _____
28 ² The notice is erroneously dated in February 2023, but the date of submission to the LWDA was March 10, 2023.

64. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

65. Wherefore, Plaintiff requests relief as hereinafter provided.

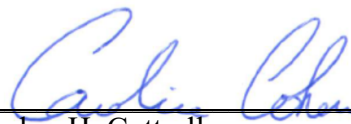
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

1. For the Court to declare, adjudge, and decree that Defendant has violated the Cal. Lab. Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided for under the PAGA;
3. For an award of reasonable attorneys' fees s provided by the Cal. Lab. Code, including Cal. Lab. Code § 2699(g)(1), Cal. Code Civ. Proc. § 1021.5, and/or any other applicable law;
4. For all costs of suit, as provided in Cal. Lab. Code § 2699(g)(1); and
5. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Date: May 19, 2023



Carolyn H. Cottrell
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*Attorneys for Plaintiff, on behalf of the State of
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Date: May 19, 2023

Carolyn Cohen

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*