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County of Alameda

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

RITO LOPEZ, on behalf of the State of California
and Aggrieved Employees;

Plaintiff,

v.

EUROFINS SCIENTIFIC, INC, and
DOES 1-100, inclusive;

Defendants.

Case No.: **21CV004840**

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

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

8 2. Plaintiff and Aggrieved Employees bring this action to challenge Defendant’s policies
9 and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
10 (2) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (3) failing to pay
11 Plaintiff and Aggrieved Employees all overtime wages owed; (4) failing to provide Plaintiff and
12 Aggrieved Employees accurate, itemized wage statements; and (5) failing to timely pay Aggrieved
13 Employees full wages during employment and upon separation from employment.

14 3. Plaintiff and Aggrieved Employees routinely perform off-the-clock work before paid
15 shifts. Defendant maintains a longstanding policy and/or practice of failing to properly compensate
16 Plaintiff and Aggrieved Employees for work related tasks performed while “off-the-clock,” including,
17 but not limited to, waiting in line, temperature checks, and answering COVID-19 questionnaires
18 before the start of their shift, *i.e.*, before clocking in. In addition, Defendant requires Plaintiff and
19 Aggrieved employees to wait in line after their meal breaks to clock back in for their afternoon shift.

20 4. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
21 denied proper payment for all hours worked for the time spent off-the-clock, including minimum
22 wage and/or overtime. Defendant fails to pay for any of this time worked off-the-clock in violation of
23 the California Labor Code.

24 5. As a result of the above violations, Defendant failed to maintain true and accurate
25 records of the hours Plaintiff and Aggrieved Employees actually work, and also failed to pay all wages
26 due during employment and upon separation within the required time period.

27 6. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
28

1 attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
2 Private Attorneys General Act ("PAGA").

3 **PARTIES**

4 7. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
5 employed by Defendant. Plaintiff and Aggrieved Employees are employed by Defendant in California
6 as packers, warehouse assistants, sample receiving – shipping technicians, and other hourly non-
7 exempt positions at Defendant's facilities at any time from October 26, 2020 through final resolution.

8 8. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this
9 Complaint was a resident of the State of California.

10 9. Plaintiff is currently employed as a non-exempt packer. Plaintiff began employment
11 with Defendant in January 1990. Plaintiff works for Defendant in Oakland, California.

12 10. Plaintiff is informed, believes, and thereon alleges that Eurofins is a Delaware
13 corporation headquartered in Des Moines, Iowa. Eurofins is registered to do business in California,
14 does business in California and employs and/or employed hourly, non-exempt employees, including
15 Plaintiff and Aggrieved Employees in California. Eurofins may be served with process by serving
16 its registered agent, Cogency Global, Inc., 1325 J Street, Suite 1550, Sacramento, California 95814.

17 11. Defendant employs and/or employed Plaintiff and Aggrieved Employees because
18 Defendant, directly or indirectly, control the employment terms, pay practices, timekeeping
19 practices, and daily work of Plaintiff and Aggrieved Employees.

20 12. At all material times, Defendant has done business under the laws of California, have
21 had places of business in California, including in this judicial district, and have employed putative
22 Class members in this District and elsewhere throughout California. Defendant is a "person" as
23 defined in Labor Code § 18 and an "employer" as that term is used in the Labor Code, the IWC Wage
24 Orders regulating wages, hours, and working conditions, and the California Business and Professions
25 Code § 17201.

26 **JURISDICTION AND VENUE**

27 13. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and/or

1 395.5. Defendant conducts business and employs Aggrieved Employees in this County, and therefore
2 the liability and the cause of some part of the cause arose in this County.

3 14. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
4 The Court also has jurisdiction over Defendant because it is a company authorized to do business in
5 the State of California, and because Defendant does in fact do business and employ workers in the
6 State of California.

7 **FACTUAL ALLEGATIONS**

8 15. Eurofins provides a range of analytical testing services to clients across multiple
9 industries. Eurofins is one of the global leaders in food, environmental, pharmaceutical, and cosmetic
10 products testing and in AgroSciences Contract Research Organization ("CRO") services. On
11 information and belief, Eurofins has over 12,000 employees and operated approximately 80 locations
12 throughout the United States, including the state of California. Plaintiff is informed, believes, and
13 thereon alleges that Eurofins employs hundreds of hourly, non-exempt workers similarly situated to
14 Plaintiff in California.

15 16. Plaintiff works for Defendant as a packer in Oakland, California. Plaintiff began
16 employment with Defendant in January 1990. Plaintiff is classified as an hourly, non-exempt
17 employee and is paid an hourly rate of approximately \$16.52.

18 17. Plaintiff is informed, believes, and thereon alleges that Defendant employs and have
19 employed hundreds of hourly, non-exempt workers similarly situated to Plaintiff in California,
20 including but not limited to packers, warehouse assistants, sample receiving – shipping technicians
21 and other employees with similar job duties.¹

22 18. Although Plaintiff's shifts may vary in length, Plaintiff usually worked eight (8) hours
23 or more per shift, five (5) shifts per week. Plaintiff works approximately forty (40) hours per week,
24 or more.

25 19. Defendant routinely requires Plaintiff and Aggrieved Employees to perform substantial

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27 ¹ Although Plaintiff is a current employee, Aggrieved Employees include current and former employees. For ease of
discussion, the allegations herein are made in the present tense.

1 work off-the-clock and without compensation. This includes but is not limited to Defendant requiring
2 Plaintiff and Aggrieved Employees to wait in line, to go through temperature checks and to answer
3 COVID-19 screening questionnaires prior clocking in for the start of their shift. It takes Plaintiff and
4 Aggrieved Employees at least one minute and often longer to go through the line, to undergo such
5 temperature checks, and to answer the COVID-19 screening questionnaires *before* the beginning of
6 each shift. This time spent in temperature check lines, undergoing temperature checks, and answering
7 COVID-19 screening questionnaires goes unrecorded and therefore uncompensated.

8 20. In addition, Defendant requires Plaintiff and Aggrieved Employees to wait in line in
9 order to clock back in upon returning from their meal breaks. Plaintiff and Aggrieved Employees
10 spend at least two additional minutes waiting in line after their meal breaks to clock back in for their
11 afternoon shift. This time spent in line also goes unrecorded and therefore uncompensated.

12 21. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are
13 denied compensation for all hours worked, including minimum wages and overtime, which they are
14 lawfully owed resulting from the additional off-the-clock work in excess of eight (8) hours per day
15 and forty (40) hours per week.

16 22. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and applies
17 these “temperature check” and “COVID-19 screening” protocols, policies, and practices across all
18 Defendant’s facilities throughout California.

19 23. Further, Plaintiff is informed, believes, and thereon alleges that Defendant institutes a
20 similar policy of not compensating employees while waiting in line to clock in after their meal breaks
21 across all Defendant’s facilities throughout California.

22 24. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same or
23 substantially similar timekeeping mechanisms throughout all its facilities in California.

24 25. Defendant’s common course of wage-and-hour abuse also includes routinely failing to
25 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.
26 Defendant fails to record hours that Plaintiff and Aggrieved Employees work off-the-clock.

27 26. Defendant’s failure to record all hours worked results in Defendant’s failure to provide

1 Plaintiff and Aggrieved Employees with itemized accurate wage statements as required by California
2 law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect all hours worked,
3 including overtime premiums.

4 27. Further, Defendant does not provide Aggrieved Employees who are former employees
5 of Defendant with full and timely payment of all wages owed upon separation from employment. At
6 the time their employment ends, Aggrieved Employees are owed wages for all time worked,
7 including overtime, whether their termination was voluntary or involuntary; yet Defendant has failed
8 to provide Aggrieved Employees with such payments within the required time period. As a result,
9 and pursuant to the California Labor Code, Defendant is subject to waiting time penalties.

10 28. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
11 has been widespread, repeated, and consistent as to Aggrieved Employees and throughout all of
12 Defendant's facilities in California.

13 **FIRST CAUSE OF ACTION**
14 **Penalties Pursuant to Labor Code § 2699(a)**
(On Behalf of the State of California and Aggrieved Employees)

15 29. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 30. Labor Code § 2699(a) provides:

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

25 31. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
26 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
27 or she quits, at the latest.

28 32. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an

1 employee who is discharged or who quits, the wages of the employees
2 shall continue as a penalty from the due date thereof at the same rate
3 paid or until an action therefor is commenced; but the wages shall not
4 continue for more than 30 days.

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

34. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
5 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees
6 in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203.
7

35. Labor Code § 226(a) provides:

8
9 Every employer shall, semimonthly or at the time of each payment of
10 wages, furnish each of his or her employees, either as a detachable part
11 of the check, draft, or voucher paying the employee's wages, or
12 separately when wages are paid by personal check or cash, an accurate
13 itemized statement in writing showing (1) gross wages earned, (2) total
14 hours worked by the employee, except for any employee whose
15 compensation is solely based on a salary and who is exempt from
16 payment of overtime under subdivision (a) of Section 515 or any
17 applicable order of the Industrial Welfare Commission, (3) the number
18 of piece-rate units earned and any applicable piece rate if the employee
19 is paid on a piece-rate basis, (4) all deductions, provided that all
20 deductions made on written orders of the employee may be aggregated
21 and shown as one item, (5) net wages earned, (6) the inclusive dates of
22 the period for which the employee is paid, (7) the name of the employee
23 and his or her social security number, (8) the name and address of the
24 legal entity that is the employer, and (9) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours
26 worked at each hourly rate by the employee.

36. Labor Code § 226(e)(1) provides, in relevant part:

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

37. Labor Code § 226.3 provides:

26 Any employer who violates subdivision (a) of Section 226 shall be
27 subject to a civil penalty in the amount of two hundred fifty dollars

1 (\$250) per employee per violation in an initial citation and one thousand
2 dollars (\$1,000) per employee for each violation in a subsequent
3 citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the records required in subdivision
5 (a) of Section 226. The civil penalties provided for in this section are in
6 addition to any other penalty provided by law.

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11 38. Labor Code § 226.6 provides:

Any employer who knowingly and intentionally violates the provisions
of Section 226, or any officer, agent, employee, fiduciary, or other
person who has the control, receipt, custody, or disposal of, or pays, the
wages due any employee, and who knowingly and intentionally
participates or aids in the violation of any provision of Section 226 is
guilty of a misdemeanor and, upon conviction thereof, shall be fined not
more than one thousand dollars (\$1,000) or be imprisoned not to exceed
one year, or both, at the discretion of the court. That fine or
imprisonment, or both, shall be in addition to any other penalty provided
by law.

12 39. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
13 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
14 statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code §
15 226.3. In addition, Plaintiff seeks penalties in the amount established by Labor Code § 226(e)(1), as
16 prayed for herein.

17 40. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
18 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. Sixty-
19 five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
20 prerequisites to commence this civil action in compliance with § 2699.3(a).

21 41. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
22 Employees, and himself as set forth in Labor Code § 2699.

23 42. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
24 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
25 award of attorneys’ fees and costs as set forth below.

26 43. Wherefore, Plaintiff requests relief as hereinafter provided.
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SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

44. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

45. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more 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.

46. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

47. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

48. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

49. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

50. Labor Code § 225.5 provides:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(b) 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.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an

independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

51. Labor Code § 510 provides, in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight 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 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

52. Labor Code § 558 provides, in relevant part:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

53. Labor 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.

(2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

(C) From January 1, 2020, to December 31, 2020, inclusive,—twelve dollars (\$12) per hour.

(D) From January 1, 2021, to December 31, 2021, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2022, to December 31, 2022, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2023, 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.

54. Labor 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.

55. Labor Code § 1197.1 provides, in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in

addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

56. Labor 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.

57. To the extent that any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for violations of Labor Code provisions including, but not limited to, Labor Code 510, 1194, 201-203, 204, 226, and IWC Wage Orders 4-2001, and any other violation alleged herein does not carry penalties under Labor Code § 2699(a).

58. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of his intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

59. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699(g)(1).

60. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for

the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

61. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest as provided by applicable law;
4. For an award of reasonable attorneys' fees;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: December 30, 2021



Carolyn H. Cottrell
Caroline N. Cohen
Kristabel Sandoval
Philippe M. Gaudard
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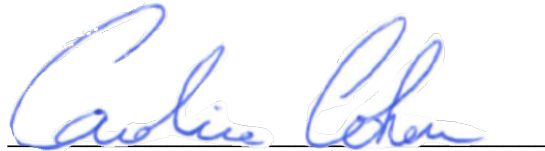
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: December 30, 2021

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7
8 Carolyn H. Cottrell
9 Caroline N. Cohen
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14 *Attorneys for Plaintiff, on behalf of the State of*
15 *California and Aggrieved Employees*