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January 7, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/308)

Subject: *Geovanna Carcelen v. Round Hill Country Club*

Dear PAGA Administrator:

This office represents Geovanna Carcelen in connection with her claims under the California Labor Code. Ms. Carcelen was an employee of ROUND HILL COUNTRY CLUB ("RHCC").

The employer may be contacted directly at the address below:

ROUND HILL COUNTRY CLUB
3169 ROUNDHILL ROAD
ALAMO, CA 94507

Ms. Carcelen intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Carcelen seeks relief on behalf of herself, the State of California, and other persons who are or were employed by RHCC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

RHCC employed Ms. Carcelen as an hourly paid, non-exempt employee at various jobsites in California. Ms. Carcelen worked as a Pantry Cook from approximately June 2021 to September 2024. During her employment, Ms. Carcelen typically worked eight (8) hours or more per day and five (5) days or more per week. At the time her employment ended, Ms. Carcelen was compensated approximately $24.95 per hour. Her primary job duties included, without limitation, preparing food orders and cleaning and organizing her workstation.

RHCC has committed each of the following Labor Code violations against Ms. Carcelen, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

RHCC's Company-Wide and Uniform Payroll and HR Practices

ROUND HILL COUNTRY CLUB is a California corporation that operates a private, membership-only club offering a variety of activities and facilities for its members, including golf, tennis, swimming, dining, and social events. Upon information and belief, RHCC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Alamo, California, for all non-exempt, hourly paid employees working for RHCC in California, including Ms. Carcelen and other aggrieved employees. At all relevant times, RHCC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Carcelen and other aggrieved employees, regardless of their location or position.

Upon information and belief, RHCC maintains a centralized Payroll department at its corporate headquarters in Alamo, California, which processes payroll for all non-exempt, hourly paid employees working for RHCC in California, including Ms. Carcelen and other aggrieved employees. Further, RHCC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Carcelen and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, RHCC utilized the same methods and formulas when calculating wages due to Ms. Carcelen and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

RHCC willfully failed to pay all overtime wages owed to Ms. Carcelen and other aggrieved employees. During the relevant time period, Ms. Carcelen and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

[1] These facts, theories, and claims are based on Ms. Carcelen's experience and counsel's review of those records currently available relating to Ms. Carcelen's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Carcelen reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

RHCC had, and continues to have, a company-wide policy and/or practice of requiring Ms. Carcelen and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts. For example, RHCC did not provide Ms. Carcelen and other aggrieved employees with a sufficient number of timekeeping machines to clock in for their shifts, thus forcing Ms. Carcelen and other aggrieved employees to wait in line off-the-clock and under RHCC's control, time for which they were not paid. Ms. Carcelen and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to wait in a line for a few minutes to clock in. Thus, RHCC failed to track all hours Ms. Carcelen and other aggrieved employees spent working before clocking in, and Ms. Carcelen and other aggrieved employees received no compensation for this time.

Additionally, RHCC required employees with food handling duties to obtain California Food Handler Cards (*see infra*), which led to Ms. Carcelen and other aggrieved employees completing online food safety training and testing before or after their shifts or on their days off, but did not compensate them for this time. For example, Ms. Carcelen spent 1-2 hours completing a food safety training course at home to renew her food handler card, but was not paid by RHCC for this time.

Second, RHCC had, and continues to have, a company-wide policy and/or practice of understaffing and/or single-staffing certain positions, such that there were too few employees on duty to handle the workload and attend to club members. RHCC's policy and/or practice resulted in a failure to provide Ms. Carcelen and other aggrieved employees with adequate meal period coverage, and thus, Ms. Carcelen and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. RHCC also had a practice of failing to schedule meal periods, which further caused Ms. Carcelen and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Ms. Carcelen and other aggrieved employees were required to work through their meal periods and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle member demand, time for which they were not paid.

Further, on information and belief, because RHCC frowned upon employees accruing meal period premiums, RHCC's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not. Additionally, RHCC's company-wide timekeeping system prevented Ms. Carcelen and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Ms. Carcelen and other aggrieved employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, RHCC did not record all hours worked during meal periods, and Ms. Carcelen and other aggrieved employees performed work during meal periods for which they were not paid.

RHCC knew or should have known that as a result of these company-wide practices and/or policies, Ms. Carcelen and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Carcelen and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Carcelen and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, RHCC did not pay Ms. Carcelen and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RHCC paid Ms. Carcelen and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RHCC failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Carcelen and other aggrieved employees worked overtime and received these other forms of pay, RHCC failed to pay all overtime wages by paying a lower overtime rate than required.

For example, RHCC paid Ms. Carcelen and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Ms. Carcelen's and other aggrieved employees' wage statements as "Employee Referral." During pay periods that Ms. Carcelen and other aggrieved employees were paid overtime wages, RHCC did not incorporate the incentive pay and/or nondiscretionary bonuses into Ms. Carcelen's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, RHCC paid Ms. Carcelen and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. RHCC's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Carcelen and other aggrieved employees on a company-wide basis.

RHCC's failure to pay Ms. Carcelen and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages</u>

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 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." Cal. Code Regs. tit. 8, § 11050(2)(M) (defining "Hours Worked"). Moreover, California Health and Safety Code section 113948(i)(1) provides that "[a]n employer shall consider the time that it takes for the employee to complete the [food handler] training and the examination as compensable 'hours worked,' for which the employer shall pay."

As set forth above, RHCC maintained a policy and/or practice requiring Ms. Carcelen and other aggrieved employees to perform work off-the-clock prior to the start of their shifts such as waiting to clock in. Moreover, as stated, RHCC required employees with food handling duties to obtain California Food Handler Cards, which led to Ms. Carcelen and other aggrieved employees completing online food safety training and testing before or after their shifts or on their days off, but did not compensate them for this time. RHCC failed to track all of this time Ms. Carcelen and other aggrieved employees spent working off-the-clock, and thus, Ms. Carcelen and other aggrieved employees received no compensation for this time.

Further, as also stated, due to RHCC's policies and/or practices of understaffing and/or single-staffing certain positions while assigning heavy workloads, and failing to schedule meal periods, Ms. Carcelen and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Furthermore, as stated, in order to prevent employees from accruing meal period premiums, upon information and belief, RHCC's management pressured Ms. Carcelen and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, RHCC's company-wide timekeeping system prevented Ms. Carcelen and other aggrieved employees from entering time worked during meal periods because the system locked out Ms. Carcelen and other aggrieved employees for a full 30 minutes. Thus, RHCC systematically failed to pay Ms. Carcelen and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

RHCC did not pay at least minimum wages for all hours worked by Ms. Carcelen and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, RHCC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, RHCC regularly failed to pay at least minimum wages to Ms. Carcelen and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, during the time relevant period, RHCC had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing certain positions, assigning heavy workloads, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Ms. Carcelen and other aggrieved employees from taking all timely meal periods to which they were entitled. As a result, Ms. Carcelen and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Carcelen missed her meal periods approximately four (4) times per week due to the demanding workload and lack of coverage. Further, Ms. Carcelen sometimes took her meal periods late, after having worked in excess of five (5) hours into her shift, in order to complete her assigned duties or meet member demand.

Second, as set forth above, on information and belief, because RHCC frowned upon employees accruing meal period premiums, RHCC's management pressured employees to clock out for meal periods to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal period premiums that would need to be paid by RHCC. Also, as stated, RHCC's company-wide timekeeping system prevented Ms. Carcelen and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Ms. Carcelen and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Ms. Carcelen was unable to record when her meal periods were interrupted or shortened because RHCC's timekeeping system would not let her clock back in before 30 minutes had elapsed.

Third, RHCC did not provide Ms. Carcelen and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Carcelen worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Ms. Carcelen and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, RHCC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. RHCC took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, RHCC's "Meal Break Waiver – Employee Shift 6 Hours or Less" requires employees to provide advanced written notice should they wish to revoke the waiver. RHCC's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Carcelen and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

> [A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written

> agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That RHCC require Ms. Carcelen and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because RHCC's obligation to provide Ms. Carcelen and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, RHCC knew or should have known that, as a result of these policies, Ms. Carcelen and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. RHCC further knew or should have known that RHCC did not pay Ms. Carcelen and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, RHCC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Carcelen and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that RHCC did pay Ms. Carcelen and other aggrieved employees premium pay for missed, late, and interrupted meal periods, RHCC did not pay Ms. Carcelen and other aggrieved employees at the correct rate of pay for premiums because RHCC systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RHCC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc*., 2 Cal. 5th 257, 273 (2016).

During the relevant time period, RHCC regularly failed to authorize and permit Ms. Carcelen and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RHCC's company-wide policies and/or practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. Carcelen and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RHCC also failed to schedule rest periods, which, coupled with RHCC's failure to provide adequate rest period coverage, further led to Ms. Carcelen and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, RHCC maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Carcelen and other aggrieved employees remain on the premises during their rest periods. Because Ms. Carcelen and other aggrieved employees were restricted from leaving RHCC's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, RHCC effectively maintained control over Ms. Carcelen and other aggrieved employees during rest periods.

As a result of RHCC's practices and policies, Ms. Carcelen and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Carcelen had to forgo all of her rest periods due to the lack of coverage, heavy workload, and RHCC's failure to schedule rest periods for employees.

RHCC have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Carcelen and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RHCC did pay Ms. Carcelen and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RHCC did not pay Ms. Carcelen and other aggrieved employees at the correct rate of pay for premium wages because RHCC failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, RHCC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. RHCC has not provided Ms. Carcelen and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RHCC has knowingly and intentionally provided Ms. Carcelen and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RHCC issued uniform wage statements to Ms. Carcelen and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, RHCC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because RHCC did not record the time Ms. Carcelen and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), RHCC did not list the correct amount of gross wages and net wages earned by Ms. Carcelen and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RHCC failed to accurately list the total number of hours worked by Ms. Carcelen and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Moreover, because RHCC did not calculate Ms. Carcelen's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, RHCC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, RHCC failed to list the correct amount of net wages in violation of section 226(a)(5). RHCC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), RHCC willfully failed to maintain accurate payroll records for Ms. Carcelen and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, RHCC engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Carcelen and other aggrieved employees, in violation of section 1198. Furthermore, in light of RHCC's failure to provide Ms. Carcelen and other aggrieved employees with second 30-minute meal periods to which they were entitled, RHCC kept no records of meal start and end times for second meal periods.

Because RHCC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Carcelen and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Carcelen and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, RHCC failed to pay Ms. Carcelen and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code sections 204.

Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, RHCC willfully failed to pay Ms. Carcelen and other aggrieved employees who are no longer employed by RHCC all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving RHCC's employ.

Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer." Moreover, California Health and Safety Code section 113948(i)(1) requires that an employer "shall pay [an] employee for any necessary expenditures or losses associated with the employee obtaining a food handler card."

First, during the relevant time period, Ms. Carcelen and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but RHCC failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Ms. Carcelen would use her personal cellular phone to download and use the "WhatsApp Messenger" mobile application to communicate with RHCC's management and other employees. Although RHCC required Ms. Carcelen and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, RHCC failed to reimburse them for these costs.

Second, during the relevant time period, RHCC, on a company-wide basis, required Ms. Carcelen and other aggrieved employees to obtain and pay for a California Food Handler Card, which was required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Ms. Carcelen paid approximately $10 to renew her food handler card, but RHCC did not reimburse her for the costs of renewing it. Thus, RHCC failed to reimburse Ms. Carcelen and other aggrieved employees for the costs of obtaining these food handler cards, including training and/or examination fees.

Third, during the relevant time period, RHCC required Ms. Carcelen and other aggrieved employees to purchase tools and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Carcelen spent approximately $80 over the course of her employment purchasing kitchen tools such as knives and a vegetable peeler because RHCC failed to provide her with these necessary tools which were required for the kitchen to operate properly and/or meet management's expectations. Although RHCC required Ms. Carcelen and other aggrieved employees to purchase tools and equipment to carry out their work-related responsibilities, RHCC failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Fourth, during the relevant time period, RHCC required Ms. Carcelen and other aggrieved employees to wear uniforms bearing the company's logo, including a chef's jacket or a t-shirt. However, due to the nature of work in the kitchen preparing food, Ms. Carcelen's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix these clothes in with other laundry. As a result, Ms. Carcelen had to wash her uniform items more frequently and separately from her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniforms. Thus, RHCC failed to maintain uniforms it required Ms. Carcelen and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

RHCC could have provided Ms. Carcelen and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and tools and equipment, as well as an adequate number of uniform items or access to laundering services; or RHCC could have reimbursed employees for the costs of their mobile device usage, food handler cards, equipment and tool expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, RHCC passed these operating costs onto Ms. Carcelen and other aggrieved employees. At all relevant times, Ms. Carcelen did not earn at least two (2) times the minimum wage.

Thus, RHCC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Carcelen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring RHCC into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny 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 . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." RHCC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Carcelen's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Carcelen seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Carcelen, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against RHCC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Carcelen seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Best Regards,

Anthony Castillo

Copy: ROUND HILL COUNTRY CLUB (via U.S. Certified Mail)

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