



1875 Century Park East, Suite 1000  
Los Angeles, California 90067  
310.556.4811 Main | 310.943.0396 Fax

JEZZETTE RON  
310.712.8142 Direct  
Jezzette.Ron@capstonelawyers.com

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June 18, 2024

VIA ONLINE SUBMISSION

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

Subject: *Gabriela Cecena v. Dolphin California Management, LLC, et al.*

Dear PAGA Administrator:

This office represents Gabriela Cecena in connection with her claims under the California Labor Code. Ms. Cecena was an employee of DOLPHIN CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC; and/or CLEARVIEW HOTEL CAPITAL, LLC. For the purposes of this letter, Ms. Cecena collectively refers to these entities as “DCM.”

The employers may be contacted directly at the addresses below:

DOLPHIN CALIFORNIA MANAGEMENT, LLC  
500 NEWPORT CENTER DR, STE 800  
NEWPORT BEACH, CA 92660

DOLPHIN HOTEL MANAGEMENT, LLC  
500 NEWPORT CENTER DR, STE 800  
NEWPORT BEACH, CA 92660

CLEARVIEW HOTEL CAPITAL, LLC  
500 NEWPORT CENTER DR, SUITE 800  
NEWPORT BEACH, CA 92660

Ms. Cecena intends to seek civil penalties, attorney’s 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. Cecena seeks relief on behalf of herself, the State of California, and other persons who are or were employed by DCM 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.

DCM employed Ms. Cecena as an hourly paid, non-exempt employee from approximately May 2023 to January 2024. Ms. Cecena worked as a Housekeeping Supervisor and Room Attendant at DCM’s hotels located in San Diego, California. Ms. Cecena typically worked eight (8) hours or more per day, and five (5) days or more per week. At the time Ms. Cecena’s employment ended with DCM, she was compensated approximately \$22.00 per hour as a Housekeeping Supervisor, and \$20.00 per

hour as a Room Attendant. Ms. Cecena's primary job duties as a Housekeeping Supervisor included, without limitation, reviewing and verifying room cleaning completion, assisting Room Attendants, and replenishing supplies. Her primary job duties as a Room Attendant included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting bathrooms.

DCM committed one or more of the following Labor Code violations against Ms. Cecena, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **DCM's Company-Wide and Uniform Payroll and HR Practices**

DOLPHIN CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC; and CLEARVIEW HOTEL CAPITAL, LLC are Delaware limited liability companies. DCM provides hotel, restaurant, and project management services across the United States including management of at least three (3) hotel locations in California. Upon information and belief, DCM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Newport Beach, California, for all non-exempt, hourly paid employees working for DCM in California, including Ms. Cecena and other aggrieved employees. At all relevant times, DCM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Cecena and other aggrieved employees, regardless of their location or position.

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

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<sup>1</sup> These facts, theories, and claims are based on Ms. Cecena's experience and counsel's review of those records currently available relating to Ms. Cecena'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. Cecena 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.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

DCM willfully failed to pay all overtime wages owed to Ms. Cecena and other aggrieved employees. During the relevant time period, Ms. Cecena 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 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.

First, DCM had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Cecena and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with DCM's practice of understaffing and assignment of heavy workloads (*see infra*), led Ms. Cecena and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

For example, Ms. Cecena was required to arrive up to one (1) hour prior to her scheduled shift-start time and begin working—preparing her cleaning cart, replenishing cleaning chemicals, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet DCM's expectation that she complete 15 room assignments and her other daily tasks within her scheduled shift hours. For the same reasons, other aggrieved employees were required to continue working after their scheduled shift end-times, completing tasks such as finishing room turnover and replenishing linens and toiletries, before they could leave for the day. As a further example, Ms. Cecena was required to clock out at her scheduled shift end-time and travel to another location to complete closing duties, such as verifying room turnover and collecting assignment completion forms, keys, and communication devices, which would take up to 30 minutes each instance. When this occurred, Ms. Cecena and other aggrieved employees were unable to record this off-the-clock work because DCM's management prohibited them from recording these overtime hours.

Second, as stated, DCM had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Ms. Cecena and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Cecena and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. DCM also had a practice of failing to schedule meal periods, which further caused Ms. Cecena and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately twice per week, Ms. Cecena was required to work through all or part of her meal periods because she was required to answer questions from DCM's management regarding the status of completing her assigned guest rooms or to replenish rooms with toiletries, linens, and other supplies. Thus, Ms. Cecena and other aggrieved employees worked through meal periods and/or had their meal periods interrupted or cut short in order to complete their assigned workloads. DCM did not pay Ms. Cecena and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, on information and belief, because DCM frowned upon employees accruing meal period penalties, DCM pressured Ms. Cecena and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. For example,

when Ms. Cecena was too busy with her workload to take a complaint meal period, her manager would tell her to adjust her meal period punch times to appear compliant by submitting a time change request form at the end of her shift. Thus, DCM did not record all hours worked during meal periods and Ms. Cecena and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, DCM did not pay Ms. Cecena and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, DCM paid Ms. Cecena and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DCM 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 rates. Therefore, during times when Ms. Cecena and other aggrieved employees worked overtime and received these other forms of pay, DCM failed to pay all overtime wages by paying a lower overtime rate than required.

For example, DCM paid Ms. Cecena and other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Ms. Cecena's and other aggrieved employees' wage statements as "BNS" and "INC." During the pay periods that Ms. Cecena and other aggrieved employees were paid overtime wages, DCM did not incorporate these payments into Ms. Cecena'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, DCM paid Ms. Cecena and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. DCM'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. Cecena and other aggrieved employees on a company-wide basis.

DCM's failure to pay Ms. Cecena 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. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages**

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)(L) (defining “Hours Worked”).

As stated above, as a result of DCM’s company-wide policies and/or practices of restricting overtime accrual, understaffing, and assigning heavy workloads, Ms. Cecena and other aggrieved employees were required to perform various work-related tasks off-the-clock, including, but not limited to, preparing cleaning carts, replenishing supplies, completing room turnover, and performing closing duties. DCM failed to track this time Ms. Cecena and other aggrieved employees spent working off-the-clock, and Ms. Cecena and other aggrieved employees received no compensation for this time.

Additionally, as set forth above, due to DCM’s uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, and resultant lack of meal period coverage, Ms. Cecena 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. Moreover, as stated, on information and belief, in order to limit meal penalties that DCM would otherwise owe, DCM pressured Ms. Cecena and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, DCM systematically failed to pay Ms. Cecena and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, DCM did not pay at least minimum wages for all hours worked by Ms. Cecena and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DCM 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, DCM regularly failed to pay at least minimum wages to Ms. Cecena 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. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

#### **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, DCM had, and continues to have, company-wide policies and/or practices of understaffing its locations while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Cecena and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, DCM had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Cecena and other aggrieved employees from taking all compliant meal periods. As a result of DCM's practices and/or policies, Ms. Cecena and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately twice per week, Ms. Cecena was required to take her meal periods late in order to complete room turnover, meet guest check-in timeframes, and to keep up with DCM's productivity expectations. As another example, as stated above, Ms. Cecena had her meal periods interrupted or cut short by supervisors to discuss the status of assigned guest rooms or to replenish rooms with toiletries, linens, and other supplies.

Second, as stated, on information and belief, in order to limit meal penalties that DCM would otherwise owe, DCM pressured Ms. Cecena and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, and/or adjusted employee time records even when they did not receive a compliant meal period. For example, as stated above, DCM's management pressured Ms. Cecena to submit timesheet correction forms to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely, uninterrupted meal periods.

Third, DCM did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Cecena 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.

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

Moreover, DCM engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. Cecena and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that DCM did pay Ms. Cecena and other aggrieved employees for missed, late, and interrupted meal periods, DCM did not pay Ms. Cecena and other aggrieved employees at the correct rate of pay for premiums because DCM 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, DCM failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

### **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, DCM regularly failed to authorize and permit Ms. Cecena 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, DCM's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Cecena and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. DCM also failed to schedule rest periods, which, coupled with DCM's failure to provide adequate rest period coverage, further led to Ms. Cecena and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of DCM's practices and policies, Ms. Cecena 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 10-minute rest periods to which they were entitled. For example, Ms. Cecena would sometimes have to forgo her rest periods altogether due to the heavy workload and lack of rest period coverage. When Ms. Cecena was able to take her rest periods, they were often interrupted because she was required to respond to requests for supplies or resume her assigned room cleaning.

DCM has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Cecena and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DCM did pay Ms. Cecena and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DCM did not pay Ms. Cecena and other aggrieved employees at the correct rate of pay for premiums because

DCM 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, DCM failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**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. DCM has not provided Ms. Cecena 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, DCM has knowingly and intentionally provided Ms. Cecena and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DCM issued uniform wage statements to Ms. Cecena and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, DCM violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because DCM did not record the time Ms. Cecena 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), DCM did not list the correct amount of gross wages and net wages earned by Ms. Cecena and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DCM failed to accurately list the total number of hours worked by Ms. Cecena 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)).

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

Third, and separately from these violations, DCM issued uniform wage statements to Ms. Cecena and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, DCM systematically, and on a company-wide basis, issued wage statements to Ms. Cecena and other aggrieved employees that fail to list the employing entity's address. Ms. Cecena's and other aggrieved employees' statements incorrectly list the employer's address as "3501 Jamboree Road, Suite 550, Newport Beach, CA 92660" but, according to the California Secretary of State's website, the correct address is "500 NEWPORT CENTER DR STE 800, NEWPORT BEACH, CA 92660."

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 of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the 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 . . . ." At all relevant times, and in violation of Labor Code section 1174(d), DCM willfully failed to maintain accurate payroll records for Ms. Cecena 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, DCM engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Cecena and other aggrieved employees, in violation of section 1198. Also, in light of DCM's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, DCM kept no records of meal start and end times for second meal periods.

Because DCM failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Cecena 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. Cecena 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. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **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, DCM willfully failed to pay Ms. Cecena and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Ms. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

#### **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, DCM willfully failed to pay Ms. Cecena and other aggrieved employees who are no longer employed by DCM the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving DCM's employ.

Ms. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave**

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, DCM did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, DCM paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DCM failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, DCM failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, DCM paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

DCM's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

### **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."

First, during the relevant time period, DCM, on a company-wide basis, required that Ms. Cecena and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Cecena used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned rooms

and other work-related tasks. Although DCM required Ms. Cecena and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities DCM failed to reimburse them for this cost.

Second, during the relevant time period, DCM, on a company-wide basis, required that Ms. Cecena and other aggrieved employees purchase supplies, tools, and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Cecena spent approximately \$50 on supplies such as cleaning chemicals, spray bottles, and sponges because DCM failed to provide her with the necessary supplies, tools, and/or equipment needed to complete her assigned duties. Although DCM required Ms. Cecena and other aggrieved employees to purchase supplies to carry out their work-related responsibilities, DCM failed to reimburse them for their out-of-pocket cost.

DCM could have provided Ms. Cecena and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies, tools and/or equipment; or, DCM could have reimbursed employees for the costs of their mobile device usage, and supplies, tools and/or equipment. Instead, DCM passed these operating costs off onto Ms. Cecena and other aggrieved employees. At all relevant times, Ms. Cecena and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, DCM had, and continues to have, a company-wide policy and/or practice of passing not reimbursing employees for expenses necessarily incurred and on their operating costs to Ms. Cecena and other aggrieved employees in violation of California Labor Code section 2802. Ms. Cecena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

### **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.” DCM, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Cecena’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Cecena 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Cecena, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against DCM for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Cecena 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:

Jezzette Ron  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: DOLPHIN CALIFORNIA MANAGEMENT, LLC (via U.S. Certified Mail); DOLPHIN HOTEL MANAGEMENT, LLC (via U.S. Certified Mail); CLEARVIEW HOTEL CAPITAL, LLC (via U.S. Certified Mail)

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Continued on p. 20

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1. The first step is to identify the problem or question that needs to be answered.

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1. The first step is to identify the problem. This involves understanding the current situation and what needs to be changed.

2. The second step is to set goals. These should be specific, measurable, achievable, relevant, and time-bound.

3. The third step is to develop a plan. This involves determining the steps that need to be taken to achieve the goals.

4. The fourth step is to implement the plan. This involves putting the plan into action and monitoring progress.

5. The fifth step is to evaluate the results. This involves assessing whether the goals have been achieved and what lessons can be learned.

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Dimitrios Fotiadis, President