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County of San Diego

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Clerk of the Superior Court
By A. Villasenor ,Deputy Clerk

Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
Daniel S. Jonathan (SBN 262209)
Daniel.Jonathan@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
Shealene P. Mancuso (SBN 331740)
Shealene.Mancuso@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Gabriela Cecena
and Elva Verdugo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

GABRIELA CECENA and ELVA
VERDUGO, individually, and on behalf of
other members of the general public
similarly situated, and as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

vs.

DOLPHIN CALIFORNIA
MANAGEMENT, LLC, a Delaware limited
liability company; DOLPHIN HOTEL
MANAGEMENT, LLC, a Delaware limited
liability company; CLEARVIEW HOTEL
CAPITAL, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2024-00023571-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Gabriela Cecena and Elva Verdugo, individually and on behalf of all other
2 members of the public similarly situated, and as aggrieved employees and on behalf of all
3 aggrieved employees, allege as follows.

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of damages,
17 penalties, and other relief sought in this action do not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants employ persons in this county,
5 and employed Plaintiffs in this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Gabriela Cecena ("Plaintiff Cecena") is a resident of Chula Vista, in San
9 Diego County, California. Defendants employed Plaintiff Cecena as an hourly paid, non-
10 exempt employee from approximately May 2023 to January 2024. Plaintiff Cecena worked as
11 a Housekeeping Supervisor and Room Attendant for Defendants at their hotel locations in San
12 Diego, California. During her employment, Plaintiff Cecena typically worked eight (8) hours
13 or more per day, and five (5) days or more per week. At the time Plaintiff Cecena's employment
14 with Defendants ended, she was compensated approximately \$22.00 per hour as a Housekeeping
15 Supervisor, and \$20.00 per hour as a Room Attendant. Plaintiff Cecena's primary job duties as
16 a Housekeeping Supervisor included, without limitation, reviewing and verifying room cleaning
17 completion, assisting Room Attendants, and replenishing supplies. Plaintiff Cecena's primary
18 job duties as a Room Attendant included, without limitation, making beds, replacing towels and
19 toiletries, vacuuming, and disinfecting bathrooms.

20 5. Plaintiff Elva Verdugo ("Plaintiff Verdugo") is a resident of San Diego, in San
21 Diego County, California. Defendants employed Plaintiff Verdugo as an hourly paid, non-
22 exempt employee from approximately December 2016 to July 2023. Plaintiff Verdugo worked
23 as a Room Attendant for Defendants at their hotel locations in San Diego, California. During
24 her employment, Plaintiff Verdugo typically worked seven (7) hours or more per day, and five
25 (5) days or more per week. At the time Plaintiff Verdugo's employment with Defendants ended,
26 she was compensated approximately \$20.00 per hour. Plaintiff Verdugo's primary job duties
27 included, without limitation, making beds, replacing towels and toiletries, vacuuming, and
28 disinfecting kitchens and bathrooms.

1 6. DOLPHIN CALIFORNIA MANAGEMENT, LLC was and is, upon information
2 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
3 employer whose employees are engaged throughout this county, the State of California.

4 7. DOLPHIN HOTEL MANAGEMENT, LLC was and is, upon information and
5 belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
6 employer whose employees are engaged throughout this county, the State of California.

7 8. CLEARVIEW HOTEL CAPITAL, LLC was and is, upon information and belief,
8 a Delaware limited liability company, and at all times hereinafter mentioned, an employer
9 whose employees are engaged throughout this county, the State of California.

10 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
11 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
12 the complaint and serve such fictitiously named Defendants once their names and capacities
13 become known.

14 10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
15 were the partners, agents, owners, or managers of DOLPHIN CALIFORNIA MANAGEMENT,
16 LLC; DOLPHIN HOTEL MANAGEMENT, LLC; and CLEARVIEW HOTEL CAPITAL,
17 LLC, at all relevant times.

18 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the
19 acts and omissions alleged herein was performed by, or is attributable to, DOLPHIN
20 CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC;
21 CLEARVIEW HOTEL CAPITAL, LLC; and/or DOES 1 through 10 (collectively,
22 “Defendants” or “DCM”), each acting as the agent, employee, alter ego, and/or joint venturer
23 of, or working in concert with, each of the other co-Defendants and was acting within the course
24 and scope of such agency, employment, joint venture, or concerted activity with legal authority
25 to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
26 represent, the official policy of Defendants.

27 12. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

3 13. Plaintiffs are informed and believe, and thereon allege, that each of said
4 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
5 omissions, occurrences, and transactions alleged herein.

6 14. Under California law, Defendants are jointly and severally liable as employers
7 for the violations alleged herein because they have each exercised sufficient control over the
8 wages, hours, working conditions, and employment status of Plaintiffs and class members. Each
9 Defendant had the power to hire and fire Plaintiffs and class members, supervised and controlled
10 their work schedule and/or conditions of employment, determined their rate of pay, and
11 maintained their employment records. Defendants suffered or permitted Plaintiffs and class
12 members to work and/or “engaged” Plaintiffs and class members so as to create a common-law
13 employment relationship. As joint employers of Plaintiffs and class members, Defendants are
14 jointly and severally liable for the civil penalties available to Plaintiffs and class members under
15 the law.

16 15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
17 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and class
18 members because Defendants have:

- 19 (a) jointly exercised meaningful control over the work performed by
20 Plaintiffs and class members;
- 21 (b) jointly exercised meaningful control over Plaintiffs’ and class members’
22 wages, hours, and working conditions, including the quantity, quality
23 standards, speed, scheduling, and operative details of the tasks performed
24 by Plaintiffs and class members;
- 25 (c) jointly required that Plaintiffs and class members perform work which is
26 an integral part of Defendants’ businesses; and
- 27 (d) jointly exercised control over Plaintiffs and class members as a matter of
28 economic reality in that Plaintiffs and class members were dependent on

1 Defendants, who shared the power to set the wages of Plaintiffs and class
2 members and determined their working conditions, and who jointly
3 reaped the benefits from the underpayment of their wages and
4 noncompliance with other statutory provisions governing their
5 employment.

6 16. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
7 there has existed a unity of interest and ownership between Defendants such that any
8 individuality and separateness between the entities has ceased.

9 17. DOLPHIN CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL
10 MANAGEMENT, LLC; CLEARVIEW HOTEL CAPITAL, LLC; and/or DOES 1 through 10
11 are therefore alter egos of each other.

12 18. Adherence to the fiction of the separate existence of Defendants would permit an
13 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
14 liability for the wrongful acts committed by them under the name DCM.

15 19. Plaintiffs further allege, upon information and belief, that the Defendants
16 DOLPHIN CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT,
17 LLC; and CLEARVIEW HOTEL CAPITAL, LLC are alter egos of each other for the following
18 reasons:

19 (a) On the California Secretary of State's website
20 (<https://bizfileonline.sos.ca.gov/>), DOLPHIN CALIFORNIA
21 MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC;
22 and CLEARVIEW HOTEL CAPITAL, LLC share the same principal
23 address and mailing address, "500 NEWPORT CENTER DR STE 800,
24 NEWPORT BEACH, CA 92660";

25 (b) According to their most recent "Statement of Information" forms filed
26 with the California Secretary of State, DOLPHIN CALIFORNIA
27 MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC;
28 and CLEARVIEW HOTEL CAPITAL, LLC share the same managers,

members, and/or officers, including, but not limited to, Jon Kline;

- (c) On the California Secretary of State’s website, DOLPHIN CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC; and CLEARVIEW HOTEL CAPITAL, LLC share the same agent for service of process, Jon Kline; and
- (d) On information and belief, DOLPHIN CALIFORNIA MANAGEMENT, LLC; DOLPHIN HOTEL MANAGEMENT, LLC; and CLEARVIEW HOTEL CAPITAL, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

20. Defendants provide 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, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Newport Beach, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

21. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

22. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Newport Beach, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiffs and class members. Based upon information and

1 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
2 employees in California, irrespective of their work locations. Upon information and belief,
3 Defendants process payroll for departing employees in the same manner throughout the State
4 of California, regardless of the manner in which each employee's employment ends.

5 23. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

7 24. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
9 advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 25. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
12 class members were not paid for all hours worked because all hours worked were not recorded.

13 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and class members were entitled to receive certain wages for
15 overtime compensation and that they were not receiving certain wages for overtime
16 compensation.

17 27. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
18 should have known that Plaintiffs and class members were entitled to be paid at a regular rate
19 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
20 premiums, that included as eligible income all remuneration required by law, including but not
21 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms
22 of compensation, but failed to include all forms of remuneration in calculating the regular rate
23 of pay for Plaintiffs and class members.

24 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and class members were entitled to receive at least minimum
26 wages for compensation and that they were not receiving at least minimum wages for work that
27 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and
28 class members were not paid at least minimum wages for work done off-the-clock.

1 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiff Cecena and class members were entitled to meal periods in
3 accordance with the California Labor Code and applicable IWC Wage Order or payment of one
4 (1) additional hour of pay at their regular rates of pay when they were not provided with timely,
5 uninterrupted, thirty (30) minute meal periods and that Plaintiff Cecena and class members were
6 not provided with all meal periods or payment of one (1) additional hour of pay at their regular
7 rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

8 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and class members were entitled to rest periods in accordance
10 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
11 additional hour of pay at their regular rates of pay when they were not authorized and permitted
12 to take a compliant rest period. In violation of the Labor Code, Plaintiffs and class members
13 were not authorized and permitted to take compliant rest periods, nor did Defendants provide
14 Plaintiffs and class members with payment of one (1) additional hour of pay at their regular
15 rates of pay when they were not authorized and permitted to take a compliant rest period.

16 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to receive complete and
18 accurate wage statements in accordance with California law. In violation of the California
19 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
20 statements.

21 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
24 knowingly, and intentionally failed to do so.

25 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and class members were entitled to timely payment of all
27 wages earned upon termination of employment. In violation of the California Labor Code,
28 Plaintiffs and class members did not receive payment of all wages due, including, but not limited

1 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
2 time periods.

3 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to timely payment of wages
5 during their employment. In violation of the California Labor Code, Plaintiffs and class
6 members did not receive payment of all wages, including, but not limited to, overtime wages,
7 minimum wages, and/or meal and rest period premiums, within permissible time periods.

8 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that class members were entitled to receive full reimbursement for all
10 business-related expenses and costs they incurred during the course and scope of their
11 employment and that they did not receive full reimbursement of applicable business-related
12 expenses and costs incurred.

13 36. Plaintiffs are informed and believe, and thereon allege, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiffs and class members for all hours worked, and that Defendants had the financial ability
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
17 represented to Plaintiffs and class members that they were properly denied wages, all in order
18 to increase Defendants' profits.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 37. At all times herein set forth, PAGA provides that any provision of law under the
21 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
22 collected by the Labor and Workforce Development Agency ("LWDA") for violations of the
23 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
24 aggrieved employees in a civil action brought on behalf of themselves and other current or
25 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

26 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
27 "any person who was employed by the alleged violator and personally suffered each of the
28 violations alleged."

1 39. Plaintiffs and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’ current
3 or former employees and each of the alleged violations were committed against them.

4 40. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
5 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
6 following requirements have been met:

- 7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violation.
11 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
12 2699.3(a) and any employer response to that notice shall be accompanied
13 by a filing fee of seventy-five dollars (\$75).
14 (c) The LWDA shall notify the employer and the aggrieved employee or
15 representative by certified mail that it does not intend to investigate the
16 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
17 postmark date of the aggrieved employee’s notice. Upon receipt of the
18 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
19 calendar days of the postmark date of the aggrieved employee’s notice,
20 the aggrieved employee may commence a civil action pursuant to
21 California Labor Code section 2699 to recover civil penalties.

22 41. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
23 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision
24 other than those listed in Section 2699.5 after the following requirements have been met:

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

42. On June 18, 2024, Plaintiff Cecena provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Cecena's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Cecena's written notice and assigned Plaintiff Cecena PAGA Case Number LWDA-CM-1034690-24. A true and correct copy of Plaintiff Cecena's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

43. On June 18, 2024, Plaintiff Verdugo provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Verdugo's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Verdugo's written notice and

1 assigned Plaintiff Verdugo PAGA Case Number LWDA-CM-1034691-24. A true and correct
2 copy of Plaintiff Verdugo's written notice to the LWDA and Defendants is attached hereto as
3 "Exhibit 2."

4 44. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
5 sent the notices described above to the LWDA, and the LWDA has not responded that it intends
6 to investigate Plaintiffs' claims and Defendants have not cured the violations.

7 45. Thus, Plaintiffs have satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
10 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

11 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare Commission
14 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
15 each underpaid employee for each pay period for which the employee was underpaid (2)
16 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
17 each pay period for which the employee was underpaid" Labor Code section 558(c)
18 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
19 criminal penalty provided by law."

20 47. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees'
22 rights by violating various sections of the California Labor Code as set forth above.

23 48. As set forth below, Defendants have violated numerous provisions of both the
24 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
25 Order.

26 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
28 private attorneys general, seek assessment and collection of civil penalties for themselves, all

1 other aggrieved employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
3 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

4 **CLASS ACTION ALLEGATIONS**

5 50. Plaintiffs brings this action on their own behalf, as well as on behalf of each and
6 all other persons similarly situated, and thus seek class certification under California Code of
7 Civil Procedure section 382.

8 51. All claims alleged herein arise under California law for which Plaintiffs seek
9 relief authorized by California law.

10 52. Plaintiffs' proposed class consists of and is defined as follows:

11 All persons who worked for Defendants as non-exempt, hourly
12 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

13 53. Plaintiffs' proposed subclass consists of and is defined as follows:

14 All persons who worked for Defendants as non-exempt, hourly
15 paid employees in California and who received at least one wage
16 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

17 54. Members of the Class and Subclass are referred to herein as "class members."

18 55. Plaintiffs reserve the right to redefine the Class and Subclass and to add
19 additional subclasses as appropriate based on further investigation, discovery, and specific
20 theories of liability.

21 56. There are common questions of law and fact as to class members that
22 predominate over questions affecting only individual members, including, but not limited to:

23 (a) Whether Defendants required Plaintiffs and class members to work over
24 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
25 hours per week and failed to pay all legally required overtime
26 compensation to Plaintiffs and class members;

27 (b) Whether Defendants failed to include all forms of remuneration in the
28 regular rate of pay as required by law for purposes of paying overtime

- wages and/or meal and rest period premiums to Plaintiffs and class members;
- (c) Whether Defendants failed to pay Plaintiffs and class members at least minimum wages for all hours worked;
 - (d) Whether Defendants failed to provide Plaintiff Cecena and class members meal periods;
 - (e) Whether Defendants failed to authorize and permit Plaintiffs and class members to take rest periods;
 - (f) Whether Defendants provided Plaintiffs and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
 - (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
 - (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiffs and class members upon their discharge;
 - (i) Whether Defendants failed to timely pay overtime wages, minimum wages, and/or meal and rest period premiums, to Plaintiffs and class members during their employment;
 - (j) Whether Defendants failed to reimburse Plaintiffs and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
 - (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
 - (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

57. There is a well-defined community of interest in the litigation and the class

members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

1 (e) Public Policy Considerations: Employers in the State of California
2 violate employment and labor laws every day. Current employees are
3 often afraid to assert their rights out of fear of direct or indirect retaliation.
4 Former employees are fearful of bringing actions because they believe
5 their former employers might damage their future endeavors through
6 negative references and/or other means. Class actions provide the class
7 members who are not named in the complaint with a type of anonymity
8 that allows for the vindication of their rights while simultaneously
9 protecting their privacy.

10 **FIRST CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
12 **(Against all Defendants)**

13 58. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
14 every allegation set forth above.

15 59. Labor Code section 1198 makes it illegal to employ an employee under
16 conditions of labor that are prohibited by the applicable wage order. California Labor Code
17 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
18 be the . . . standard conditions of labor for employees. The employment of any employee . . .
19 under conditions of labor prohibited by the order is unlawful.”

20 60. California Labor Code section 1198 and the applicable IWC Wage Order provide
21 that it is unlawful to employ persons without compensating them at a rate of pay either time-
22 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
23 worked by the person on a daily or weekly basis.

24 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
25 were required to pay Plaintiffs and class members working more than eight (8) hours in a day
26 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
27 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

28 62. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
2 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
3 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
4 employee, including nondiscretionary bonuses and incentive pay.

5 63. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
8 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
9 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
10 the seventh (7th) day of work.

11 64. During the relevant time period, Defendants willfully failed to pay all overtime
12 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
13 class members were not paid overtime premiums for all of the hours they worked in excess of
14 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
15 hours in a week, because all hours worked were not recorded.

16 65. First, Defendants had, and continue to have, a company-wide policy and/or
17 practice of discouraging and impeding Plaintiffs and class members from recording hours
18 worked that were outside their scheduled shifts, in order to limit the amount of overtime
19 employees could accrue. On information and belief, this policy of limiting overtime, coupled
20 with Defendants' practice of understaffing and assignment of heavy workloads (*see infra*), led
21 Plaintiffs and class members to work off-the-clock before and after their scheduled shift times
22 in order to complete their assigned tasks.

23 66. For example, Plaintiff Cecena was required to arrive up to one (1) hour prior to
24 her scheduled shift-start times and begin working—preparing her cleaning cart, replenishing
25 cleaning chemicals, and gathering replacement toiletries for hotel guest rooms and suites, in
26 order to meet Defendants' expectation that she complete 15 room assignments and her other
27 daily tasks within her scheduled shift hours. For the same reasons, Plaintiff Verdugo was
28 required to continue working after her scheduled shift end-times, completing tasks such as

1 finishing room turnover and replenishing linens and toiletries, before she could leave for the
2 day. As a further example, Plaintiff Cecena was required to clock out at her scheduled shift
3 end-time and travel to another location to complete closing duties, such as verifying room
4 turnover and collecting assignment completion forms, keys, and communication devices, which
5 would take up to 30 minutes each instance. When this occurred, Plaintiffs were unable to record
6 this off-the-clock work because Defendants' management prohibited them from recording these
7 overtime hours.

8 67. Second, as stated, Defendants had, and continue to have, company-wide policies
9 and/or practices of understaffing their locations while assigning heavy workloads, resulting in
10 a failure to provide Plaintiff Cecena and class members with adequate meal period coverage.
11 As a result of this lack of meal period coverage, Plaintiff Cecena and class members were not
12 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
13 receive a meal period. Defendants also had a practice of failing to schedule meal periods, which
14 further caused Plaintiff Cecena and class members to not be relieved of their duties for
15 compliant meal periods. For example, Plaintiff Cecena was required to work through all or part
16 of her meal periods because she was required to answer questions from Defendants'
17 management regarding the status of completing her assigned guest rooms or to replenish rooms
18 with toiletries, linens, and other supplies. Thus, Plaintiff Cecena and class members worked
19 through meal periods and/or had their meal periods interrupted or cut short in order to complete
20 their assigned workloads. Defendants did not pay Plaintiff Cecena and class members for the
21 time they continued to perform tasks during meal periods.

22 68. Third, on information and belief, because Defendants frowned upon employees
23 accruing meal period penalties, Defendants pressured Plaintiff Cecena and class members to
24 clock out for meal periods to reflect compliant meal periods, on threat of discipline, and/or
25 adjusted their time records to reflect compliant meal periods, even when they did not receive a
26 compliant meal period. For example, when Plaintiff Cecena was too busy with her workload to
27 take a compliant meal period, her manager would tell her to adjust her meal period punch times
28 to appear compliant by submitting a time change request form at the end of her shift. Thus,

Defendants did not record all hours worked during meal periods and Plaintiff Cecena and class members performed work during meal periods for which they were not paid.

69. Defendants knew or should have known that, as a result of these company-wide practices and/or policies, Plaintiffs and class members 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 Plaintiffs and class members 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, Plaintiffs and class members were not paid overtime wages for all of the overtime hours they actually worked.

70. Moreover, Defendants did not pay Plaintiffs and class members the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiffs and class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants 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 Plaintiffs and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

71. For example, Defendants paid Plaintiffs and class members incentive pay and/or nondiscretionary bonuses, which were listed on Plaintiffs' and class members' wage statements as "BNS" and "INC." During the pay periods that Plaintiffs and class members were paid overtime wages, Defendants did not incorporate these payments into Plaintiffs' and class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiffs and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiffs and class members on a company-wide basis.

72. Defendants' failure to pay Plaintiffs and class members the balance of overtime

1 compensation as required by California law, violates the provisions of California Labor Code
2 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class
3 members are entitled to recover from Defendants their unpaid overtime compensation, as well
4 as interest, costs, and attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 7 **Minimum Wages** 8 **(Against all Defendants)**

9 73. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
10 every allegation set forth above.

11 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
12 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
13 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
14 Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which
15 an employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
17 § 11050(2)(L) (defining "Hours Worked").

18 75. As stated above, as a result of Defendants' company-wide policies and/or
19 practices of restricting overtime accrual, understaffing, and assigning heavy workloads,
20 Plaintiffs and class members were required to perform various work-related tasks off-the-clock,
21 including, but not limited to, preparing cleaning carts, replenishing supplies, completing room
22 turnover, and performing closing duties. Defendants failed to track this time Plaintiff and class
23 members spent working off-the-clock, and Plaintiffs and class members received no
24 compensation for this time.

25 76. Additionally, as set forth above, due to Defendants' uniform practices of
26 understaffing, assignment of heavy workloads, failure to schedule meal periods, and resultant
27 lack of meal period coverage, Plaintiff Cecena and class members were impeded from taking
28 all uninterrupted meal periods to which they were entitled and were required to work off-the-

1 clock. Moreover, as stated, on information and belief, in order to limit meal penalties that
2 Defendants would otherwise owe, Defendants pressured Plaintiff Cecena and class members to
3 clock out for meal periods, on threat of discipline, and/or adjusted employee time records to
4 reflect compliant meal periods, even when they did not receive a compliant meal period. Thus,
5 Defendants systematically failed to pay Plaintiff Cecena and class members for actual hours
6 worked during unpaid meal periods because these hours were not always correctly recorded.

7 77. Defendants did not pay minimum wages for all hours worked by Plaintiffs and
8 class members. To the extent that these off-the-clock hours did not qualify for overtime
9 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
10 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

11 78. Defendants' failure to pay Plaintiffs and class members minimum wages violates
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
13 Labor Code section 1194.2, Plaintiffs and class members are entitled to recover from
14 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest
15 thereon.

16 **THIRD CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 18 **Violations** 19 **(Against all Defendants)**

20 79. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
21 every allegation set forth above.

22 80. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
24 class members' employment by Defendants. At all relevant times herein set forth, California
25 Labor Code section 512(a) provides that an employer may not require, cause, or permit an
26 employee to work for a period of more than five (5) hours per day without providing the
27 employee with a meal period of not less than thirty (30) minutes, except that if the total work
28 period per day of the employee is not more than six (6) hours, the meal period may be waived

1 by mutual consent of both the employer and the employee. Under California law, first meal
2 periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.
3 4th 1004, 1041-1042 (2012).

4 81. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

7 82. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
8 the applicable IWC Wage Order also require employers to provide a second meal period of not
9 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
10 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
11 hours worked is no more than twelve (12) hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period was not waived.

13 83. First, as stated, Defendants had, and continue to have, company-wide policies
14 and/or practices of understaffing their locations while simultaneously assigning heavy
15 workloads, which resulted in a lack of meal period coverage and prevented Plaintiff Cecena and
16 class members from taking all timely, uninterrupted meal periods to which they were entitled.
17 Further, as stated, Defendants had a company-wide practice of failing to schedule meal periods,
18 which further prevented Plaintiff Cecena and class members from taking all compliant meal
19 periods. As a result of Defendants' practices and/or policies, Plaintiff Cecena and class
20 members were forced to work in excess of five (5) hours before taking a meal period and, at
21 times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For
22 example, Plaintiff Cecena was required to take her meal periods late in order to complete room
23 turnover, meet guest check-in timeframes, and to keep up with Defendants' productivity
24 expectations. As another example, as stated above, Plaintiff Cecena had her meal periods
25 interrupted or cut short by supervisors to discuss the status of assigned guest rooms or to
26 replenish rooms with toiletries, linens, and other supplies.

27 84. Second, as stated, on information and belief, in order to limit meal penalties that
28 Defendants would otherwise owe, Defendants pressured Plaintiff Cecena and class members to

1 clock out for meal periods to reflect compliant meal periods, on threat of discipline, and/or
2 adjusted employee time records even when they did not receive a compliant meal period. For
3 example, as stated above, Defendants' management pressured Plaintiff Cecena to submit
4 timesheet correction forms to record that she had received compliant meal periods on shifts
5 when she had not, in fact, received these timely, uninterrupted meal periods. Plaintiff Cecena
6 and class members did not sign valid meal period waivers on days that they were entitled to
7 meal periods and were not relieved of all duties.

8 85. At all times mentioned herein, Defendants knew or should have known that as a
9 result of their policies, Plaintiff Cecena and class members were not actually relieved of all
10 duties to take timely, uninterrupted meal periods. Defendants further knew or should have
11 known that they did not pay Plaintiff Cecena and class members meal period premiums when
12 meal periods were late, interrupted, shortened, and/or missed.

13 86. Furthermore, Defendants engaged in a company-wide practice and/or policy of
14 not paying meal period premiums owed when compliant meal periods are not provided.
15 Because of this practice and/or policy, Plaintiff Cecena and class members have not received
16 premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that
17 Defendants did pay Plaintiff Cecena and class members premium pay for missed, late, and
18 interrupted meal periods, Defendants did not pay Plaintiff Cecena and class members at the
19 correct rate of pay for premiums because Defendants systematically failed to include all forms
20 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
21 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff
22 Cecena and class members compliant meal periods in violation of California Labor Code
23 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

24 87. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff Cecena and class members are
26 therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's
27 regular rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

88. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

89. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs’ and class members’ employment by Defendants.

90. At all relevant times, 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.

91. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

92. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or

1 practices of understaffing and assigning heavy workloads prevented Plaintiffs and class
2 members from being relieved of all duty in order to take compliant rest periods. Defendants
3 also failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate
4 rest period coverage, further led to Plaintiffs and class members not being authorized and
5 permitted to take rest periods.

6 93. Furthermore, upon information and belief, Defendants maintained a company-
7 wide on-premises rest period policy, which effectively required that Plaintiffs and class
8 members remain on the work premises during their rest periods. Because Plaintiffs and class
9 members were restricted from leaving the premises during rest periods, they were denied the
10 ability to use their rest periods freely for their own purposes, such as running personal errands.
11 Thus, Defendants effectively maintained control over Plaintiffs and class members during rest
12 periods.

13 94. As a result of Defendants' practices and policies, Plaintiffs and class members
14 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
15 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
16 Plaintiffs would sometimes have to forgo their rest periods altogether due to the heavy workload
17 and lack of rest period coverage. When Plaintiffs were able to take their rest periods, they were
18 often interrupted because they were required to respond to request for supplies or resume their
19 assigned room cleaning.

20 95. Defendants also have engaged in a company-wide practice and/or policy of not
21 paying rest period premiums owed when compliant rest periods are not authorized and
22 permitted. Because of this practice and/or policy, Plaintiffs and class members have not
23 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
24 did pay Plaintiffs and class members one (1) additional hour of premium pay for missed rest
25 periods, Defendants did not pay Plaintiffs and class members at the correct rate of pay for
26 premium wages because Defendants failed to include all forms of compensation, such as
27 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate
28 of pay. As a result, Defendants denied Plaintiffs and class members rest periods and failed to

1 pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the
2 applicable IWC Wage Order.

3 96. Defendants' conduct violates the applicable IWC Wage Order and California
4 Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled
5 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
6 compensation for each work day that a compliant rest period was not authorized and permitted.

7 **FIFTH CAUSE OF ACTION**

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

10 **(Against all Defendants)**

11 97. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
12 every allegation set forth above.

13 98. At all relevant times herein set forth, California Labor Code section 226(a)
14 provides that every employer shall furnish each of his or her employees an accurate and
15 complete itemized wage statement in writing, including, but not limited to, the name and address
16 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
17 and all applicable rates of pay.

18 99. At all relevant times, Defendants have knowingly and intentionally provided
19 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.
20 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
21 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address
22 of the legal entity that is the employer, and all applicable hourly rates in effect during the pay
23 period, including rates of pay for overtime wages and/or meal and rest period premiums, and
24 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
25 violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

26 100. First, because Defendants did not accurately record the time Plaintiffs and
27 Subclass members spent working off-the-clock and deducted time from their records for meal
28 periods that were interrupted and/or missed (and therefore time for which they should have been

1 paid), Defendants did not list the correct amount of gross wages and net wages earned by
2 Plaintiffs and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the
3 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs
4 and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
5 rates of pay in effect during the pay period and corresponding accurate number of work hours
6 worked at each hourly rate in violation of section 226(a)(9).

7 101. Second, because Defendants did not calculate Plaintiffs' and Subclass members'
8 regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period
9 premiums, Defendants did not list the correct amount of gross wages in compliance with section
10 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in
11 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates
12 in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
13 rest period premiums, in violation of section 226(a)(9).

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

27 103. The wage statement deficiencies also include, without limitation, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a

1 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
2 which employees were paid; failing to list the name of the employee and only the last four digits
3 of his or her social security number or an employee identification number other than a social
4 security number; failing to list the name of the legal entity that is the employer; and/or failing
5 to state all hours worked as a result of not recording or stating hours worked off-the-clock.

6 104. California Labor Code section 1174(d) provides that “[e]very person employing
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
8 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
9 plants or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments” Labor Code section 1174.5 provides that employers are subject to a \$500
13 civil penalty if they fail to maintain accurate and complete records as required by section
14 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
15 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass
16 members the daily hours they worked and the wages paid thereto as a result of failing to record
17 the off-the-clock hours that they worked.

18 105. California Labor Code section 1198 provides that the maximum hours of work
19 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
20 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
21 of any employees for longer hours than those fixed by the order or under conditions of labor
22 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
23 are required to keep accurate time records showing when the employee begins and ends each
24 work period and meal period. During the relevant time period, Defendants engaged in company-
25 wide practices and/or policies of failing to record actual hours worked (including falsifying time
26 records by recording that compliant meal periods were taken regardless of if or when meal
27 periods were actually taken), and thereby failed to keep accurate records of work period and
28 meal period start and end times for Plaintiffs and Subclass members, in violation of section

1 1198.

2 106. Plaintiffs and Subclass members are entitled to recover from Defendants the
3 greater of their actual damages caused by Defendants' failure to comply with California Labor
4 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
5 employee.

6 **SIXTH CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**
8 **Termination**
9 **(Against all Defendants)**

10 107. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
11 every allegation set forth above.

12 108. At all times relevant herein set forth, California Labor Code sections 201 and
13 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
14 time of discharge are due and payable immediately, and that if an employee voluntarily leaves
15 his or her employment, his or her wages shall become due and payable not later than seventy-
16 two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice
17 of his or her intention to quit, in which case the employee is entitled to his or her wages at the
18 time of quitting.

19 109. During the relevant time period, on information and belief, Defendants had a
20 company-wide practice or policy of paying departing employees their final wages late, instead
21 of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
22 Defendants terminated Plaintiff Verdugo on July 20, 2023, but did not provide Plaintiff Verdugo
23 with her final paycheck until a day later. Thus, Defendants failed to pay Plaintiff Verdugo her
24 final wages immediately, in violation of Labor Code section 201.

25 110. Additionally, Defendants willfully failed to pay Plaintiffs and class members
26 who are no longer employed by Defendants the earned and unpaid wages set forth above,
27 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
28 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving

1 Defendants' employ.

2 111. Defendants' failure to pay Plaintiffs and class members who are no longer
3 employed by Defendants their wages earned and unpaid at the time of discharge, or within
4 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
5 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the
6 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
7 thirty (30) day maximum pursuant to California Labor Code section 203.

8 **SEVENTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**

10 **Employment**

11 **(Against all Defendants)**

12 112. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
13 every allegation set forth above.

14 113. This cause of action is dependent upon, and wholly derivative of, the overtime
15 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to
16 Plaintiffs and class members during their employment.

17 114. At all times relevant herein set forth, Labor Code section 204 provides that all
18 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
19 days, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
21 the month during which the labor was performed.

22 115. At all times relevant herein, Labor Code section 204 provides that all wages
23 earned by any person in any employment between the sixteenth (16th) and the last day,
24 inclusive, of any calendar month, other than those wages due upon termination of an employee,
25 are due and payable between the first (1st) and the tenth (10th) day of the following month.

26 116. At all times relevant herein, Labor Code section 204 provides that all wages
27 earned for labor in excess of the normal work period shall be paid no later than the payday for
28 the next regular payroll period. Alternatively, at all times relevant herein, 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.

117. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

118. Defendants' failure to pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

119. Plaintiffs incorporate and re-allege as if fully stated herein each and every allegation set forth above.

120. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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."

121. First, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiffs and class members 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

1 reimburse them for the costs of their work-related mobile device expenses. For example,
2 Plaintiffs used their personal cellular phones to communicate with managers regarding the status
3 of cleaning their assigned rooms and other work-related tasks. Although Defendants required
4 Plaintiffs and class members to utilize their personal mobile devices and/or mobile data to carry
5 out their work-related responsibilities, Defendants failed to reimburse them for this cost.

6 122. Second, during the relevant time period, Defendants, on a company-wide basis,
7 required that Plaintiff Cecena and class members purchase supplies, tools, and/or equipment
8 necessary for the performance of their duties, but failed to reimburse them for their out-of-
9 pocket costs. For example, Plaintiff Cecena spent approximately \$50 on supplies such as
10 cleaning chemicals, spray bottles, and sponges because Defendants failed to provide her with
11 the necessary supplies, tools, and/or equipment needed to complete her assigned duties.
12 Although Defendants required Plaintiff Cecena and class members to purchase supplies to carry
13 out their work-related responsibilities, Defendants failed to reimburse them for their out-of-
14 pocket cost.

15 123. Defendants could have provided Plaintiffs and class members with the actual
16 equipment for use on the job, such as company mobile devices and supplies, tools, and/or
17 equipment; or, Defendants could have reimbursed employees for the costs of their mobile device
18 usage, and supplies, tools, and/or equipment. Instead, Defendants passed these operating costs
19 off onto Plaintiffs and class members. At all relevant times, Plaintiffs did not earn at least two
20 (2) times the minimum wage.

21 124. Defendants' company-wide policy and/or practice of passing not reimbursing
22 employees for expenses necessarily incurred and on their operating costs to Plaintiffs and class
23 members violates California Labor Code section 2802. Defendants have intentionally and
24 willfully failed to reimburse Plaintiffs and class members for necessary business-related
25 expenses and costs.

26 125. Plaintiffs and class members are entitled to recover from Defendants their
27 business-related expenses incurred during the course and scope of their employment, plus
28 interest.

1 **NINTH CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 126. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
5 every allegation set forth above.

6 127. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
8 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198.
9 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover
10 civil penalties for violations of those Labor Code sections not found in section 2699.5, including
11 sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, and 2802.

12 128. Defendants’ conduct, as alleged herein, violates numerous sections of the
13 California Labor Code, including, but not limited to, the following:

- 14 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
15 Wage Order for Defendants’ failure to compensate Plaintiffs and other
16 aggrieved employees with all required overtime pay, as alleged herein;
- 17 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable
18 IWC Wage Order for Defendants’ failure to include all forms of
19 remuneration in the regular rate of pay as required by law for purposes of
20 paying overtime wages and/or meal and rest period premiums to Plaintiffs
21 and other aggrieved employees, as alleged herein;
- 22 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
23 and the applicable IWC Wage Order for Defendants’ failure to
24 compensate Plaintiffs and other aggrieved employees with at least
25 minimum wages for all hours worked, as alleged herein;
- 26 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
27 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
28 Cecena and other aggrieved employees with meal periods, as alleged

herein;

- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

129. Therefore, Plaintiffs and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

130. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

131. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or

1 associations.

2 132. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
4 suffered injuries in fact and have lost money as a result of Defendants' unlawful business
5 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
6 meaning of Code of Civil Procedure section 1021.5.

7 133. Defendants' activities, as alleged herein, are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business & Professions
9 Code sections 17200, *et seq.*

10 134. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
14 class members, to work overtime without paying them proper
15 compensation in violation of California Labor Code sections 510 and
16 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (b) Failing to include all forms of remuneration in the regular rate of pay as
18 required by law for purposes of paying overtime wages and/or meal and
19 rest period premiums to Plaintiffs and class members, in violation of
20 California Labor Code sections 226.7, 510, and 1198, and the applicable
21 IWC Wage Order, as alleged herein;
- 22 (c) Failing to pay at least minimum wage to Plaintiffs and class members in
23 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
24 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (d) Failing to provide all meal periods to Plaintiff Cecena and class members
26 in violation of California Labor Code sections 226.7, 512(a), 516, and
27 1198, and the applicable IWC Wage Order, as alleged herein;
- 28 (e) Failing to authorize and permit Plaintiffs and class members to take all

rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(g) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code sections 204, as alleged herein; and

(h) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

135. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

136. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

137. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

138. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or

1 associations.

2 139. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
3 harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injuries
4 in fact and have lost money as a result of Defendants' unfair business practices. Plaintiffs seek
5 to enforce important rights affecting the public interest within the meaning of Code of Civil
6 Procedure section 1021.5.

7 140. Defendants' activities, namely Defendants' company-wide practice and/or policy
8 of not paying Plaintiffs and class members all meal and rest period premiums due to them under
9 Labor Code section 226.7, deprived Plaintiffs and class members of the compensation guarantee
10 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
11 section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and
12 secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
13 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiffs and
14 class members as part of their employment with Defendants, and thus Defendants' practice
15 and/or policy of denying these statutory benefits constitutes an unfair business practice in
16 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

17 141. A violation of California Business & Professions Code sections 17200, *et seq.*
18 may be predicated on any unfair business practice. In the instant case, Defendants' policies and
19 practices have violated the spirit of California's meal and rest period laws and constitute acts
20 against the public policy behind these laws.

21 142. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
22 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
23 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
24 commences four years prior to the filing of the initial complaint; a permanent injunction
25 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs
26 and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure
27 section 1021.5 and other applicable laws; and an award of costs.

28 ///

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs request a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against
5 Defendants, jointly and severally, as follows:

6 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
7 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
8 reserve the right to amend their prayer for relief to seek a different amount.

9 **Class Certification**

10 2. That this case be certified as a class action;

11 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

12 4. That counsel for Plaintiffs be appointed as class counsel.

13 **As to the First Cause of Action**

14 5. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
16 pay all overtime wages due to Plaintiffs and class members;

17 6. For general unpaid wages at overtime wage rates and such general and special
18 damages as may be appropriate;

19 7. For pre-judgment interest on any unpaid overtime compensation commencing
20 from the date such amounts were due, or as otherwise provided by law;

21 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
22 California Labor Code section 1194(a); and

23 9. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Second Cause of Action**

26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
28 Order by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff Cecena and class members;

17. That the Court make an award to the Plaintiff Cecena and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiffs and class members to take all rest periods;

2 24. That the Court make an award to the Plaintiffs and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a rest period was not
4 authorized and permitted;

5 25. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 26. For premiums pursuant to California Labor Code section 226.7(c);

8 27. For pre-judgment interest on any unpaid rest period premiums from the date such
9 amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
17 Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate
18 itemized wage statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Sixth Cause of Action**

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 and/or meal and rest period premiums owed at the time of termination of the employment of
3 Plaintiffs and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 38. For waiting time penalties according to proof pursuant to California Labor Code
7 section 203 for all employees who have left Defendants' employ;

8 39. For pre-judgment interest on any unpaid wages from the date such amounts were
9 due, or as otherwise provided by law;

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Seventh Cause of Action**

15 42. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime
17 wages, minimum wages, and/or meal and rest period premiums pay during their employment;

18 43. For all actual, consequential and incidental losses and damages, according to
19 proof;

20 44. For statutory penalties according to proof pursuant to California Labor Code
21 section 210;

22 45. For pre-judgment interest on any unpaid wages from the date such amounts were
23 due, or as otherwise provided by law;

24 46. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 47. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 ///

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiffs and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), 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;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' 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;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiff Cecena and class members all meal periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing to timely pay Plaintiffs and class members all earned wages during employment, and failing to reimburse Plaintiffs and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

63. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiffs and class members and prejudgment interest from the day such amounts were due and payable;

66. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

68. For pre-judgment and post-judgment interest as provided by law; and

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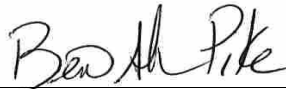
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1 69. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: August 23, 2024

Respectfully submitted,

5 Capstone Law APC

6
7 By: 

8 Bevin Allen Pike

Daniel S. Jonathan

9 Trisha K. Monesi

Shealene P. Mancuso

10 Attorneys for Plaintiffs Gabriela Cecena and
11 Elva Verdugo

EXHIBIT “1”



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

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):¹

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

¹ 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)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



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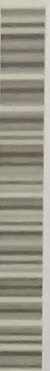
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EXHIBIT “2”

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

June 18, 2024

VIA ONLINE SUBMISSION

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

Subject: *Elva Verdugo v. Dolphin California Management, LLC, et al.*

Dear PAGA Administrator:

This office represents Elva Verdugo in connection with her claims under the California Labor Code. Ms. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo as an hourly paid, non-exempt employee from approximately December 2016 to July 2023. Ms. Verdugo worked as a Room Attendant at DCM’s hotels located in San Diego, California. Ms. Verdugo typically worked seven (7) hours or more per day, and five (5) days or more per week. At the time Ms. Verdugo’s employment ended with DCM, she was

compensated approximately \$20.00 per hour. Ms. Verdugo's primary job duties 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. Verdugo, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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.

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

DCM willfully failed to pay all overtime wages owed to Ms. Verdugo and other aggrieved employees. During the relevant time period, Ms. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo was required to continue working up to 30 minutes after her scheduled shift end-times, completing tasks, such as finishing room turnover and replenishing linens and toiletries, before she could leave for the day. For the same reasons, other aggrieved employees were required to arrive up to one (1) hour prior to their scheduled shift-start time and begin working—preparing their cleaning cart, replenishing cleaning chemicals, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet DCM's expectation of completing 15 room assignments and their other daily tasks within their scheduled shift hours. As a further example, other aggrieved employees were required to clock out at their 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, 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 other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, 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 other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, other aggrieved employees were required to work through all or part of their meal periods because they were required to answer questions from DCM's management regarding the status of completing their assigned guest rooms or to replenish rooms with toiletries, linens, and other supplies. Thus, 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 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 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 other aggrieved employees were too busy with their workload to take a compliant meal period, their manager would tell them to adjust their meal period punch times to appear compliant by submitting a time change request form at the end of their shift. Thus, DCM did not record all hours worked

during meal periods 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. Verdugo and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Verdugo 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. Verdugo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, DCM did not pay Ms. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo and other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Ms. Verdugo's and other aggrieved employees' wage statements as "BNS" and "INC." During the pay periods that Ms. Verdugo and other aggrieved employees were paid overtime wages, DCM did not incorporate these payments into Ms. Verdugo'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. Verdugo 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. Verdugo and other aggrieved employees on a company-wide basis.

DCM's failure to pay Ms. Verdugo 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. Verdugo 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. Verdugo and other aggrieved employees were required to perform various work-related tasks off-the-clock, including, but not limited to, completing room turnover, preparing cleaning carts, replenishing supplies, and performing closing duties. DCM failed to track this time Ms. Verdugo and other aggrieved employees spent working off-the-clock, and Ms. Verdugo 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, 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 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 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. Verdugo 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. Verdugo 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. Verdugo 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 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 other aggrieved employees from taking all compliant meal periods. As a result of DCM's practices and/or policies, 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, other aggrieved employees were required to take their 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, other aggrieved employees had their 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 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 other aggrieved employees to submit timesheet correction forms to record that they had received compliant meal periods on shifts when they 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. 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, 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 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, other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that DCM did pay other aggrieved employees for missed, late, and interrupted meal periods, DCM did not pay 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. 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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Verdugo 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. Verdugo and other aggrieved employees during rest periods.

As a result of DCM's practices and policies, Ms. Verdugo 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. Verdugo would sometimes have to forgo her rest periods altogether due to the heavy workload and lack of rest period coverage. When Ms. Verdugo was able to take her rest periods, they were often interrupted because she was required to respond to requests for linens and supplies.

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. Verdugo and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DCM did pay Ms. Verdugo and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DCM did not pay Ms. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DCM issued uniform wage statements to Ms. Verdugo 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. Verdugo and other aggrieved employees spent working off-the-clock and/or 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. Verdugo 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. Verdugo 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. Verdugo'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. Verdugo 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. Verdugo and other aggrieved employees that fail to list the employing entity's address. Ms. Verdugo'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. Verdugo 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/or meal period start and end times for Ms. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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, on information and belief, DCM had a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, DCM terminated Ms. Verdugo on July 20, 2023, but did not provide Ms. Verdugo with her final paycheck until a day later. Thus, DCM failed to pay Ms. Verdugo her final wages immediately, in violation of Labor Code section 201.

Additionally, DCM willfully failed to pay Ms. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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. Verdugo 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 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, other aggrieved employees purchased supplies such as cleaning chemicals, spray bottles, and sponges because DCM failed to provide them with the necessary supplies, tools, and/or equipment needed to complete their assigned duties. Although DCM required 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. Verdugo 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. Verdugo and other aggrieved employees. At all relevant times, Ms. Verdugo 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. Verdugo and other aggrieved employees in violation of California Labor Code section 2802. Ms. Verdugo 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. Verdugo’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Verdugo 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. Verdugo, 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. Verdugo 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)

Capstone Law, APC
1875 Century Park, East, 1000
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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **August 23, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Cheryl Wilke (SBN 216109)
cheryl.wilke@lewisbrisbois.com

Ross Poole (SBN 285948)
Ross.Poole@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP
550 West C Street, Suite 1700

San Diego, California 92101

Tel.: (619) 233-1006

Fax: (619) 233-8627

Attorneys for Defendant(s)

DOLPHIN CALIFORNIA

MANAGEMENT, LLC; DOLPHIN

HOTEL MANAGEMENT, LLC; and

CLEARVIEW HOTEL CAPITAL, LLC,

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 23, 2024**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name

Signature

