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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

RICHARD WARD, as an individual and
on behalf of all employees similarly
situated,

Plaintiff,

v.

MILLER-JONES MORTUARY &
CREMATORY, INC., a corporation
doing business in California; and DOES 1
through 50, inclusive,

Defendants.

Case No.: **RIC2002589**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Labor Code §§ 226.7, IWC Wage Order 16 (Rest Period Violations);
4. Violation of Labor Code § 226 (Failure to Provide Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
6. Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties) and
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practice).
8. Violation of Labor Code § 2698 et seq., the Private Attorneys General Act ("PAGA").

REQUEST FOR JURY TRIAL

Plaintiff Richard Ward ("Plaintiff" or "Mr. Ward"), on behalf of himself and all employees similarly situated, complains and alleges as follows:

- 1 (e) Willfully refusing to furnish accurate itemized wage statements upon payment
2 of wages;
3 (f) Willfully refusing to pay all wages due upon separation of employment;
4 (g) Willfully refusing to pay for expenditures or losses in the discharge of their
5 duties; and
6 (h) Willfully engaging in unfair business practices.

7 **JURISDICTION AND VENUE**

8 5. This Court has subject matter jurisdiction over the causes of action alleged in this
9 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
10 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
11 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
12 collectively amongst all employees do not exceed five million dollars (\$5,000,000.00).

13 6. Defendants are a California corporation believed to be doing business in the
14 State of California.

15 7. Defendants Miller-Jones Mortuary & Crematory, Inc. are a California Corporation
16 located at 1501 W. Florida Ave. Hemet, CA. 92543. There is no federal question at issue, as the
17 issue herein are based solely on California statutes and law, including the Labor Code, Industrial
18 Welfare Commission ("IWC") Wage Orders, Code of Civil Procedure, Business and Professions
19 Code and Rules of Court. By doing business in the state of California, Defendants have
20 purposefully availed themselves of the state's jurisdiction. Accordingly, as personal jurisdiction
21 over Defendants would be constitutional, California's long-arm statute provides that California
22 courts may exercise personal jurisdiction over Defendants. (Code Civ. Pro. § 410.10.)

23 8. Venue is proper in the County of Riverside, because Defendants perform business
24 in the County of Riverside, and the acts set forth herein occurred in the County of Riverside

25 //

26 //

THE PARTIES

Plaintiff

9. Plaintiff, at all relevant times herein, was an employee of Defendants from on or about March 8, 2019 until February 28, 2020, as a body removal technician.

10. Plaintiff is entitled to compensation for all hours worked, overtime compensation, premium pay, reporting time pay, business expense reimbursements, and penalties from Defendants.

Defendants

11. Plaintiff is informed and believes, and based thereon alleges, that Miller-Jones Mortuary & Crematory, Inc. is a California Corporation with a headquartered in California, and doing business in the state of California, and was the employer of the Plaintiff and similarly situated employees during the Relevant Time Period. Defendant Miller-Jones Mortuary & Crematory, Inc. has facilities in California, including in Riverside County. Defendant is in the business of mortuary services throughout California.

12. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendant when ascertained.

13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or single business enterprise, integrated enterprise and/or are agents of one another, are alter egos, joint employers and conspire with one another to increase profits by engaging in the conduct described in this complaint.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,

1 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
2 below was acting, at least in part, within the course and scope of that authority as such agent,
3 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
4 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
5 are legally attributable to the other Defendants.

6 **FACTUAL ALLEGATIONS**

7 15. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny their
8 employees the benefits due under California's wage and hour laws for work performed in
9 California. Defendants wrongfully refused to pay Plaintiff and the Putative Class minimum
10 wages, overtime compensation, reporting time pay, business expense reimbursements, and other
11 statutory benefits mandated by California.

12 16. Defendants provide services focus on the mortuary science of caring for and
13 preparing a body for burial or cremation, removal, and transportation of the body throughout
14 California. Defendants' business model is to take care of every detail involved with planning a
15 funeral or memorial service. Once the consumer purchases a service package, Defendants would
16 direct Plaintiff and the Putative Class to remove the body from the place of death to their facility
17 for preparation corresponding to their service package.

18 17. Plaintiff and Putative Class frequently worked over eight (8) hours per day and/or
19 over forty (40) hours each week. However, Defendants failed to compensate them the required
20 minimum wage and overtime compensation in violation of the Labor Code and the IWC Wage
21 Orders. Defendant implemented an unlawful rounding policy that affected the calculation of
22 compensable time for Plaintiff and Putative Class.

23 18. Plaintiff and Putative Class were compensated at a fixed rate per person they
24 received, transported and prepared regardless of the amount of work performed. Plaintiff and
25 Putative Class were not compensated for non-productive time.

26 19. Defendants fail to timely paid Plaintiff and Putative Class all wages during their
27 employment, including overtime payment. Plaintiff paystubs did not accurately reflect all wages
28 owed.

20. Defendants fail to prove Plaintiff and Putative Class with itemized wage statements.

21. Furthermore, Defendants failed to provide Plaintiff and the Putative Class with meal periods in violation of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders. Plaintiff and the Putative Class were entitled to timely, uninterrupted, thirty (30) minute meal periods prior to the end of each five (5) hours worked, but often did not receive these.

22. Defendant also failed to permit complaint rest periods. Specifically, Plaintiff and the Putative Class could not take any duty-free breaks lasting ten (10) minutes in violation of the Labor Code and the IWC Wage Orders.

23. Defendant further failed to reimburse Plaintiff and the Putative Class for any necessary business expenses. Specifically, Plaintiff and the Putative Class were required use of their personal cellphone to maintain communication between themselves and dispatchers. However, Defendants failed to reimburse Plaintiff and the Putative Class for all expenses spent for business purposes in violation of the Labor Code and the IWC Wage Orders.

PAGA ADMINISTRATIVE PREREQUISITE

24. Plaintiff brings this case in part as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorneys General Act (hereinafter “PAGA”) Labor Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was employed by Defendants and did not receive all wages due, was not provided lawful meal and rest breaks due to the Defendants’ policies and practices, did not receive all wages due at the termination of employment, and who was forced to incur necessary business expenses for which Defendants failed to reimburse.

25. Prior to filing this Complaint, on April 27, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (hereinafter “LWDA”) and to Defendants of the specified provisions alleged to have been violated, including the facts and theories that support the alleged violation as required by Labor Code section 2699.3. (LWDA Case No. LWDA-CM-784679-20.)

26. The LWDA has not provided Plaintiff with any notice that it intends to investigate

1 the violations as alleged in Plaintiff's LWDA notice and more than 65 calendar days have elapsed
2 since the postmark date of that notice.

4 **CLASS ALLEGATIONS**

5 27. Plaintiff brings this action on behalf of himself and all other similarly situated
6 persons, as a class action pursuant to Code of Civil Procedure section 382. The Putative Class
7 consists of all individuals who worked for Defendants in California location during the Relevant
8 Time Period who were California Citizens at the time of the filing of this complaint. Plaintiff
9 reserves the right under California Rules of Court, rule 3.765, to amend or modify the Putative
10 Class description, or to further divide the Putative Class into subclasses by limitation to particular
11 issues or by other means.

12 28. This action has been brought and may be maintained as a class action pursuant to
13 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
14 litigation, and because the Putative Class is easily ascertained by Defendants' personnel and
15 payroll records.

16 **Numerosity**

17 29. The potential members of the class as defined are so numerous that joinder of all
18 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
19 Plaintiff is informed and believes that Defendant has employed more than 25 employees at any
20 given time during the Class Period, and that the Putative Class may contain as many as 50
21 employees total.

22 **Commonality**

23 30. There are common questions of law and fact arising out of Defendants' conduct
24 as described herein, including, but not limited to:

- 25 a. Whether Defendants failed to pay all wages, including minimum and overtime
26 wages, due to Plaintiff and the Putative Class;
- 27 b. Whether Defendants failed, and continue to fail, to provide meal periods or
28 premium compensation in lieu thereof to Plaintiff and the Putative Class;

- 1 c. Whether Defendants failed, and continue to fail, to authorize and permit
2 Plaintiff and the Putative Class to take rest breaks, or pay premium
3 compensation in lieu thereof;
- 4 d. Whether Defendants failed to furnish wage statements to Plaintiff and the
5 Putative Class containing all information required by Labor Code section
6 226(a);
- 7 e. Whether Defendants failed to pay all unpaid wages earned during the course
8 of employment to Plaintiff and the Putative Class upon the separation of their
9 employment;
- 10 f. Whether Defendants failed to reimburse Plaintiff and the Putative Class for all
11 necessary business expenditures, including but not limited to the use of their
12 personal vehicles; and
- 13 g. Whether Defendants engaged in unlawful or unfair business practices.

14 **Typicality**

15 31. Plaintiff's claims are typical of the Putative Class's claims, all of whom have
16 incurred and/or will incur damages, as a result of Defendants' common course of conduct and
17 common policies and practices. The claims of Plaintiff are typical because of Defendants
18 subjected all of its non-exempt employees to identical violations of the California IWC Wage
19 Orders, California Code of Regulations, California Labor Code, and California Business and
20 Professions Code, among other statutes.

21
22 **Adequacy of Representation**

23 Plaintiff will fairly and adequately represent and protect the interests of the Putative Class.
24 Plaintiff's interests are not in conflict with those of the Putative Class. Plaintiff's attorneys are
25 competent, well-versed, and experienced in litigating employment class actions and other
26 complex litigation matters.

27 **Superiority of Class Action**
28

1 32. Under the facts and circumstances set forth above, a class action is superior to any
2 other method available for both the fair and efficient adjudication of the rights of each class
3 members inasmuch as joinder of individual relatively small claims of Putative Class members is
4 not practical, and if each employee were required to file an individual lawsuit, the corporate
5 Defendants would necessarily gain an unconscionable advantage since they would be able to
6 exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Putative
7 Class member to pursue an individual remedy would also discourage the assertion of lawful
8 claims by employees fearful of retaliation and permanent damage to their careers at present
9 and/or subsequent employment. Further, the substantial risk of inconsistent or varying verdicts
10 or adjudications with respect to the individual Class Members against Defendants herein further
11 support class certification.

12 **FIRST CAUSE OF ACTION**

13 **Failure to Pay All Wages Owed, Including Minimum Wage and Overtime**

14 **(Plaintiff Against All Defendants)**

15 33. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
16 fully alleged herein.

17 34. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
18 wage for all industries shall not be less than nine dollars (\$9) per hour, and on and after January
19 1, 2016, the minimum wage for all industries shall not be less than ten (\$10) per hour. For
20 employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the
21 minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January
22 1, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11) per
23 hour. As of January 1, 2019, through December 31, 2019, the minimum wage rate in California
24 is twelve dollars (\$12) per hour. Plaintiff is informed and believes Defendants employ more than
25 26 employees and thus fall within all requirements of section 1182.12.

26 35. Additionally, many California cities and counties impose a separate minimum
27 wage higher than that set by section 1182.12, which members of the Putative Class may fall
28 under.

1 36. Notwithstanding any other provision of the Labor Code, hourly minimum wage
2 rates are set for all industries according to statute. (Lab. Code § 1182.12). Employers must pay
3 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194; IWC Wage
4 Order 16-2001, Sect. 4.)

5 37. Any work in excess of eight hours in any workday and any work in excess of 40
6 hours in a workweek shall be compensated at a rate of no less than one and one-half times the
7 regular rate of pay for an employee. (Lab. Code, § 510, subd. (a); IWC Wage Order 16-2001,
8 Sect. 3(A)). Any work in excess of 12 hours in a workday shall be compensated at the rate of
9 twice the regular rate of pay for an employee. (*Ibid.*)

10 38. Any employee receiving less than the legal minimum wage or legal overtime
11 compensation is entitled to recover in a civil action the amount of unpaid wages and interests
12 thereon, attorneys' fees, and costs of suit. (Lab. Code, § 1194, subd. (a)).

13 39. Each workday an employee is required to report for work and does report, but is
14 not put to work or furnished less than half said employee's usual or scheduled day's work, the
15 employee shall be paid for half the usual or scheduled day's work, but in no event for less than
16 two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall
17 not be less than the minimum wage. (IWC Wage Order 16-2001, Sect. 3 and 4.)

18 40. All wages earned in employment are due and payable twice during each calendar
19 month on dates designated in advance by the employer. (Lab. Code, § 204).

20 41. Plaintiff and the Putative Class regularly worked over eight (8) hours per day and
21 forty (40) hours per week. Defendants failed to pay Plaintiff and the Putative Class all minimum
22 wage, overtime premiums, and/or double-time premiums for all hours worked in excess of eight
23 (8) hours per day and/or forty (40) hours per week for work performed for Defendants. Pursuant
24 to Labor Code sections 510, 1182.12, 1194, and section 3 of IWC Wage Order 16-2001, Plaintiff
25 and the Putative Class seek the payment of all minimum wage, overtime, and/or double-time
26 compensation, and reporting time pay earned and accrued beginning four (4) years prior to filing
27 this complaint, according to proof.

28 42. Additionally, Plaintiff and the Putative Class are entitled to liquidated damages,

attorneys' fees, and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Premium Compensation in Lieu Thereof

(Plaintiff against All Defendants)

43. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

44. Labor Code sections 226.7 and 512 and IWC Wage Order 16-2001, Sect. 11 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

45. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendants failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

46. At all relevant times, Plaintiff and the Putative Class have worked shifts of more than five (5) hours in a workday.

47. Pursuant to Labor Code section 226.7, Plaintiff and the Putative Class are entitled to damages equal to one (1) hour of wages at their regular rate of pay for each missed meal break, in an amount according to proof.

48. At varying times relevant hereto, Plaintiff and the Putative Class have worked shifts of more than ten (10) hours in a workday.

49. Plaintiff individually, and on behalf of the Putative Class, requests recovery of meal period premium compensation pursuant to Labor Code section 226.7 which they are owed

1 beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory
2 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code
3 and/or other statutes.

4 50. Pursuant to Code of Civil Procedure section 1021.5 and any other applicable
5 provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred
6 in this action.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof**

9 **(Plaintiff against All Defendants)**

10 51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
11 fully set forth herein.

12 52. Labor Code section 226.7 provides that employers authorize and permit all
13 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours,
14 or major fraction thereof.

15 53. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
16 provide and employee rest periods in accordance with this section, the employer shall pay the
17 employee one (1) hour of pay at the employees' regular rate of compensation for each workday
18 that the rest period is not provided. Plaintiff and the Putative Class consistently worked over
19 four (4) hours per shift with no rest breaks, due to Defendants' uniform policies and practices.

20 54. Defendants failed to reasonably make available rest breaks to Plaintiff and the
21 Putative Class during the Relevant Time Period.

22 55. Plaintiff and the Putative Class are entitled to damages in an amount equal to one
23 (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil
24 Procedure section 1021.5 and any other applicable provision of law, Plaintiff requests the court
25 award reasonable attorneys' fees and costs incurred in this action.

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Itemized Wage Statements and Maintain Records**

3 **(Plaintiff against All Defendants)**

4 56. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
5 fully set forth herein.

6 57. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage
7 Orders, provide that employers must keep records and provide employees with itemized wage
8 statements showing all hours worked and each applicable rate of pay in effect during the pay
9 period with the corresponding number of hours worked at each hourly rate.

10 58. Labor Code section 1174, subdivision (d), requires employers to keep at a central
11 location in California or at the plant or establishment at which the employees are employed,
12 payroll records showing the hours worked daily, and the wages paid to, each employee. Labor
13 Code section 226, subdivision (a), requires employers to provide employees – either as a
14 detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
15 wages are paid by personal check or cash – an accurate itemized wage statement in writing
16 including specified information, including but not limited to: (1) gross wages earned; (2) total
17 hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4) all
18 deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
19 paid; (7) the name of the employee and only the last four digits of his or her social security
20 number or an employee identification number other than a social security number; (8) the name
21 and address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in
22 effect during the pay period and corresponding number of hours worked at each hourly rate by
23 the employee...” (Lab. Code § 226.) Labor Code section 226, subdivision (e), provides that if
24 an employer knowingly and intentionally fails to provide a statement itemizing, inter alia, the
25 gross and net wages earned, the total hours worked by the employee and the applicable hourly
26 overtime rates, causing the employee injury, then the employee is entitled to recover the greater
27 of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100)
28 for each subsequent violation, up to four thousand dollars (\$4,000). Plaintiff is informed and

believes that Defendants willfully failed to make or keep accurate records for Plaintiff and Putative Class.

59. The IWC Wage Orders require that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work periods, the total daily hours worked by each employee and the total hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that Defendants willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and the Putative Class. Specifically, Plaintiff believes that Defendants did not maintain records for Plaintiff and the Putative Class reflecting their time worked and applicable rate of pay, and did not issue any itemized wage statements.

60. An employee is deemed to suffer injury if the employer fails to provide a wage statement containing all of the required information set forth in Labor Code section 226, subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper rates of pay, records of missed meal and rest breaks and/or premium pay make it difficult for employees to determine whether they were paid all wages due without complicated calculations and/or reconstruction of records required to be maintained by the employer.

61. For each employee suffering an injury as a result of Defendants' knowing and intentional failure to provide an accurate, itemized wage statement the employee is entitled to recover the greater of actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.

62. Plaintiff is informed and believe that Defendants' failure to keep accurate payroll records, as described above, violated Labor Code sections 1174, subdivision (d) and 226, subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor Code section 2699, subdivision (f)(2). Plaintiffs and the Putative Class are entitled to penalties of \$100.00 for the initial violation, and \$200.00 for each subsequent violation for every pay period during which these records and information were not kept by Defendants.

63. Plaintiff is informed and believes that Defendants' failure to keep and maintain

1 accurate records and information and provide to Plaintiff and the Putative Class itemized wage
2 statements containing all of the information mandated by the Labor Code, as described above,
3 was knowing and intentional, and Plaintiff and the Putative Class are entitled to statutory
4 penalties for each pay period in which a violation occurred. Plaintiff further seeks recovery of
5 attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise
6 permitted by law.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Pay Wages Due upon Termination of Employment**

9 **(Plaintiff against All Defendants)**

10 64. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
11 fully set forth herein.

12 65. Plaintiff is informed and believes, and based thereon alleges, that as part of
13 Defendants' ongoing unfair business practices, Defendants failed to pay all employees all wages
14 earned during their employment at the time of their separation in violation of Labor Code
15 sections 201, 202, and 203.

16 66. Labor Code section 201 provides that employers are required to pay an employee
17 whose employment is terminated by the employer all wages earned and unpaid immediately
18 upon termination.

19 67. Labor Code section 202 requires employers to pay an employee who quits his or
20 her employment all wages earned and unpaid no later than 72 hours thereafter.

21 68. Labor Code section 203 provides that when an employer who fails to pay all wages
22 earned and due to an employee who is discharged or quits within the appropriate timeframes set
23 forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the
24 employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid,
25 up to 30 days.

26 69. Plaintiff and the Putative Class whose employment was severed within four (4)
27 years of the filing of this complaint until the date of entry of judgment, without being paid the
28 proper payments, are entitled to up to thirty (30) days of pay at their regular rate of pay as waiting

time penalties, as appropriate to Plaintiff and each member of the Putative Class.

SIXTH CAUSE OF ACTION

Indemnification for Expenditures or Losses in Discharge of Duties

(Plaintiff against All Defendants)

70. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

71. Defendants failed to indemnify Plaintiff and the Putative Class for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties. Specifically, Defendants failed to indemnify Plaintiff and the Putative Class for expenditures in direct consequence of the discharge of their duties to Defendants.

72. Defendants have not reimbursed Plaintiff and the Putative Class for all expenditures. Plaintiff and the Putative Class are therefore entitled to be paid damages, attorneys' fees, costs, and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory penalties, against Defendants in accordance with Labor Code section 2802, subdivision (d).

SEVENTH CAUSE OF ACTION

Unfair or Unlawful Business Practices

(Plaintiff and against All Defendants)

73. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein as if fully alleged herein.

74. Plaintiff brings this claim individually and on behalf of the Putative Class.

75. Business & Professions Code sections 17200 et seq., known as California's Unfair Competition Law ("UCL"), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

76. Business and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil action for violation of the UCL.

77. Labor Code section 90.5, subdivision (a), states it is the public policy of California

1 to vigorously enforce minimum labor standards in order to ensure employees are not required to
2 work under substandard and unlawful conditions, and to protect employers who comply with the
3 law from those who attempt to gain competitive advantage at the expense of their workers by
4 failing to comply with minimum labor standards.

5 78. Beginning at an exact date unknown to Plaintiff, but at least since the date four
6 years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as
7 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
8 business practices and acts described in this complaint, including but not limited to violations of
9 Labor Code sections 201-204, 226, 226.7, 351, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, and
10 2802, as well as other statutes as described above.

11 79. The violations of these laws and regulations, as well as of the fundamental
12 California public policies protecting workers, serve as unlawful predicate acts and practices for
13 purposes of Business and Professions Code sections 17200 et seq.

14 80. As a result of these actions, Plaintiff, on information and belief, alleges that
15 Defendants are able to unfairly compete with other comparable companies in the State of
16 California in violation of Business & Professions Code sections 17000 et seq. Due to these
17 unlawful, unfair and/or fraudulent business practices, Defendants have gained a competitive
18 advantage over other comparable companies doing business in the State of California.

19 81. The victims of these unlawful, unfair and/or fraudulent business practices include,
20 but are not limited to, Plaintiff, Putative class members, competing manufacturing and
21 construction companies in the State of California, and the general public. Plaintiff is informed
22 and believes, and based thereon alleges, that Defendants performed the above-mentioned acts
23 with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiff, the
24 Putative Class, other competitors, and the general public.

25 82. Plaintiff's success in this action will enforce important rights affecting the public
26 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
27 of himself.

28 83. Business and Professions Code section 17203 provides that a court may make such

orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and business practices alleged above.

84. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and the Putative Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods and other losses alleged herein, during the four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to Business and Professions Code section 17205.

85. Business and Professions Code section 17202 provides: “Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.” Plaintiff and Putative Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

86. Plaintiff requests injunctive relief pursuant to Business and Professions Code section 17203 to enjoin Defendants from continuing the unfair/unlawful business practices alleged herein.

Plaintiff herein takes upon enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

EIGHTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Plaintiff against all Defendants)

87. Plaintiff realleges and incorporates by reference all preceding paragraphs as if

1 fully alleged herein.

2 88. Plaintiff seeks recovery of penalties under the Private Attorneys General Act of
3 2004 (“PAGA”), Labor Code sections 2698 et seq.

4 89. Section 2699, subdivision (f), of the Labor Code provides for civil penalties for
5 violations of the Labor Code, for which a specific civil penalty is not provided.

6 90. PAGA permits an “aggrieved employee” to recover penalties on behalf of
7 himself/herself and other similarly aggrieved employees subject to violations of the Labor Code.
8 Plaintiff seeks recovery of civil penalties for sections 201-204, 226, 226.7, 351, 510, 512, 1174,
9 1182.12, 1194, 1194.2, 1197, and 2802, and the applicable Wage Order.

10 91. Section 558 of the Labor Code provides for civil penalties for violations of the
11 Labor Code by “any employer or other person,” which includes Defendants BS, BSS, and BP.
12 Labor Code section 558 provides for the award of civil penalties that includes the amount each
13 employee was underpaid, and those underpaid wages are paid to the aggrieved employees.

14 92. Plaintiff is informed and believes Defendants at all relevant times employed one
15 or more employees.

16 93. For those code sections that provide for the recovery of civil penalties, Plaintiff
17 will seek those penalties on behalf of all aggrieved employees. Pursuant to Labor Code section
18 2699, subdivision (f), for those sections of the Labor Code that do not specifically provide for
19 civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100.00) for each
20 aggrieved employee for the initial violation, and two hundred dollars (\$200.00) for each
21 aggrieved employee, per pay period, for each subsequent violation. The “initial violation” occurs
22 during the first pay period following notice of such violations served on Defendant through the
23 letter sent to the LWDA.

24 94. Section 2699, subdivision (a), provides that civil penalties may be “recovered
25 through a civil action brought by an aggrieved employee on behalf of himself or herself and
26 other current or former employees.” (*Ibid.*) Section 2699, subdivision (g), provides that an
27 employee who prevails in a civil action under section 2699 shall be entitled to an award of
28 reasonable attorneys’ fees and costs.

1 95. The State of California, Plaintiff, and aggrieved employees are, therefore, entitled to
2 civil penalties, attorneys' fees, and costs, according to proof.
3

4 **PRAYER FOR RELIEF**

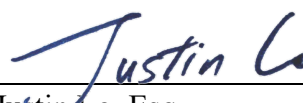
5 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 6 1. That the Court determine that this action may be maintained as a class action under
7 Code of Civil Procedure section 382;
8 2. That the Court appoint Plaintiff as Class Representative;
9 3. That the Court appoint Work Lawyers, PC as class counsel;
10 4. For compensatory and statutory damages;
11 5. For restitution of all monies due to Plaintiff and the Putative Class from the unlawful
12 business practices of Defendant;
13 6. For injunctive relief;
14 7. For statutory and civil penalties according to proof;
15 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,
16 subdivision (e), section 218.5, and section 1194, Code of Civil Procedure section
17 1021.5, and/or other applicable laws and/or statutes;
18 9. For penalties provided, per each violation, by PAGA, Labor Code section 2699, et
19 seq. for the violations as stated above, either as provided by each applicable Labor
20 Code section or section 2699, subdivision (f); and
21 10. For all such other and further relief as the Court may deem just and proper.
22
23
24

25 Dated: July 7, 2020

WORK LAWYERS, PC

26
27 By:


Justin Lo, Esq.

Attorney for Plaintiff Richard Ward
28

1
2
3 **DEMAND FOR JURY TRIAL**

4 Plaintiff Richard Ward hereby demands a jury trial on all issues so triable.

5
6 Dated: July 7, 2020

WORK LAWYERS, PC

7
8 By:

9 
Justin Lo, Esq.
Attorney for Plaintiff Richard Ward

1
2 **INTRODUCTION**

3 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
4 who were subjected to one or more of the violations alleged herein (“Putative Class”) by
5 Defendants Miller-Jones Mortuary & Crematory, Inc., (collectively “Defendants”). The term
6 “RELEVANT TIME PERIOD” or “TIME PERIOD” is defined as four (4) years prior to the
7 filing of the Complaint. Plaintiff reserves the right to amend this Complaint to reflect a different
8 “Time Period” as further discovery is conducted.

9 2. Plaintiff, individually and on behalf of the Putative Class, seeks relief against
10 Defendants for their: (1) failure to pay all wages due including regular and overtime wages and
11 minimum wages; (2) failure to provide meal periods or premium compensation in lieu thereof;
12 (3) failure to provide rest periods or premium compensation in lieu thereof; (4) failure to provide
13 accurate itemized wage statements; (5) failure to pay wages due upon termination of
14 employment; (6) failure to indemnify for expenditures or losses in discharge of duties; and (7)
15 unfair business practices under Business and Professions Code section 17200, et seq.

16 3. Additionally, Plaintiff seeks penalties in connection with Defendants’ Labor Code
17 violations based on the Private Attorneys’ General Act (“PAGA”), Labor Code section 2698, et
18 seq.

19 4. At all relevant times herein, Defendants has consistently maintained and enforced
20 the following unlawful policies and practices against Plaintiff and the Putative Class:

- 21 (a) Willfully refusing to pay all hours worked, including both regular, overtime,
22 and minimum wages;
23 (b) Willfully refusing to pay separate compensation for non-productive time
24 worked;
25 (c) Willfully refusing to permit off-duty meal periods or providing compensation
26 in lieu thereof;
27 (d) Willfully refusing to permit rest periods or providing compensation in lieu
28 thereof;