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 9 AARON SALAZAR and ANDREW FORREST

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN BERNARDINO**
 12 **(UNLIMITED JURISDICTION)**

13 AARON SALAZAR and ANDREW FORREST,
 14 as "aggrieved employees" on behalf of themselves
 15 and all other "aggrieved employees" under the
 16 Labor Code Private Attorney General Act of
 17 2004,

18 *Plaintiffs,*

19 vs.

20 DESERT CREMATION SOCIETY, INC., a
 21 California corporation; WIEFELS & SON, a
 22 California corporation; WIEFELS & SON II,
 23 INC., a California corporation; WIEFELS FD,
 24 INC., a California corporation; and DOES 1-50,
 25 inclusive,

26 *Defendants.*

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

JUN 14 2021

BY Nathaniel Johnson
 NATHANIEL JOHNSON, DEPUTY

Case No. **CIV SB 2116545**

**COMPLAINT FOR VIOLATIONS OF
 THE LABOR CODE AND CIVIL
 PENALTIES UNDER THE LABOR
 CODE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004, LABOR
 CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED**BY FAX**


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2

Aaron Salazar, et al. v. Desert Cremation Society., et al.

Complaint

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1 Plaintiffs, AARON SALAZAR and ANDREW FORREST (collectively “Plaintiffs”), on
2 behalf of themselves, the State of California, and other Aggrieved Employees, complain and
3 allege as follows:

4 **I. INTRODUCTION**

5 1. Plaintiffs bring this representative action based on alleged violations of the
6 California Labor Code and Industrial Welfare Commission Order No. 9-2001 (hereafter “the
7 Wage Order”), against Defendants DESERT CREMATION SOCIETY, INC., a California
8 corporation doing business as All Caring Cremations and All Caring Solutions, WIEFELS &
9 SON, a California corporation, WIEFELS & SON II, a California corporation doing business as
10 All California Cremation, WIEFELS FD, INC., a California corporation, and DOES 1-50,
inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
12 them, the State of California, and other similarly situated and aggrieved current and former
13 employees who worked in California as hourly, non-exempt employees, for civil penalties and
14 other related relief. These claims are based on Defendants’ failures to: (1) Pay all wages for all
15 hours at the correct rates of; (2) Provide all rest and meal periods; (3) Indemnify for necessary
16 work-related expenditures; (4) Provide accurate written wage statements; (5) Timely pay wages
17 during and upon termination of employment and; (6) Maintain accurate employment records.
18 Accordingly, Plaintiffs now seek to recover civil penalties and related relief through this
representative action.

19 **II. JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction because the aggregate claims of
21 Plaintiffs and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in
22 controversy.

23 4. There is no basis for federal question subject matter jurisdiction in this case.
24 Specifically, Plaintiffs assert claims on behalf of themselves, the State of California, and
Aggrieved Employees that solely arise under California law, rather than federal law.

25 5. There is also no basis for federal diversity jurisdiction in this case.

26 6. Venue is proper in San Bernardino County pursuant to California Code of Civil
27 Procedure § 395(a) and § 395.5 in that liability arose in San Bernardino County because at least
28 some of the transactions that are the subject matter of this Complaint occurred therein and/or



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1 because each defendant is found, maintains offices, transacts business, and/or has an agent
2 therein.

3 **III. THE PARTIES**

4 7. Plaintiff, AARON SALAZAR is a natural person and resident of the State of
5 California.

6 8. Plaintiff, ANDREW FORREST is a natural person and resident of the State of
7 California.

8 9. At all relevant times, Plaintiffs were “employees” within the meaning of Title 8
9 California Code of Regulations § 11090 and “aggrieved employees” within the meaning of Labor
10 Code § 2699(c).

11 10. Defendant DESERT CREMATION SOCIETY, INC., is a corporation organized
12 and existing under the laws of California and a citizen of California based on Plaintiffs’
13 information and belief. DESERT CREMATION SOCIETY, INC. is doing business in California
14 as All Caring Cremations and All Caring Solutions.

15 11. Defendant WIEFELS & SON is a corporation organized and existing under the
16 laws of California and a citizen of California based on Plaintiffs’ information and belief.

17 12. Defendant WIEFELS & SON II, INC., is a corporation organized and existing
18 under the laws of California and a citizen of California based on Plaintiffs’ information and belief.
19 WIEFELS & SON II, INC. is doing business in California as All California Cremation.

20 13. Defendant WIEFELS FD, INC., is a corporation organized and existing under the
21 laws of California and a citizen of California based on Plaintiffs’ information and belief.

22 14. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
23 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
24 are informed and believe and thereon allege that said Defendants are legally responsible for the
25 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
26 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
27 Defendants when ascertained.

28 15. Plaintiffs are informed and believe that each Defendant acted in all respect
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 that the acts of each Defendant are legally
attributable to each of the other Defendants.



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1 **A. THE AGGRIEVED EMPLOYEES**

2 16. The “Aggrieved Employees” are all individuals currently and formerly employed
3 by Defendants in California, as hourly, non-exempt employees, including, but not limited to
4 transport specialists, and persons in comparable positions, at any time during the period of March
5 19, 2020 and entry of judgment (“the PAGA Period”).

6 17. Plaintiffs are informed and believe and thereon allege that, at all relevant times
7 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
8 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
9 and scope of such agency or employment, and with the approval and ratification of each of the
10 other Defendants.

11 18. At all relevant times, in perpetrating the acts and omissions alleged herein,
12 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
13 of a practice which resulted in Defendants not paying Plaintiffs and the other Aggrieved
14 Employees in accordance with applicable California labor laws as alleged herein.

15 19. Plaintiffs are informed and believe and thereon allege that each and every one of
16 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
17 each acting as agents and/or employees, and/or under the direction and control of each of the other
18 defendants, and that said acts and failures to act were within the course and scope of said agency,
19 employment, and/or direction and control.

20 **IV. FACTUAL ALLEGATIONS**

21 20. In approximately September 2017, Plaintiff Salazar began working for
22 Defendants as an hourly transport specialist. Defendants employed him continuously from that
23 date until on or about June 16, 2020, when his employment ended.

24 21. In approximately February 2020, Plaintiff Forrest began working for Defendants
25 located at 272 South Mountain View Ave, San Bernardino, as an hourly transport specialist.
26 Since his hire date, Forrest has continuously worked for Defendants and is still employed in that
27 capacity.

28 22. At all relevant times, Defendants issued wages to Plaintiffs and the Aggrieved
Employees on a semi-monthly basis and paid them at an hourly rate of pay. At all relevant times,
Defendants classified Plaintiffs and the Aggrieved Employees as non-exempt employees entitled
to the protections of both the Labor Code and the Wage Order.



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1 23. At all relevant times, Plaintiffs and the Aggrieved Employees have worked over
2 eight (8) hours in one workday and/or over 40 hours in one workweek. Despite this, Defendants
3 failed to provide Plaintiffs and the Aggrieved Employees with all timely rest and meal periods
4 pursuant to California law. Due to the workload and low staffing levels, Defendants denied
5 Plaintiffs and the Aggrieved Employees their 30-minute duty-free meal period within the first
6 Five (5) hours of work. Defendants frequently forced Plaintiffs and the Aggrieved Employees to
7 forego timely, duty-free 30-minute meal periods by assigning them more time-sensitive work
8 than they could reasonably expect Plaintiffs and the Aggrieved Employees to complete within
their first five hours of work.

9 24. At all relevant times, Defendants failed to authorize and permit Plaintiffs and the
10 Aggrieved Employees to take rest periods in violation of California law. Due to high workload
11 and low staffing levels, Defendants failed to authorize and permit Plaintiffs and the Aggrieved
12 Employees to take 10-minute, paid, duty-free rest breaks every four (4) hours worked or major
13 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
14 Wage Order from the California Division of Labor Standards Enforcement. Furthermore,
15 Defendants failed to pay premium wages for days on which they failed to provide Plaintiffs and
16 the Aggrieved Employees with timely rest breaks and/or meal periods in compliance with
California law.

17 25. At all relevant times, Defendants required Plaintiffs and the Aggrieved Employees
18 to work on-call shifts. Defendants often required Plaintiffs and the Aggrieved Employees to
19 remain on-call 24 hours a day, for up to seven (7) days a week. However, Defendants did not pay
20 Plaintiffs and the Aggrieved Employees minimum, overtime, and double-time wages for such
21 calls. During such on-call shifts, Defendants restricted Plaintiffs and the Aggrieved Employees
22 in the types of activities they could perform and required them to stay available for additional
23 work duties at all times. Defendants prohibited Plaintiffs and the Aggrieved Employees from
24 consuming alcohol during the on-call shifts, and required them to stay within approximately a
25 25-mile radius of Defendants' office. Also, during these on-call periods, Defendants required
26 Plaintiffs and the Aggrieved Employees to monitor their phones for work-related calls at all
27 times. Defendants required Plaintiffs and the Aggrieved Employees to respond and travel to
28 Defendants office within 30 minutes of such calls, and subsequently to the assigned locations
within 30 minutes. Defendants, however, compensated the Aggrieved Employees only after they



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1 arrived to the assigned locations, and only for the period they worked at the assigned location.
2 Consequently, Defendants failed to compensate Plaintiffs and the Aggrieved Employees for all
3 hours spent on-call. Plaintiff Salazar complained to management about Defendants' Labor Code
4 and Wage Order violations. Defendants took no action to resolve his complaints.

5 26. At all relevant times, Defendants required Plaintiffs and the Aggrieved Employees
6 to incur certain business expenses in the course of performing their duties. Defendants required
7 Plaintiffs and the Aggrieved Employees to use their personal cell phones in the course of
8 performing their duties. Defendants communicated with Plaintiffs and the Aggrieved Employees
9 by phone regarding work instructions, scheduling, or to resolve work-related issues and did not
10 provide mobile phones or an alternative to them for this purpose. Additionally, Defendants did
11 not reimburse Plaintiffs and the Aggrieved Employees for their cell phone expenses.

12 27. As a result of these aforementioned violations, Defendants failed to provide
13 Plaintiffs and the Aggrieved Employees with accurate written wage statements; failed to pay
14 them all wages earned during employment; and failed to maintain accurate employee records
15 with respect to Plaintiffs and the Aggrieved Employees as required under California law.

16 28. For the reasons stated herein, Plaintiffs allege that as a result of Defendants'
17 unlawful practice and policies, Plaintiffs and the Aggrieved Employees were:

- 18 A. Not provided with all timely and off duty meal periods;
- 19 B. Not provided with all rest break periods as required by law;
- 20 C. Not paid one hour's pay for each workday in which Defendants failed to
21 provide them with one or more timely rest periods;
- 22 D. Not paid one hour's pay for each workday in which Defendants failed to
23 provide them with one or more timely meal periods;
- 24 E. Not paid for all hours worked at the correct rates of pay;
- 25 F. Not indemnified for all necessary business expenditures incurred during
26 the discharge of their duties;
- 27 G. Not provided with accurate and complete wage statements; and
- 28 H. Not timely paid all earned and unpaid wages during their employment with
Defendants and at the time such employment ended.

V. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES



(Lab. Code §§ 2698, *et seq.*)

(By Plaintiffs, on behalf of themselves and the other Aggrieved Employees,
against all Defendants)

29. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

30. At all relevant times, Plaintiffs and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

**A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT
THE CORRECT RATES OF PAY**

31. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]”

32. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

33. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.



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(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

34. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hour that an employer has actual or constructive knowledge that employees are working.

35. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

36. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

37. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

38. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

39. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

1 40. Plaintiffs are informed and believe that, at all relevant times, Defendants have
2 applied centrally devised policies and practices to them and the Aggrieved Employees with
3 respect to working conditions and compensation arrangements.

4 41. At all relevant times during the applicable limitations period, Defendants paid
5 Plaintiffs and the Aggrieved Employees at an hourly rate on a bi-weekly basis.

6 42. At all relevant times during the applicable limitations period, Defendants failed
7 to compensate Plaintiffs and the Aggrieved Employees for all hours worked, including, but not
8 limited to overtime wages during on-call shifts for all overtime hours they worked at the correct
9 rates of pay.

10 43. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
11 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
12 failure to compensate the Aggrieved Employees for all hours worked, including, but not limited
13 to, regular and overtime hours at the correct rates of pay.

14 **B. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

15 44. In relevant part, California Labor Code § 1198 states:

16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment
19 of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

21 45. In relevant part, In relevant part, California Labor Code § 512 states:

22 An employer shall not employ an employee for a work period of
23 more than five hours per day without providing the employee with
24 a meal period of not less than 30 minutes, except that if the total
25 work period per day of the employee is no more than six hours, the
26 meal period may be waived by mutual consent of both the
27 employer and employee.

28 An employer shall not employ an employee for a work period of
more than 10 hours per day without providing the employee with
a second meal period of not less than 30 minutes, except that if the
total hours worked is no more than 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.

 46. In relevant part, Section 12 of the Wage Order states:



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1 **Rest Periods**

2 (A) “Every employer shall authorize and permit all employees
3 to take rest periods, which insofar as practicable shall be in the
4 middle of each work period. The authorized rest period time shall
5 be based on the total hours worked daily at the rate of ten (10)
6 minutes net rest time per four (4) hours or major fraction thereof.
7 However, a rest period need not be authorized for employees
8 whose total daily work time is less than three and one-half (3 1/2)
9 hours. Authorized rest period time shall be counted as hours
10 worked for which there shall be no deduction from wages.”

11 (B) If an employer fails to provide an employee a rest period in
12 accordance with the applicable provisions of this Order, the
13 employer shall pay the employee one (1) hour of pay at the
14 employee’s regular rate of compensation for each work day that
15 the rest period is not provided.”

16 47. In relevant part, Section 11 of the Wage Order states:

17 **Meal Periods**

18 (A) No employer shall employ any person for a work period of
19 more than five (5) hours without a meal period of not less than 30
20 minutes, except that when a work period of not more than six (6)
21 hours will complete the day’s work the meal period may be waived
22 by mutual consent of the employee and the employee.

23 (B) An employer may not employ an employee for a work
24 period of more than ten (10) hours per day without providing the
25 employee with a second meal period of not less than 30 minutes,
26 except that if the total hours worked is no more than 12 hours, the
27 second meal period may be waived by mutual consent of the
28 employer and the employee only if the first meal period was not
 waived.

 (C) Unless the employee is relieved of all duty during a 30
 minute meal period, the meal period shall be considered an “on
 duty” meal period and counted as time worked. An on-duty” meal
 period shall be permitted only when the nature of the work
 prevents an employee from being relieved of all duty and when by
 written agreement between the parties an on-the-job paid meal
 period is agreed to. The written agreement shall state that the
 employee may, in writing, revoke the agreement at any time.

 (D) If an employer fails to provide an employee a meal period
 in accordance with the applicable provisions of this order, the



1 employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the
3 meal period is notprovided.

4 48. In relevant part, California Labor Code § 226.7 states:

5 (b) An employer shall not require an employee to work during
6 a meal or rest period mandated pursuant to an applicable statute,
7 or applicable regulation, standard, or order of the Industrial
8 Welfare Commission, the Occupational Safety and Health
9 Standards Board, or the Division of Occupational Safety and
10 Health.

11 (c) If an employer fails to provide an employee a meal period
12 or rest period in accordance with a state law, including, but not
13 limited to, an applicable statute or applicable regulation, standard,
14 or order of the Industrial Welfare Commission, the Occupational
15 Safety and Health Standards Board, or the Division of
16 Occupational Safety and Health, the employer shall pay the
17 employee one additional hour of pay at the employee's regular rate
18 of compensation for each work day that the meal or rest period is
19 not provided.

20 49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the
21 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
22 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
23 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

24 50. Pursuant to the Wage Order, Plaintiffs and the Aggrieved Employees were
25 entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of
26 work, or major fraction thereof.

27 51. Defendants intentionally failed to provide Plaintiffs and the Aggrieved
28 Employees with all required timely 30-minute duty free meal periods and 10-minute rest periods
free from any work duties in accordance with the Wage Order.

52. At all relevant times, Plaintiffs and the Aggrieved Employees have worked over
eight (8) hours in one workday and/or over 40 hours in one workweek. Despite this, Defendants
failed to provide Plaintiffs and the Aggrieved Employees with all timely rest and meal periods
pursuant to California law. Due to the workload and low staffing levels, Defendants denied
Plaintiffs and the Aggrieved Employees their 30-minute duty-free meal period within the first



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1 five (5) hours of work. Defendants frequently forced Plaintiffs and the Aggrieved Employees to
2 forego timely, duty-free 30-minute meal periods by assigning them more time-sensitive work
3 than they could reasonably expect Plaintiffs and the Aggrieved Employees to complete within
4 their first five hours of work.

5 53. Furthermore, at all relevant times, due to high workload and low staffing levels
6 Defendants failed to authorize and permit Plaintiffs and the Aggrieved Employees to take 10-
7 minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. Defendants
8 did not seek an exemption from the rest period protections of the Wage Order from the California
9 Division of Labor Standards Enforcement. Furthermore, Defendants failed to pay premium
10 wages for days on which they failed to provide Plaintiffs and the Aggrieved Employees with
11 timely rest breaks and/or meal periods in compliance with California law.

12 54. Plaintiffs are informed and believe and thereon allege that, at all relevant times
13 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
14 which resulted in Defendants not providing Plaintiffs and the Aggrieved Employees with all off-
15 duty meal periods and rest breaks required by California law.

16 **C. FAILURE TO INDEMNIFY**

17 55. In pertinent part, California Labor Code § 2802(a) states:

18 “An employer shall indemnify his or her employee[s] for all
19 necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her duties.”

21 56. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 57. At all relevant times, as a condition for employment, Defendants required
24 Plaintiffs and the Aggrieved Employees to use their personal cell phones in the course of
25 performing their duties. Defendants communicated with Plaintiffs and the Aggrieved Employees
26 by phone regarding work instructions, scheduling, or to resolve work-related issues and did not
27 provide mobile phones or an alternative to them for this purpose. Additionally, Defendants did
28 not reimburse Plaintiffs and the Aggrieved Employees for their personal cell phone expenses.

58. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
failure to indemnify Plaintiffs and the Aggrieved Employees for the reasonable expenses they



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1 incurred during the course of performing their duties.

2
3 **D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

4 59. Pursuant to California Labor Code § 226(a), Plaintiffs and the Aggrieved
5 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
6 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
7 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
8 each hourly rate by the employee.

9 60. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
10 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
11 the employer fails to provide accurate and complete information as required by California Labor
12 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
13 alone one or more of the following:

14 A. The amount of the gross wages or net wages paid to the employee during
15 the pay period or any of the other information required to be provided on the itemized wage
16 statement pursuant to California Labor Code § 226(a);

17 B. Which deductions the employer made from gross wages to determine the
18 net wages paid to the employee during the pay period;

19 C. The name and address of the employer and, if the employer is a farm labor
20 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
21 and address of the legal entity that secured the services of the employer during the pay period;

22 D. The name of the employee and only the last four digits of his or his social
23 security number or an employee identification number other than a social security number; and

24 E. The number of piece-rate units earned and the piece rate.

25 61. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
26 means a reasonable person would be able to readily ascertain the information without reference
27 to other documents or information.

28 62. At all relevant times, during the applicable limitations period, Defendants violated
California Labor Code § 226, in that they failed to properly and accurately itemize each and the
Aggrieved Employee’s gross wages earned, net wages earned, the total hours worked, the
corresponding number of hours worked at each rate by the and the Aggrieved Employee and other



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requirements of California Labor Code § 226.

63. Defendants' failure to provide Plaintiffs and the other Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the other Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

64. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiffs and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

E. UNTIMELY WAGES DURING EMPLOYMENT

65. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to



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total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

66. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiffs on such intervals for all wages earned for all hours worked including, but not limited to, all premium wages for all rest breaks and/or timely, off-duty meal periods that were not provided. On information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

F. UNTIMELY FINAL WAGES

67. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

68. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

69. Labor Code section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

70. By failing to pay earned minimum and premium wages to Plaintiffs and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

71. Plaintiffs are informed and believes that Defendants' failures to timely pay



1 Plaintiffs and the Aggrieved Employees all of their earned and unpaid wages have been willful in
2 that, at all relevant times, Defendants have deliberately maintained policies and practices that
3 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
4 they have had the ability to comply with those legal requirements.

5 **G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

6 72. Labor Code § 1174 states:

7 Every person employing labor in this state shall:

8 ...

9 (c) Keep a record showing the names and addresses of all employees
10 employed and the ages of all minors.

11 (d) Keep, at a central location in the state or at the plants or establishments
12 at which employees are employed, payroll records showing the hours worked
13 daily by and the wages paid to, and the number of piece-rate units earned by
14 and any applicable piece rate paid to, employees employed at the respective
plants or establishments. These records shall be kept in accordance with rules
established for this purpose by the commission, but in any case shall be kept
on file for not less than three years. An employer shall not prohibit an
employee from maintaining a personal record of hours worked, or, if paid on
a piece-rate basis, piece-rate units earned.

15 73. Labor Code § 1174.5 states:

16 Any person employing labor who willfully fails to maintain the records
17 required by subdivision (c) of Section 1174, or to allow any member of the
18 commission or employees of the division to inspect records pursuant to
19 subdivision (b) of Section 1174, shall be subject to a civil penalty of five
hundred dollars (\$500).

20 74. Section 7 of the Wage Order states,

21 (a) Every employer shall keep accurate information with respect to each
employee including the following:

- 22 1. Full name, home address, occupation, and social security number.
- 23 2. Birth date, if under 18 years, and designation as a minor.
- 24 3. Time records showing when the employee begins and ends each
work period. Meal periods, split shift intervals and total daily
hours worked shall also be recorded. Meal periods during which
operations cease and authorized rest periods need not be recorded.
- 25 4. Total wages paid each payroll period, including value of board,
lodging, or other compensation actually furnished to the
employee.
- 26 5. Total hours worked in the payroll period and applicable rates of
pay. This information shall be made readily available to the
employee upon reasonable request.



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6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

75. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

76. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods owed to Plaintiffs and the Aggrieved Employees.

H. CIVIL PENALTIES SOUGHT

77. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

78. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

79. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by



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1 Labor Code § 1174.5).

2 E. For violations of California Labor Code § 1197, one hundred dollars
3 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
4 hundred fifty dollars (\$250.00) for each and the Aggrieved Employee for each subsequent
5 violation, per pay period (regardless of whether the initial violations were intentionally
6 committed) (penalty amounts established by California Labor Code § 1197.1).

7 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
8 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
9 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
10 period for each subsequent violation (penalty amounts established by California Labor Code
11 § 2699(f)(2)).

12 **I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

13 80. Plaintiffs have complied with the procedures for bringing suit specified in
14 California Labor Code § 2699.3. By letter dated March 19, 2021, Plaintiff Salazar gave written
15 notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and
16 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
17 including the facts and theories to support the alleged violations. By letter dated April 5, 2021,
18 Plaintiff Forrest gave written notice by certified mail to the LWDA and Defendants of the specific
19 provisions of the California Labor Code alleged to have been violated, including the facts and
20 theories to support the alleged violations. True and correct copies of Plaintiffs’ letters to the
21 LWDA dated March 19, 2021 and April 5, 2021, are collectively attached hereto as Exhibit A.
22 The LWDA has not responded to Plaintiffs’ letters.

23 81. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved
24 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
25 connection with their claims for civil penalties.

26 **VI. PRAYER FOR RELIEF**

27 82. WHEREFORE, Plaintiffs, on behalf of themselves and the Aggrieved Employees,
28 prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and



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D. Such other relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: June 11, 2021

By: 
DAVID SPIVAK
CAROLINE TAHMASSIAN,
MAYA CHEAITANI, Attorneys for Plaintiffs,
AARON SALAZAR and ANDREW
FORREST, and all others similarly
situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

March 19, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Aaron Salazar / Desert Cremation Society*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Aaron Salazar (hereafter “Salazar”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to transport specialists, and persons in similar positions, (hereafter referred to as “Aggrieved Employees,”) by Desert Cremation Society, Inc., a California corporation doing business as All Caring Cremations and All Caring Solutions, Wiefels & Son, a California corporation, Wiefels & Son II, Inc., a California corporation doing business as All California Cremation, and Wiefels FD, Inc., a California corporation (hereafter collectively referred to as “DCS”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, DCS has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Salazar and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”), paragraph 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In approximately September 2017, Salazar began working for DCS as an hourly transport specialist. DCS employed him continuously from that date until on or about June 16, 2020, when his employment ended.

At all relevant times, DCS issued wages to Salazar and the Aggrieved Employees on a bi-monthly basis and paid them at an hourly rate of pay. At all relevant times, DCS classified Salazar and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Salazar and the Aggrieved Employees have worked over 8 hours in one workday and/or over 40 hours in one workweek. Despite this, DCS failed to provide Salazar and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays they worked more than 10 hours. Further, due to the workload and low staffing levels, DCS denied Salazar and the Aggrieved Employees their 30-minute duty-free meal period within the first 5 hours of work. DCS frequently forced Salazar and the Aggrieved Employees to forgo timely, duty-free 30-minute meal periods by assigning them more time-sensitive work than it could reasonably expect them to complete within their first five hours of work.

At all relevant times, DCS failed to authorize and permit Salazar and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, DCS failed to authorize and permit Salazar and the Aggrieved Employees to take 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. DCS did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Furthermore, DCS failed to pay premium wages for days on which it failed to provide Salazar and the Aggrieved Employees with timely rest breaks and/or meal periods in compliance with California law.

At all relevant times, DCS required Salazar and the Aggrieved Employees to work on-call shifts. DCS often required Salazar and the Aggrieved Employees to remain on-call 24 hours a day, 5 days a week. However, DCS did not pay Salazar and the Aggrieved Employees minimum, overtime, and double-time wages for such calls. During such on-call shifts, DCS restricted Salazar and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times. DCS prohibited Salazar and the Aggrieved Employees from consuming alcohol during the waiting periods of on-call shifts, and required them to stay within 30-minute driving distance from their work area. DCS required Salazar and the Aggrieved Employees to monitor their phones for work-related calls at all times. DCS required Salazar and the Aggrieved Employees to respond and show-up to the DCS office within 30-minutes of such calls, and subsequently to the assigned locations within 30-minutes. DCS, however, compensated the employees only when they arrived to the assigned locations, and only for the period they actually worked. Consequently, DCS failed to compensate Salazar and the Aggrieved Employees for all hours spent on-call. Salazar complained to management about DCS' Labor Code and Wage Order violations. DCS took no action to resolve his complaints.

At all relevant times, DCS required Salazar and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. DCS required Salazar and the Aggrieved Employees to use their personal cell phones in the course of performing their duties. DCS communicated with Salazar and the Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work-related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, DCS did not reimburse Salazar and the Aggrieved Employees for their cell phone expenses.

As a result of these aforementioned violations, DCS failed to provide Salazar and the Aggrieved Employees with accurate written wage statements; failed to pay them all wages earned during employment; and failed to maintain accurate employee records with respect to Salazar and the Aggrieved Employees as required under California law.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Salazar alleges that DCS committed the following violations of California Labor Code and the Wage Order,:

- a) DCS failed to provide Salazar and other Aggrieved Employees with all rest breaks and meal periods;
- b) DCS failed to compensate Salazar and other Aggrieved Employees at one hour's pay for each day in which they were not provided the rest breaks required by law;
- c) DCS failed to compensate Salazar and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) DCS failed to compensate Salazar and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) DCS failed to indemnify Salazar and other Aggrieved Employees for all business expenses;
- f) DCS failed to provide Salazar and other Aggrieved Employees with accurate wage statements; and
- g) DCS failed to timely pay Salazar and other Aggrieved Employees all earned and unpaid wages during their employment at DCS and at the time such employment ended.

Accordingly, Salazar now seeks civil penalties on behalf of himself and other Aggrieved Employees based on DCS' alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to:

“all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis...” (§1). Per §2 (P): “Transportation Industry” means any industry, business or establishment operated for the **purpose of conveying persons or property from one place to another** whether by rail, highway, air or water and all operations and services in connection therewith; and also includes storing or warehousing of goods or property and the repairing, parking, rental, maintenance or cleaning of vehicles.” (emphasis added).

At all relevant times during the applicable limitations period, DCS operated cremation and funeral services, including decedent transportation. Accordingly, Salazar and the Aggrieved Employees are entitled to the protections provided by the Wage Order.

Failure To Provide Rest Breaks And Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six

hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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 no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal

period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, 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 relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or

order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

DCS intentionally and improperly failed to provide all timely duty-free rest breaks and/or meal periods to Salazar and the Aggrieved Employees as required by law, including but not limited to, second meal periods and third rest periods on days they work directly or are on-call for more than 10 hours in a workday. DCS did not pay premium wages to Salazar and the Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by California law. In failing to do so, DCS violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Salazar seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in

addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means 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.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours

worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, DCS failed to compensate Salazar and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages during on-call shifts for all overtime hours they worked at the correct rates of pay.

Accordingly, Salazar seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were

intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As describe above, during the applicable limitations period, DCS required Salazar and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Salazar seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, DCS violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, Salazar seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed,

and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As a result of the above described violations, DCS failed to pay Salazar and the Aggrieved Employees within the time periods set by California Labor Code § 204 in that it failed to pay them for all hours worked at the correct rates of pay and failed to pay them premium wages for days on which it failed to provide them with one or more rest or meal periods.

Accordingly, Salazar seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an

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

DCS failed to pay Salazar and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with DCS. By failing to pay Salazar and the Aggrieved Employees as set forth above by such time, DCS is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Salazar seeks civil penalties from DCS as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
- (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions

made on written orders of the employee may be aggregated and shown as one item.

- (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.
- (D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

DCS has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Salazar and the Aggrieved Employees. Accordingly, Salazar seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699, subdivision (f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Walter Haines, Esq.
Aaron Salazar

Desert Cremation Society, Inc. dba All Caring Cremations, and All
Caring Solutions
c/o Mark Matthews
Agent for Service of Process
690 Vella Rd
Palm Springs, CA 92264

Wiefels & Son
c/o Mark J. Matthews
Agent for Service of Process
630 S Vella Rd
Palm Springs, CA 92264

Wiefels & Son II, Inc. dba All California Cremation
c/o Mark Matthews
Agent for Service of Process
690 Vella Rd
Palm Springs, CA 92264

LWDA / DCS

3/19/2021

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Wiefels FD, Inc.
c/o Michael J. Wiefels
Agent for Service of Process
50 East Nicolet St
Banning, CA 92220



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 5, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Andrew Forrest / Desert Cremation Society*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Andrew Forrest (hereafter “Forrest”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to transport specialists, and persons in similar positions, (hereafter referred to as “Aggrieved Employees,”) by Desert Cremation Society, Inc., a California corporation doing business as All Caring Cremations and All Caring Solutions, Wiefels & Son, a California corporation, Wiefels & Son II, Inc., a California corporation doing business as All California Cremation, and Wiefels FD, Inc., a California corporation (hereafter collectively referred to as “DCS”) of violations of California Labor Code §§ 204, 226, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, DCS has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Forrest and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage

Order”), paragraph 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In approximately February 2020, Forrest began working for DCS located at 272 South Mountain View Ave, San Bernardino, as an hourly transport specialist. Since his hire date, Forrest has continuously worked for DCS and is still employed in that capacity.

At all relevant times, DCS issued wages to Forrest and the Aggrieved Employees on a semi-monthly basis and paid them at an hourly rate of pay. At all relevant times, DCS classified Forrest and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Forrest and the Aggrieved Employees have worked over 8 hours in one workday and/or over 40 hours in one workweek. Despite this, DCS failed to provide Forrest and the Aggrieved Employees with all timely rest and meal periods pursuant to California law. Further, due to the workload and low staffing levels, DCS denied Forrest and the Aggrieved Employees their 30-minute duty-free meal period within the first 5 hours of work. DCS frequently forced Forrest and the Aggrieved Employees to forego timely, duty-free 30-minute meal periods by assigning them more time-sensitive work than it could reasonably expect them to complete within their first five hours of work.

At all relevant times, DCS failed to authorize and permit Forrest and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, DCS failed to authorize and permit Forrest and the Aggrieved Employees to take 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. DCS did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Furthermore, DCS failed to pay premium wages for days on which it failed to provide Forrest and the

Aggrieved Employees with timely rest breaks and/or meal periods in compliance with California law.

At all relevant times, DCS required Forrest and the Aggrieved Employees to work on-call shifts. DCS often required Forrest and the Aggrieved Employees to remain on-call 24 hours a day, for up to 7 days a week. However, DCS did not pay Forrest and the Aggrieved Employees minimum, overtime, and double-time wages for such calls. During such on-call shifts, DCS restricted Forrest and the Aggrieved Employees in the types of activities they could perform and required them to stay available for additional work duties at all times. DCS prohibited Forrest and the Aggrieved Employees from consuming alcohol during the on-call shifts, and required them to stay within approximately a 25-mile radius of DCS's offices. Also during these on-call periods, DCS required Forrest and the Aggrieved Employees to monitor their phones for work-related calls at all times. DCS required Forrest and the Aggrieved Employees to respond and travel to the DCS office within 30 minutes of such calls, and subsequently to the assigned locations within 30 minutes. DCS, however, compensated the Aggrieved Employees only when they arrived to the assigned locations, and only for the period they worked at the assigned location. Consequently, DCS failed to compensate Forrest and the Aggrieved Employees for all hours spent on-call.

At all relevant times, DCS required Forrest and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. DCS required Forrest and the Aggrieved Employees to use their personal cell phones in the course of performing their duties. DCS communicated with Forrest and the Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work-related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, DCS did not reimburse Forrest and the Aggrieved Employees for their cell phone expenses.

As a result of these aforementioned violations, DCS failed to provide Forrest and the Aggrieved Employees with accurate written wage statements; failed to pay them all wages earned during employment; and failed to maintain accurate

employee records with respect to Forrest and the Aggrieved Employees as required under California law.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Forrest alleges that DCS committed the following violations of California Labor Code and the Wage Order,:

- a) DCS failed to provide Forrest and other Aggrieved Employees with all rest breaks and meal periods;
- b) DCS failed to compensate Forrest and other Aggrieved Employees at one hour's pay for each day in which they were not provided the rest breaks required by law;
- c) DCS failed to compensate Forrest and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) DCS failed to compensate Forrest and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) DCS failed to indemnify Forrest and other Aggrieved Employees for all business expenses;
- f) DCS failed to provide Forrest and other Aggrieved Employees with accurate wage statements; and
- g) DCS failed to timely pay Forrest and other Aggrieved Employees all earned and unpaid wages during their employment at DCS.

Accordingly, Forrest now seeks civil penalties on behalf of himself and other Aggrieved Employees based on DCS' alleged violations of the California Labor Code and the Wage Order.

///

The Wage Order

The Wage Order applies to:

“all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis...” (§1). Per §2 (P): “Transportation Industry” means any industry, business or establishment operated for the **purpose of conveying persons or property from one place to another** whether by rail, highway, air or water and all operations and services in connection therewith; and also includes storing or warehousing of goods or property and the repairing, parking, rental, maintenance or cleaning of vehicles.” (emphasis added).

At all relevant times during the applicable limitations period, DCS operated cremation and funeral services, including decedent transportation. Accordingly, Forrest and the Aggrieved Employees are entitled to the protections provided by the Wage Order.

Failure To Provide Rest Breaks And Meal Periods (Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six

hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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 no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal

period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, 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 relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or

order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

DCS intentionally and improperly failed to provide all timely duty-free rest breaks and/or meal periods to Forrest and the Aggrieved Employees as required by law. DCS did not pay premium wages to Forrest and the Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by California law. In failing to do so, DCS violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Forrest seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means 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.

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the

regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, DCS failed to compensate Forrest and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages during on-call shifts for all overtime hours they worked at the correct rates of pay.

Accordingly, Forrest seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

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Failure to Reimburse for Expenses
(Lab. Code §§ 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As described above, during the applicable limitations period, DCS required Forrest and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Forrest seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, DCS violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, Forrest seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As a result of the above described violations, DCS failed to pay Forrest and the Aggrieved Employees within the time periods set by California Labor Code § 204 in that it failed to pay them for all hours worked at the correct rates of pay and failed to pay them premium wages for days on which it failed to provide them with one or more rest or meal periods.

Accordingly, Forrest seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code § 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

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Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate

production record shall be maintained by the employer.

- (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
- (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.
- (D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

DCS has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Forrest and the Aggrieved Employees. Accordingly, Forrest seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

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1. \$500 for each aggrieved employee for each violation of Labor Code § 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Walter Haines, Esq.
Andrew Forrest

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