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Attorneys for Plaintiff,

SHELIA CROMWELL, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

(UNLIMITED JURISDICTION)

SHELIA CROMWELL, as an "aggrieved
employee" on behalf of other similarly situated
"aggrieved employees" under the Labor Code
Private Attorney General Act of 2004,

Plaintiff,

vs.

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, a California corporation
doing business as All California Cremation;
WIEFELS FD, INC., a California corporation;
and DOES 1-50, inclusive,

Defendants.

Case No.: CIVSB2116331

**FIRST AMENDED 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

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

AUG 17 2021

BY Leanne M. Landeros
LEANNE M. LANDEROS, DEPUTY

BY FAX



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, SHELIA CROMWELL (hereafter “Plaintiff”), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complaints and alleges as follows:

3 **I. INTRODUCTION**

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

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 her, 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) Provide all rest and
15 meal periods; (2) Indemnify for necessary work-related expenditures; (3) Provide accurate written
16 wage statements; (4) Timely pay wages during and upon termination of employment and; (5)
17 Maintain accurate employment records. Accordingly, Plaintiff now seeks to recover civil
18 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 Plaintiff
21 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

22 4. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and Aggrieved
24 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, an individual and resident of California, on or about October 1, 2018,
5 began working for Defendants as an hourly transport specialist. Defendants employed her
6 continuously from that date until on or about March 18, 2020.

7 8. Defendant DESERT CREMATION SOCIETY, INC., is a corporation organized
8 and existing under the laws of California and a citizen of California based on Plaintiff's
9 information and belief.

10 9. Defendant WIEFELS & SON is a corporation organized and existing under the
11 laws of California and a citizen of California based on Plaintiff's information and belief.

12 10. Defendant WIEFELS & SON II, INC., is a corporation organized and existing
13 under the laws of California and a citizen of California based on Plaintiff's information and belief.

14 11. Defendant WIEFELS FD, INC., is a corporation organized and existing under the
15 laws of California and a citizen of California based on Plaintiff's information and belief.

16 12. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
18 is informed and believes and thereon alleges that said Defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
20 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
21 when ascertained.

22 **A. THE AGGRIEVED EMPLOYEES**

23 13. The "Aggrieved Employees" are all individuals currently and formerly employed
24 by Defendants in California, as hourly, non-exempt employees, including, but not limited to
25 transport specialists, and persons in comparable positions, at any time during the period of
26 March 17, 2020 and entry of judgment ("the PAGA Period").

27 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 herein, all Defendants were the agents, employees and/or servants, masters or employers of the



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1 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
2 and scope of such agency or employment, and with the approval and ratification of each of the
3 other Defendants.

4 15. At all relevant times, in perpetrating the acts and omissions alleged herein,
5 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
6 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
7 Employees in accordance with applicable California labor laws as alleged herein.

8 16. Plaintiff is informed and believes and thereon alleges that each and every one of
9 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
10 each acting as agents and/or employees, and/or under the direction and control of each of the other
11 defendants, and that said acts and failures to act were within the course and scope of said agency,
12 employment, and/or direction and control.

13 **IV. FACTUAL ALLEGATIONS**

14 17. On or about October 1, 2018, Plaintiff began working for Defendants as an hourly
15 transport specialist. Defendants employed her continuously from that date until on or about March
16 18, 2020, when Defendants temporarily suspended Plaintiff's employment because she suffered
17 an injury on the job which caused limited mobility in her left arm, preventing her from performing
18 all work duties. Plaintiff has not since returned to work. Plaintiff last performed her duties for
19 Defendants on or about March 18, 2020.

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

24 19. At all relevant times, Plaintiff and the Aggrieved Employees have worked over 8
25 hours in one workday and/or over 40 hours in one workweek. Despite this, Defendants failed to
26 provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods pursuant to
27 California law, including, but not limited to, two timely 30-minute uninterrupted meal periods
28 and three 10-minute rest periods on workdays they worked more than 10 hours. Further, due to



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1 the workload and low staffing levels Plaintiff and the Aggrieved Employees were denied their
2 30-minute duty-free meal period within the first 5 hours of work. Defendants frequently forced
3 Plaintiff and the Aggrieved Employees to forgo timely, duty-free 30-minute meal periods by
4 assigning them more time-sensitive work than they could reasonably expect them to complete
5 within their first five hours of work.

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

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

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

25 23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
26 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 27 A. Not provided with all off duty meal periods;
28 B. Not provided with all rest break periods as required by law;



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1 C. Not paid one hour's pay for each workday in which Defendants failed to
2 provide them with one or more timely rest periods;

3 D. Not paid one hour's pay for each workday in which Defendants failed to
4 provide them with one or more timely meal periods;

5 E. Not indemnified for all necessary business expenditures incurred during
6 the discharge of their duties;

7 F. Not provided with accurate and complete wage statements; and

8 G. Not timely paid all earned and unpaid wages during their employment with
9 Defendants and at the time such employment ended.

10 **V. FIRST (AND ONLY) CAUSE OF ACTION**

11 **CIVIL PENALTIES**

12 **(Lab. Code §§ 2698, *et seq.*)**

13 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against**
14 **all Defendants)**

15 24. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

18 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

19 26. In relevant part, California Labor Code § 1198 states:

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

25
26 27. In relevant part, In relevant part, California Labor Code § 512 states:

27
28 An employer shall not employ an employee for a work period of



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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 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.

28. 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 of ten (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

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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.”

29. 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 employee and the employer. 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.”

(B) 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 work day that the meal period is not provided.”

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

(b) An employer shall not require an employee to work during a meal or rest 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 period or rest 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 work day that the meal or rest period is not provided.

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

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

33. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods free from any work

1 duties in accordance with the Wage Order.

2 34. At all relevant times, Defendants failed to provide all timely duty-free rest breaks
3 and/or meal periods to Plaintiff and the Aggrieved Employees as required by law, including but
4 not limited to, second meal periods and third rest periods on days they worked more than 10
5 hours. Defendants also did not pay premium wages to Plaintiff and the Aggrieved Employees on
6 days they did not provide them with one or more timely meal and rest periods as required by
7 California law.

8 35. Plaintiff is informed and believes and thereon alleges that, at all relevant times
9 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
10 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
11 meal periods and rest breaks required by California law.

12 **B. FAILURE TO INDEMNIFY**

13 36. In pertinent part, California Labor Code § 2802(a) states:

14
15 “An employer shall indemnify his or her employee[s] for all
16 necessary expenditures incurred by the employee in direct
17 consequence of the discharge of his or her duties.”
18

19 37. California Labor Code § 1198 prohibits employers from employing their
20 employees under conditions prohibited by the Wage Order.

21 38. At all relevant times, as a condition for employment, Defendants required Plaintiff
22 and the Aggrieved Employees to use their personal mobile phones for work-related activities
23 without reimbursing them for mobile phone expenses.

24 39. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
25 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
26 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
27 incurred during the course of performing their duties.

28 ///



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1 **C. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

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

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

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

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

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

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

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

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

26 43. As alleged herein, Defendants failed to provide Plaintiff and the other Aggrieved
27 Employees with all meal and rest periods in compliance with California law. They also failed to
28 provide them with premium wages on workdays they failed to provide them with one or more



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1 meal and/or rest periods in compliance with California law. As a result, Defendants have failed
2 to properly itemize Plaintiff and the other Aggrieved Employees' gross and net wages earned,
3 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
4 rate, and other requirements of California Labor Code § 226.

5 44. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
6 accurate wage statements was knowing and intentional. Defendants had the ability to provide
7 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
8 provided wage statements that Defendants knew were not accurate.

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

20 **D. UNTIMELY WAGES DURING EMPLOYMENT**

21 46. Labor Code § 204 states

22 (a) All wages, other than those mentioned in Section 201,
23 201.3, 202, 204.1, or 204.2, earned by any person in any
24 employment are due and payable twice during each
25 calendar month, on days designated in advance by the
26 employer as the regular paydays. Labor performed
27 between the 1st and 15th days, inclusive, of any calendar
28 month shall be paid for between the 16th and the 26th day



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1 of the month during which the labor was performed, and
2 labor performed between the 16th and the last day,
3 inclusive, of any calendar month, shall be paid for
4 between the 1st and 10th day of the following month. ...
5

6 (b) (1) Notwithstanding any other provision of this
7 section, all wages earned for labor in excess of the normal
8 work period shall be paid no later than the payday for the
9 next regular payroll period.
10

11 (2) An employer is in compliance with the
12 requirements of subdivision (a) of Section 226 relating to
13 total hours worked by the employee, if hours worked in
14 excess of the normal work period during the current pay
15 period are itemized as corrections on the paystub for the
16 next regular pay period. Any corrections set out in a
17 subsequently issued paystub shall state the inclusive dates
18 of the pay period for which the employer is correcting its
19 initial report of hours worked.
20

21 (c) However, when employees are covered by a collective
22 bargaining agreement that provides different pay
23 arrangements, those arrangements shall apply to the
24 covered employees.
25

26 (d) The requirements of this section shall be deemed satisfied
27 by the payment of wages for weekly, biweekly, or
28 semimonthly payroll if the wages are paid not more than



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seven calendar days following the close of the payroll period.

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

E. UNTIMELY FINAL WAGES

48. 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.

49. 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.

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

51. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

F. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

52. Labor Code § 1174 states:

Every person employing labor in this state shall:

...



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

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

12
13 53. Labor Code § 1174.5 states:

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

19
20 54. Section 7 of the Wage Order states,

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

- 23 1. Full name, home address, occupation, and social security number.
- 24 2. Birth date, if under 18 years, and designation as a minor.
- 25 3. Time records showing when the employee begins and ends each
26 work period. Meal periods, split shift intervals and total daily
27 hours worked shall also be recorded. Meal periods during which
28 operations cease and authorized rest periods need not be recorded.



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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.

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

56. 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 Plaintiff and the Aggrieved Employees.

G. CIVIL PENALTIES SOUGHT

57. 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

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payday for the next regular payroll period.

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

58. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

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

60. 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.

61. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of

1 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, and 2802 during the
2 applicable limitations period in the following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
5 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
6 (penalty amounts established by California Labor Code § 210).

7 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
8 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
9 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

10 C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for
11 each aggrieved employee for each initial violation for pay period for which the employee was
12 underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period
13 for which the employee was underpaid (penalty amounts established by California Labor Code
14 § 558).

15 D. For violations of California Labor Code § 1174, five hundred dollars
16 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
17 by Labor Code § 1174.5).

18 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1198, and
19 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
20 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
21 subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

22 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

23 62. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated March 17, 2021, Plaintiff gave written notice by certified
25 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
26 provisions of the California Labor Code alleged to have been violated, including the facts and
27 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
28 dated February 17, 2021 is attached hereto as Exhibit A. The LWDA has not responded to



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Plaintiff's letter.

63. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

64. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

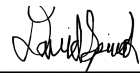
VII. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 16, 2021

By 

DAVID SPIVAK
CAROLINE TAHMASSIAN
MAYA CHEAITANI, Attorneys for Plaintiff,
SHELIA CROMWELL, and all others similarly
situated



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State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

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XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EMILY HOUNG LY