

View Document - CIVSB2116331 -

Pages: 35 | Price Per Page: \$0.50 | Document Subtotal: \$17.50

ORIGINAL**FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION**JUN 04 2021**BY *Sylvia G. Jaramo*
SYLVIA GUAJARDO, DEPUTY

1 DAVID G. SPIVAK (SBN 179684)
 david@spivaklaw.com
 2 CAROLINE TAHMASSIAN (SBN 285680)
 caroline@spivaklaw.com
 3 MAYA CHEAITANI (SBN 335777)
 maya@spivaklaw.com
 4 THE SPIVAK LAW FIRM
 5 16530 Ventura Blvd., Suite 203
 6 Encino, CA 91436
 7 Telephone (213) 725-9094
 Facsimile (213) 634-2485

8 Attorneys for Plaintiff,
 9 SHEILA CROMWELL, and all others similarly situated

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

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

Plaintiff,

vs.

18 DESERT CREMATION SOCIETY, INC., a
 19 California corporation doing business as All
 Caring Cremations and All Caring Solutions;
 20 WIEFELS & SON, a California corporation;
 WIEFELS & SON II, a California corporation
 21 doing business as All California Cremation;
 WIEFELS FD, INC., a California corporation;
 22 and DOES 1-50, inclusive,

*Defendants.*Case No.: **CIV SB 2116331****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****SPIVAK LAW**Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com

1

Cromwell v. Desert Cremation Society, et al.

Complaint

ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
whaines@uelglaw.com
 UNITED EMPLOYEES LAW GROUP
 5500 Bolsa Ave, Suite 201
 Huntington Beach, CA 92649
 Telephone: (562) 256-1047
 Facsimile: (562) 256-1006

**SPIVAK LAW**

Employee Rights Attorneys
 16530 Ventura Blvd., Ste. 203
 Encino, CA 91436
 (213) 725-9094 Tel
 (213) 634-2485 Fax
 SpivakLaw.com

1 Plaintiff, SHEILA 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,
inclusive (collectively “Defendants”).

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

17 **II. JURISDICTION AND VENUE**

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

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and Aggrieved
22 Employees that solely arise under California law, rather than federal law.

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

24 6. Venue is proper in San Bernardino County pursuant to California Code of Civil
25 Procedure § 395(a) and § 395.5 in that liability arose in San Bernardino County because at least
26 some of the transactions that are the subject matter of this Complaint occurred therein and/or
27 because each defendant is found, maintains offices, transacts business, and/or has an agent
28 therein.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

III. THE PARTIES

7. Plaintiff, an individual and resident of California, on or about October 1, 2018, began working for Defendants as an hourly transport specialist. Defendants employed her continuously from that date until on or about March 18, 2020.

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

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

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

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

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

A. THE AGGRIEVED EMPLOYEES

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

14. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

15. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
2 Employees in accordance with applicable California labor laws as alleged herein.

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

8 **IV. FACTUAL ALLEGATIONS**

9 17. On or about October 1, 2018, Plaintiff began working for Defendants as an hourly
10 transport specialist. Defendants employed her continuously from that date until on or about March
11 18, 2020, when Defendants temporarily suspended Plaintiff's employment because she suffered
12 an injury on the job which caused limited mobility in her left arm, preventing her from performing
13 all work duties. Plaintiff has not since returned to work. Plaintiff last performed her duties for
14 Defendants on or about March 18, 2020.

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

19 19. At all relevant times, Plaintiff and the Aggrieved Employees have worked over 8
20 hours in one workday and/or over 40 hours in one workweek. Despite this, Defendants failed to
21 provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods pursuant to
22 California law, including, but not limited to, two timely 30-minute uninterrupted meal periods
23 and three 10-minute rest periods on workdays they worked more than 10 hours. Further, due to
24 the workload and low staffing levels Plaintiff and the Aggrieved Employees were denied their
25 30-minute duty-free meal period within the first 5 hours of work. Defendants frequently forced
26 Plaintiff and the Aggrieved Employees to forgo timely, duty-free 30-minute meal periods by
27 assigning them more time-sensitive work than they could reasonably expect them to complete
28 within their first five hours of work.

20. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
Aggrieved Employees to take rest periods in violation of California law. Due to high workload
and low staffing levels, Defendants failed to authorize and permit Plaintiff and the Aggrieved



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Employees to take 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction
2 thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order
3 from the California Divisions of Labor Standards Enforcement. Furthermore, Defendants failed
4 to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved
Employees with timely rest breaks and/or meal periods in compliance with California law.

5 21. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
6 to incur certain business expenses in the course of performing their duties. Defendants required
7 Plaintiff and the Aggrieved Employees to use their personal cell phones in the course of
8 performing their duties. Defendants communicated with Plaintiff 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 Plaintiff and the Aggrieved Employees for their cell phone expenses.

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

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

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

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

28 **CIVIL PENALTIES**



(Lab. Code §§ 2698, et seq.)

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

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

25. At all relevant times, Plaintiff 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 PROVIDE REST BREAKS AND MEAL PERIODS

26. 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.

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

An employer shall 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 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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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.”

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.”

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 of compensation for each work day that the meal or rest period is
2 not provided.

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

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

10 33. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
11 with all required 30-minute duty free meal periods and 10-minute rest periods free from any work
12 duties in accordance with the Wage Order.

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

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

23 **B. FAILURE TO INDEMNIFY**

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

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

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

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

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

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

14 41. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
15 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
16 the employer fails to provide accurate and complete information as required by California Labor
17 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
18 alone one or more of the following:

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

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

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

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

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

 42. "Promptly and easily determine," as stated in California Labor Code § 226(e),
means a reasonable person would be able to readily ascertain the information without reference



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 to other documents or information.

2 43. As alleged herein, Defendants failed to provide Plaintiff and the other Aggrieved
3 Employees with all meal and rest periods in compliance with California law. They also failed to
4 provide them with premium wages on workdays they failed to provide them with one or more
5 meal and/or rest periods in compliance with California law. As a result, Defendants have failed
6 to properly itemize Plaintiff and the other Aggrieved Employees' gross and net wages earned,
7 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
8 rate, and other requirements of California Labor Code § 226.

9 44. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
10 accurate wage statements was knowing and intentional. Defendants had the ability to provide
11 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
12 provided wage statements that Defendants knew were not accurate.

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

24 **D. UNTIMELY WAGES DURING EMPLOYMENT**

25 46. Labor Code § 204 states

- 26 (a) All wages, other than those mentioned in Section 201,
27 201.3, 202, 204.1, or 204.2, earned by any person in any
28 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,



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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 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.

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.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

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

9 **F. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

10 52. Labor Code § 1174 states:

11 Every person employing labor in this state shall:

12 ...

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

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

24 53. Labor Code § 1174.5 states:

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

 54. 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.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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 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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1174, 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 § 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (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 initial violation (penalty amounts established by Labor Code § 1174.5).

E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial



violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

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

///

///

///

///

///

///

///

///

///

///



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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: June 3, 2021

By: 

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

March 17, 2021

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

RE: *Sheila Cromwell / 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.*), Sheila Cromwell (hereafter “Cromwell”) provides notice on behalf of herself 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, 512, 1174, 1198, and 2802.

At all relevant times, DCS has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Cromwell 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

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

At all relevant times, DCS issued wages to Cromwell and the Aggrieved Employees on a bi-monthly basis and paid them at an hourly rate of pay. At all relevant times, DCS classified Cromwell 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, Cromwell 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 Cromwell 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, Cromwell and the Aggrieved Employees were denied their 30-minute duty-free meal period within the first 5 hours of work. DCS frequently forced Cromwell 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 Cromwell 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

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

At all relevant times, DCS required Cromwell and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. DCS required Cromwell and the Aggrieved Employees to use their personal cell phones in the course of performing their duties. DCS communicated with Cromwell 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 Cromwell and the Aggrieved Employees for their cell phone expenses.

As a result of these aforementioned violations, DCS failed to provide Cromwell 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 Cromwell and the Aggrieved Employees as required under California law.

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

- a) DCS failed to provide Cromwell and other Aggrieved Employees with all rest breaks and meal periods;
- b) DCS failed to compensate Cromwell 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 Cromwell 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 indemnify Cromwell and other Aggrieved Employees for all business expenses;
- e) DCS failed to provide Cromwell and other Aggrieved Employees with accurate wage statements; and
- f) DCS failed to timely pay Cromwell and other Aggrieved Employees all earned and unpaid wages during their employment at DCS and at the time such employment ended.

Accordingly, Cromwell now seeks civil penalties on behalf of herself 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,

Cromwell 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 Cromwell 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 Cromwell 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, Cromwell seeks civil penalties on behalf of herself 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 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 Cromwell and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Cromwell seeks civil penalties on behalf of herself 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, Cromwell seeks civil penalties on behalf of herself 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 Cromwell 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, Cromwell seeks civil penalties on behalf of herself 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 Cromwell 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 Cromwell 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 herself and the Aggrieved Employees, Cromwell 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 Cromwell and the Aggrieved Employees. Accordingly, Cromwell seeks civil penalties on behalf of herself 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.
Sheila Cromwell

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

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