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

OCT 12 2021

BY Jovanna Leandro
JOVANNA LEANDRO, DEPUTY

Attorneys for Plaintiffs,
SHELIA CROMWELL, AARON SALAZAR, ANDREW FORREST, and all others similarly
situated

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

SHELIA CROMWELL, AARON SALAZAR,
and ANDREW FORREST, on behalf of
themselves, all others similarly situated, and as
“aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorney General Act of 2004,

Plaintiffs,

vs.

DESERT CREMATION SOCIETY, INC., a
California corporation; WIEFELS & SON, a
California corporation; WIEFELS & SON II,
INC., a California corporation; WIEFELS FD,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendants.

Case No.: CIVSB2116331

CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR:**

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify for Expenses (Lab. Code § 2802)
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

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ADDITIONAL ATTORNEY FOR PLAINTIFFS

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1 Plaintiffs, SHELIA CROMWELL, AARON SALAZAR, and ANDREW FORREST
2 (collectively “Plaintiffs”), on behalf of themselves, all others similarly situated and the State of
3 California complain and allege as follows:

4 **INTRODUCTION**

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

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

22 **JURISDICTION AND VENUE**

23 3. This Court has subject matter jurisdiction because the aggregate claims of
24 Plaintiffs and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

25 4. There is no basis for federal question subject matter jurisdiction in this case.
26 Specifically, Plaintiffs assert claims that solely arise under California law, rather than federal
27 law.

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

6. Venue is proper in San Bernardino County pursuant to California Code of Civil
Procedure § 395(a) and § 395.5 in that liability arose in San Bernardino County because at least
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 **THE PARTIES**

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

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

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

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

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

17 12. Defendant WIEFELS & SON is a corporation organized and existing under the
18 laws of California and a citizen of California based on Plaintiffs’ information and belief.
19 Defendant WIEFELS & SON changed its name to ARIES PROPERTIES in March of 2021.

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

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

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

16. 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 and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiffs and other members of the below-described class in accordance with applicable laws as alleged herein.

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

CLASS ALLEGATIONS

18. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class action.

19. **Class Definition:** The Class is defined as follows: 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 beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

20. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

21. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiffs do not currently know the exact number of Class Members, Plaintiffs are informed and believe that the actual number exceeds the minimum required for numerosity under California laws.

22. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;



1 B. Whether Defendants failed to pay the Class Members for all hours worked
2 at the correct rates of pay;

3 C. Whether Defendants failed to indemnify the Class Members for all
4 reasonable expenses incurred during the course of employment;

5 D. Whether Defendants knowingly and intentionally failed to provide the
6 Class Members with accurate written wage statements;

7 E. Whether Defendants willfully failed to provide the Class Members with
8 timely final wages upon termination of employment;

9 F. Whether Defendants engaged in unfair competition within the meaning of
10 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

11 G. Whether Class Members are entitled to restitution of money or property
12 that Defendants may have acquired from them through alleged Labor Code violations.

13 23. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims.
14 Plaintiffs are informed and believe and thereon allege that Defendants have a policy and/or
15 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
16 Code, the Wage Order, and the Business and Professions Code.

17 24. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives
18 in that they have no interests that are adverse to, or otherwise in conflict with, the interests of
19 absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of
20 Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class
21 Members.

22 25. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that
23 they have no known conflicts of interest with Plaintiffs or absent Class Members, are experienced
24 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
25 Plaintiffs and absent Class Members.

26 26. **Superiority:** A class action is vastly superior to other available means for fair and
27 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
28 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
and efficiently prosecute their common claims in a single forum without the unnecessary
duplication of effort and expense that numerous individual actions would entail. In addition, the
monetary amounts due to many individual Class Members are likely to be relatively small and



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1 would thus make it difficult, if not impossible, for individual Class Members to both seek and
2 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
3 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
4 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

5 **STATEMENT OF FACTS**

6 27. On or about October 1, 2018, Plaintiff Cromwell began working for Defendants
7 as an hourly transport specialist. Defendants employed her continuously from that date until
8 approximately March 18, 2020, when her employment ended.

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

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

16 30. At all relevant times, Defendants issued wages to Plaintiffs and the Class
17 Members on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times,
18 Defendants classified Plaintiffs and the Class Members as non-exempt employees entitled to the
19 protections of both the Labor Code and the Wage Order.

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

28 32. At all relevant times, Defendants failed to authorize and permit Plaintiffs and the
Class Members to take rest periods in violation of California law. Due to high workload and low
staffing levels, Defendants failed to authorize and permit Plaintiffs and the Class Members to
take 10-minute, paid, duty-free rest breaks every four (4) hours worked or major fraction thereof.



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1 Defendants did not seek an exemption from the rest period protections of the Wage Order from
2 the California Division of Labor Standards Enforcement. Furthermore, Defendants failed to pay
3 premium wages for days on which they failed to provide Plaintiffs and the Class Members with
4 timely rest breaks and/or meal periods in compliance with California law.

5 33. At all relevant times, Defendants required Plaintiffs and the other Class Members
6 to work on-call shifts. Defendants often required Plaintiffs and the Class Members to remain on-
7 call 24 hours a day, for up to seven (7) days a week. However, Defendants did not pay Plaintiffs
8 and the Class Members minimum, overtime, and double-time wages for such hours worked.
9 During such on-call shifts, Defendants restricted Plaintiffs and the Class Members in the types
10 of activities they could perform and required them to stay available for additional work duties at
11 all times. Defendants prohibited Plaintiffs and the Class Members from consuming alcohol
12 during the on-call shifts, and required them to stay within approximately a 25-mile radius of
13 Defendants' office. Also, during these on-call periods, Defendants required Plaintiffs and the
14 Class Members to monitor their phones for work-related calls at all times. Defendants required
15 Plaintiffs and the Class Members to respond and travel to Defendants' office within 30 minutes
16 of such calls, and subsequently to the assigned locations within 30 minutes. Defendants, however,
17 compensated Plaintiffs and the Class Members only after they arrived to the assigned locations,
18 and only for the period they worked at the assigned location. Consequently, Defendants failed to
19 compensate Plaintiffs and the Class Members for all hours spent on-call. Plaintiff Salazar
20 complained to management about Defendants' Labor Code and Wage Order violations.
21 Defendants took no action to resolve his complaints.

22 34. At all relevant times, Defendants required Plaintiffs and the Class Members to
23 incur certain business expenses in the course of performing their duties. Defendants required
24 Plaintiffs and the Class Members to use their personal cell phones in the course of performing
25 their duties. Defendants communicated with Plaintiffs and the Class Members by phone
26 regarding work instructions, scheduling, or to resolve work-related issues and did not provide
27 mobile phones or an alternative to them for this purpose. Additionally, Defendants did not
28 reimburse Plaintiffs and the Class Members for their cell phone expenses.

35. As a result of these aforementioned violations, Defendants failed to provide
Plaintiffs and the Class Members with accurate written itemized wage statements; failed to pay
them all wages earned during employment and after their employment ended; and failed to



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maintain accurate employee records with respect to Plaintiffs and the Class Members as required under California law.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiffs and the Class against all Defendants)

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

37. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

38. 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.

39. In relevant part, § 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 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.”

40. 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



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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.

41. Pursuant to the Wage Order, Plaintiffs and the Class Members 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.

42. Defendants intentionally failed to provide Plaintiffs and the Class Members with all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

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

44. Plaintiffs are informed and believe and thereon allege that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all rest breaks required by California law.

45. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

46. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional



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wages owed for all rest breaks not provided to them.

47. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and the Class Members are entitled to premium wages for workdays in which one or rest breaks were not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiffs and the Class against all Defendants)

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

49. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 512 and 1198, and the Wage Order.

50. 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.

51. 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.

52. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than



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1 five (5) hours without a meal period of not less than 30 minutes, except
2 that when a work period of not more than six (6) hours will complete the
3 day's work the meal period may be waived by mutual consent of the
4 employer and the employee...

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

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

18 (D) If an employer fails to provide an employee a meal period in
19 accordance with the applicable provisions of this order, the employer shall
20 pay the employee one (1) hour of pay at the employee's regular rate of
21 compensation for each workday that the meal period is not provided.

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

23 (b) An employer shall not require an employee to work during a meal
24 or rest period mandated pursuant to an applicable statute, or applicable
25 regulation, standard, or order of the Industrial Welfare Commission, the
26 Occupational Safety and Health Standards Board, or the Division of
27 Occupational Safety and Health.

28 (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.

54. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the
Class Members 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.

55. Defendants intentionally failed to provide Plaintiffs and the Class Members with



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all required 30-minute duty-free meal periods in accordance with the Wage Order.

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

57. Plaintiffs are informed and believe and thereon allege that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods required by California law.

58. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all meal periods not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

59. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional wages owed for all meal periods not provided to them.

60. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and the Class Members are entitled to premium wages for workdays in which one or more timely, off-duty meal periods were not provided to them.

THIRD CAUSE OF ACTION

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

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiffs and the Class against Defendants)

61. Plaintiffs incorporates all paragraphs of the Complaint as if fully alleged herein.



1 62. At all relevant times, Plaintiffs and the other Class Members have been non-
2 exempt employees of Defendants and entitled to the benefits and protections of California Labor
3 Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

4 63. § 2 of the Wage Order defines “hours worked” as “the time during which an
5 employee is subject to the control of an employer, and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so.”

7 64. § 3 of the Wage Order states:

8 (A) Daily Overtime - General Provisions

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

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

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

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

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

32 66. Labor Code § 510 states:

33 Eight hours of labor constitutes a day’s work. Any work in excess of eight



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

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

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

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

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

71. As described above, at all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiffs and the Class Members for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

72. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiffs and the other Class Members for all hours worked at the correct rates of pay as required by California law.

73. As a result of Defendants' unlawful conduct, Plaintiffs and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period,



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1 including minimum and overtime wages.

2 74. Pursuant to Labor Code § 1194, Plaintiffs, on behalf of themselves and Class
3 Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
4 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
5 subject to proof.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code §2802)**

9 **(By Plaintiffs and the Class against all Defendants)**

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

11 76. At all relevant times, Plaintiffs and the class have been non-exempt employees
12 of Defendants and entitled to the benefits and protections of the California Labor Code section
13 2802 and the Wage Order.

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

17 78. At all relevant times, as a condition for employment, Defendants required
18 Plaintiffs and the Class Members to use their personal cell phones in the course of performing
19 their duties. Defendants communicated with Plaintiffs and the Class Members by phone
20 regarding work instructions, scheduling, or to resolve work-related issues and did not provide
21 mobile phones or an alternative to them for this purpose. Additionally, Defendants did not
22 reimburse Plaintiffs and the Class Members for their personal cell phone expenses.

23 79. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
24 Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants'
25 failure to indemnify Plaintiffs and the class for the reasonable expenses they incurred during the
26 course of performing their duties.

27 80. By reason of the above, Plaintiffs and the members of the class are entitled to
28 reimbursement for all necessary expenditures and losses and interest due and owing to them
within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
pursuant to California Labor Code section 2802(b). Further, Plaintiffs, on behalf of themselves
and the class, pray for reasonable attorney's fees pursuant to Labor Code section 2802(c).



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81. Additionally, with respect to this cause of action, on behalf of themselves and the class, Plaintiffs pray for an award of reasonable attorney fees and costs, including interest thereon, as permitted by law, all in amounts subject to proof.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiffs and the Class against all Defendants)

82. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

83. At all relevant times during the applicable limitations period, Plaintiffs and the other Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

84. Pursuant to California Labor Code § 226(a), Plaintiffs and the other Class Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement 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 § 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.

85. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period



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1 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
3 is entitled to an award of costs and reasonable attorneys' fees.

4 86. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
5 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
6 injury if the employer fails to provide accurate and complete information as required by California
7 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
8 statement alone one or more of the following:

- 9 A. The amount of the gross wages or net wages paid to the employee during the pay
10 period or any of the other information required to be provided on the itemized
11 wage statement pursuant to California Labor Code § 226(a);
12 B. Which deductions the employer made from gross wages to determine the net wages
13 paid to the employee during the pay period;
14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code,
16 the name and address of the legal entity that secured the services of the employer
17 during the pay period; and
18 D. The name of the employee and only the last four digits of his or her social security
19 number or an employee identification number other than a social security number

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

23 88. As alleged herein, at all relevant times, during the applicable limitations period,
24 Defendants violated California Labor Code § 226, in that they failed to properly and accurately
25 itemize each of the Class Member's gross wages earned, net wages earned, the total hours
26 worked, the corresponding number of hours worked at each rate by the and the Class Members
27 and other requirements of California Labor Code § 226. Further, Defendants failed to state the
28 earned meal and rest period premium wages and their business expenses on Plaintiff and Class
Members' itemized written wage statements. As a result, Defendants have violated California
Labor Code § 226.

89. Defendants' failure to provide Plaintiffs and the other Class Members with



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1 accurate wage statements was knowing and intentional. Defendants had the ability to provide
2 Plaintiffs and the other Class Members with accurate wage statements but intentionally provided
3 wage statements that Defendants knew were not accurate.

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

14 91. Pursuant to California Labor Code § 226(e), Plaintiffs and the other Class
15 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
16 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
17 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
18 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
19 also entitled to an award of costs and reasonable attorneys' fees.

20 92. Accordingly, with respect to this cause of action, on behalf of themselves and the
21 other Class Members, Plaintiffs pray for the herein stated relief and for an award of all reasonable
22 costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject
23 to proof.

24 **SIXTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(Lab. Code §§ 201, 202, and 203)**

27 **(By Plaintiffs SHELIA CROMWELL and AARON SALAZAR , and the Class against all**
28 **Defendants)**

93. Plaintiffs SHELIA CROMWELL and AARON SALAZAR incorporate all
paragraphs of this Complaint as if fully alleged herein.

94. At all relevant times during the applicable limitations period, Plaintiffs SHELIA



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1 CROMWELL and AARON SALAZAR and the Class have been non-exempt employees of
2 Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203,
3 and the Wage Order.

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

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

10 97. By failing to pay earned minimum, overtime, and premium wages to Plaintiffs
11 SHELIA CROMWELL and AARON SALAZAR and the Class, Defendants failed to timely pay
12 them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

13 98. Plaintiffs SHELIA CROMWELL and AARON SALAZAR are informed and
14 believe that Defendants’ failures to timely pay all final wages to them and the Class Members
15 have been willful in that Defendants have the ability to pay final wages in accordance with Labor
16 Code §§ 201 and 202 but have intentionally adopted policies or practice that are incompatible
17 with those requirements.

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

21 100. Defendants failed to pay Plaintiffs SHELIA CROMWELL and AARON
22 SALAZAR and the Class Members whose employment ended all of the earned, but unpaid wages
23 described above by the conclusion of their employment.

24 101. Plaintiffs SHELIA CROMWELL and AARON SALAZAR are informed and
25 believe that Defendants’ failures to timely pay Plaintiffs and the Class all of their earned and
26 unpaid wages have been willful in that, at all relevant times, Defendants have deliberately
27 maintained policies and practices that violate the requirements of the Labor Code and the Wage
28 Order, even though at all relevant times, they have had the ability to comply with those legal
requirements.

102. Pursuant to Labor Code § 203, Plaintiffs SHELIA CROMWELL and AARON
SALAZAR seek waiting time penalties on behalf of themselves and the Class, in amounts subject



1 to proof not to exceed 30 days of waiting time penalties for each Class Member.

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(Bus. & Prof. Code §§ 17200, et seq.)**

5 **(By Plaintiffs and the Class against all Defendants)**

6 103. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

7 104. At all relevant times during the applicable limitations period, Plaintiffs and the
8 other Class Members have been employees of Defendants and entitled to the benefits and
9 protections of the Business and Professions Code §§ 17200, et seq.

10 105. The unlawful conduct of Defendants alleged herein amounts to and constitutes
11 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
12 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
13 unfairly gained a competitive advantage over other comparable companies doing business in
14 California that comply with their legal obligations to, among other things, pay their employees
15 premium wages for workdays in which they did not provide employees with one or more meal
16 and rest periods, reimburse their employees for reasonable expenses incurred during the course
17 of performing their duties, and pay them all earned wages for all regular and overtime hours
18 worked.

19 106. As a result of Defendants' unfair competition as herein alleged, Plaintiffs and the
20 other Class Members have suffered injuries in fact and lost money or property. Defendants
21 deprived Plaintiffs and the other Class Members of minimum, overtime, off-the-clock, paid sick
22 leave and notice of paid sick leave, and premium wages and reimbursement for expenses that
23 Plaintiffs and the other Class Members incurred during the course of performing their duties.

24 107. Pursuant to California Business & Professions Code § 17203, Plaintiffs and the
25 other Class Members are entitled to restitution of all monies rightfully belonging to them that
26 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
27 and unfair business practices.

28 108. Plaintiffs and the other Class Members are entitled to reasonable attorneys' fees in
connection with their unfair competition claims pursuant to California Code of Civil Procedure
§ 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION



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CIVIL PENALTIES

(By Plaintiffs and the Class against all Defendants)

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

110. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning in March 2019 and ending on the date that final judgment is entered in this action.

111. 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 more than seven calendar days following the close of the payroll period.

112. Defendants paid wages to employees on regular intervals. Defendants, however,



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1 failed to pay Plaintiffs on such intervals for all wages earned and all hours worked. On
2 information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved
3 Employees on such intervals for all wages earned and all hours worked.

4 113. During the applicable time period, Defendants violated California Labor Code
5 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

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

13 A. For violations of California Labor Code § 204, one hundred dollars
14 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
15 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226 (a), two hundred fifty
18 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
19 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
20 established by California Labor Code § 226.3).

21 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
22 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
23 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
24 established by California Labor Code § 558).

25 D. For violations of California Labor Code § 1197, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
27 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
28 pay period (regardless of whether the initial violations were intentionally committed) (penalty
amounts established by California Labor Code § 1197.1).

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



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1 California Labor Code § 1174.5).

2 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
3 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
4 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
5 period for each subsequent violation (penalty amounts established by California Labor Code
6 § 2699 (f)(2)).

7 116. Plaintiffs have complied with the procedures for bringing suit specified in
8 California Labor Code § 2699.3. By letter dated March 17, 2021, Plaintiff Cromwell gave
9 written notice by certified mail to the LWDA and Defendants of the specific provisions of the
10 California Labor Code alleged to have been violated, including the facts and theories to support
11 the alleged violations. By letter dated March 19, 2021, Plaintiff Salazar gave written notice by
12 certified mail to the LWDA and Defendants of the specific provisions of the California Labor
13 Code alleged to have been violated, including the facts and theories to support the alleged
14 violations. By letter dated April 5, 2021, Plaintiff Forrest gave written notice by certified mail
15 to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to
16 have been violated, including the facts and theories to support the alleged violations. True and
17 correct copies of Plaintiffs' letters to the LWDA dated March 17, 2021, March 19, 2021, and
18 April 5, 2021, are collectively attached hereto as Exhibit A. The LWDA has not responded to
19 Plaintiffs' letters. Plaintiffs accompanied their LWDA notices with a fee in the amount of
20 \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of
21 Plaintiffs' notice, but Plaintiffs anticipate that the LWDA will provide written notice to Plaintiffs
22 informing them that it does not intend to investigate these allegations.

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

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
28 for relief and judgment against Defendants as follows:

- 29 A. An order that the action be certified as a class action;
- 30 B. An order that Plaintiffs be appointed class representatives;
- 31 C. An order that counsel for Plaintiffs be appointed class counsel;



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- 1 D. Unpaid Wages;
2 E. Actual Damages;
3 F. Statutory Damages;
4 G. Civil Penalties
5 H. Liquidated Damages;
6 I. Restitution;
7 J. Declaratory and injunctive relief;
8 K. Equitable relief;
9 L. Pre-judgment interest;
10 M. Statutory penalties;
11 N. Costs of suit;
12 O. Interest;
13 P. Reasonable attorneys' fees; and
14 Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

15 Plaintiffs, on behalf of themselves and all other Class Members, hereby demand a jury
16 trial on all issues so triable.

17 Respectfully submitted,

18 THE SPIVAK LAW FIRM

19
20 Dated: October 12, 2021

By: 

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



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EXHIBIT A



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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



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

March 19, 2021

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

RE: *Aaron Salazar / Desert Cremation Society*

To whom it may concern:

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

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

Statement of Facts

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

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

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

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

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

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

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

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

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

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

The Wage Order

The Wage Order applies to:

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

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

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

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

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

Meal Periods:

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

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

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

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

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

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

Rest Periods:

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

California Labor Code § 226.7 states:

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

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

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

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

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

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

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

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

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

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

Section 4 of Wage Order states,

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

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

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

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

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of the Wage Order states,

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

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

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Walter Haines, Esq.
Aaron Salazar

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

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

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

LWDA / DCS

3/19/2021

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



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 5, 2021

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

RE: *Andrew Forrest / Desert Cremation Society*

To whom it may concern:

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

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

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

Statement of Facts

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

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

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

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

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

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

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

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

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

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

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

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

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The Wage Order

The Wage Order applies to:

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

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

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

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

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

Meal Periods:

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

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

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

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

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

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

Rest Periods:

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

California Labor Code § 226.7 states:

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

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

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

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

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

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

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

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

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

Section 4 of Wage Order states,

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

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

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

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Labor Code section 1174.5 states:

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

Section 7 of the Wage Order states,

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

production record shall be maintained by the employer.

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Walter Haines, Esq.
Andrew Forrest

Desert Cremation Society, Inc. dba All Caring Cremations, and All
Caring Solutions
c/o Orion S. Robinson, Esq.
Robinson Di Lando
801 South Grand Avenue, Suite 500
Los Angeles, CA 90017
orobinson@rdwlaw.com

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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

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 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.

10 On Tuesday, October 12, 2021, I served the foregoing document
11 described as **SECOND AMENDED COMPLAINT** on interested parties by electronic
mail, addressed as follows:

12 Orion S. Robinson, Esq.
13 Robinson Di Lando, APLC
14 801 South Grand Avenue, Suite 500
Los Angeles, CA 90017
orobinson@rdwlaw.com

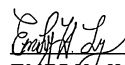
15
16 _____ (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with
17 other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,
Encino, California 91436.

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

20
21 EXECUTED on Tuesday, October 12, 2021, at Los Angeles, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State
23 of California that the above is true and correct.

24 _____ (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.

25
26 
27 _____
EMILY HOUNG LY
28