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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ROBERTO CHINCHILLA, individually,
and on behalf of other members of the
general public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

CARRIAGE FUNERAL HOLDINGS,
INC., a Delaware corporation; CARRIAGE
SERVICES, INC., a Delaware corporation;
CARRIAGE CEMETERY SERVICES,
INC., a Texas corporation; CARRIAGE
CEMETERY SERVICES OF
CALIFORNIA, INC., a California
corporation; CARRIAGE FUNERAL
SERVICES OF CALIFORNIA, INC., a
California corporation; ROLLING HILLS
MEMORIAL PARK, a California
corporation; WILSON & KRATZER
MORTUARIES, a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2021-4661

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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FIRST AMENDED CLASS ACTION COMPLAINT

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Roberto Chinchilla, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 ("IWC") Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff's
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons within the
24 County of San Joaquin and have violated the requirements of the California Labor Code and
25 applicable Wage Order in this county which give rise to the penalties sought in this action.
26 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
27 California Labor Code and applicable Wage Order in at least one location within the County
28 of San Joaquin, including Defendants' locations in Escalon (1441 San Joaquin Street, Escalon,

1 CA 95320), Manteca (290 North Union Road, Manteca, CA 95337), Ripon (111 Palm
2 Avenue, Ripon, CA 95366), and Tracy (550 South Central Avenue, Tracy, CA 95376; and
3 8842 W Schulte Road, Tracy, CA 95304). Pursuant to California Civil Code of Procedure
4 section 393, venue is proper for the recovery of a penalty imposed by statute in the county in
5 which the cause, or some part of the cause, arose. Because Defendants have employees in San
6 Joaquin County and Plaintiff could bring this action to recover penalties in San Joaquin
7 County, venue is proper. *Id.*

8 THE PARTIES

9 4. Plaintiff Roberto Chinchilla is a resident of San Pablo, in Contra Costa County,
10 California. Defendants employed Plaintiff as an hourly paid, non-exempt Cemetery
11 Maintenance employee from approximately February 2018 to March 2021. Plaintiff worked
12 for Defendants at their Rolling Hills Memorial Park property located in Richmond, California.
13 During his employment, Plaintiff typically worked eight (8) hours or more per day, and five
14 (5) days per week. Plaintiff's primary job duties included, without limitation, installing
15 headstones and monuments; operating an excavator; mowing and maintaining grass; disposing
16 of trash; and assisting with funeral services.

17 5. CARRIAGE FUNERAL HOLDINGS, INC. was and is, upon information and
18 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county, the State of California, or the various states of
20 the United States of America.

21 6. CARRIAGE SERVICES, INC. was and is, upon information and belief, a
22 Delaware corporation and at all times hereinafter mentioned, an employer whose employees
23 are engaged throughout this county, the State of California, or the various states of the United
24 States of America.

25 7. CARRIAGE CEMETERY SERVICES, INC. was and is, upon information and
26 belief, a Texas corporation, and at all times hereinafter mentioned, an employer whose
27 employees are engaged throughout this county, the State of California, or the various states of
28 the United States of America.

1 8. CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC. was and is,
2 upon information and belief, a California corporation, and at all times hereinafter mentioned,
3 an employer whose employees are engaged throughout this county, the State of California, or
4 the various states of the United States of America.

5 9. CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC. was and is, upon
6 information and belief, a California corporation, and at all times hereinafter mentioned, an
7 employer whose employees are engaged throughout this county, the State of California, or the
8 various states of the United States of America.

9 10. ROLLING HILLS MEMORIAL PARK was and is, upon information and
10 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
11 employees are engaged throughout this county, the State of California, or the various states of
12 the United States of America.

13 11. WILSON & KRATZER MORTUARIES was and is, upon information and
14 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
15 employees are engaged throughout this county, the State of California, or the various states of
16 the United States of America.

17 12. Plaintiff is unaware of the true names or capacities of the Defendants sued
18 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
19 amend the complaint and serve such fictitiously named Defendants once their names and
20 capacities become known.

21 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
22 were the partners, agents, owners, or managers of CARRIAGE FUNERAL HOLDINGS,
23 INC.; CARRIAGE SERVICES, INC.; CARRIAGE CEMETERY SERVICES, INC.;
24 CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC.; CARRIAGE FUNERAL
25 SERVICES OF CALIFORNIA, INC.; ROLLING HILLS MEMORIAL PARK; and WILSON
26 & KRATZER MORTUARIES, at all relevant times.

27 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, CARRIAGE

1 FUNERAL HOLDINGS, INC.; CARRIAGE SERVICES, INC.; CARRIAGE CEMETERY
2 SERVICES, INC.; CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC.;
3 CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.; ROLLING HILLS
4 MEMORIAL PARK; WILSON & KRATZER MORTUARIES, and/or DOES 1 through 10
5 (collectively, "Defendants" or "CARRIAGE SERVICES"), each acting as the agent,
6 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
7 Defendants and was acting within the course and scope of such agency, employment, joint
8 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
9 and all Defendants were in accordance with, and represent, the official policy of Defendants.

10 15. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

14 16. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
16 omissions, occurrences, and transactions alleged herein.

17 17. Under California law, Defendants are jointly and severally liable as employers
18 for the violations alleged herein because they have each exercised sufficient control over the
19 wages, hours, working conditions, and employment status of Plaintiff and class members.
20 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
21 controlled their work schedule and/or conditions of employment, determined their rate of pay,
22 and maintained their employment records. Defendants suffered or permitted Plaintiff and
23 class members to work and/or "engaged" Plaintiff and class members so as to create a
24 common-law employment relationship. As joint employers of Plaintiff and class members,
25 Defendants are jointly and severally liable for the civil penalties and all other relief available
26 to Plaintiff and class members under the law.

27 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
28 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class

1 members because Defendants have:

- 2 (a) jointly exercised meaningful control over the work performed by
- 3 Plaintiff and class members;
- 4 (b) jointly exercised meaningful control over Plaintiff's and class members'
- 5 wages, hours, and working conditions, including the quantity, quality
- 6 standards, speed, scheduling, and operative details of the tasks
- 7 performed by Plaintiff and class members;
- 8 (c) jointly required that Plaintiff and class members perform work which is
- 9 an integral part of Defendants' businesses; and
- 10 (d) jointly exercised control over Plaintiff and class members as a matter of
- 11 economic reality in that Plaintiff and class members were dependent on
- 12 Defendants, who shared the power to set the wages of Plaintiff and class
- 13 members and determined their working conditions, and who jointly
- 14 reaped the benefits from the underpayment of their wages and
- 15 noncompliance with other statutory provisions governing their
- 16 employment.

17 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
18 there has existed a unity of interest and ownership between Defendants such that any
19 individuality and separateness between the entities has ceased.

20 20. CARRIAGE FUNERAL HOLDINGS, INC.; CARRIAGE SERVICES, INC.;
21 CARRIAGE CEMETERY SERVICES, INC.; CARRIAGE CEMETERY SERVICES OF
22 CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.;
23 ROLLING HILLS MEMORIAL PARK; WILSON & KRATZER MORTUARIES, and/or
24 DOES 1 through 10 are therefore alter egos of each other.

25 21. Adherence to the fiction of the separate existence of Defendants would permit
26 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
27 from liability for the wrongful acts committed by them under the name CARRIAGE
28 SERVICES.

1 22. Plaintiff further alleges, upon information and belief, that Defendants
2 CARRIAGE FUNERAL HOLDINGS, INC.; CARRIAGE SERVICES, INC.; CARRIAGE
3 CEMETERY SERVICES, INC.; CARRIAGE CEMETERY SERVICES OF CALIFORNIA,
4 INC.; CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.; ROLLING HILLS
5 MEMORIAL PARK; and WILSON & KRATZER MORTUARIES are alter egos of each
6 other for the following reasons:

7 (a) On CARRIAGE SERVICES, INC.'s SEC Form 10-K filing for 2020¹,
8 CARRIAGE FUNERAL HOLDINGS, INC.; CARRIAGE CEMETERY
9 SERVICES, INC.; CARRIAGE CEMETERY SERVICES OF
10 CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES OF
11 CALIFORNIA, INC.; ROLLING HILLS MEMORIAL PARK; and
12 WILSON & KRATZER MORTUARIES are listed as direct subsidiaries
13 of CARRIAGE SERVICES, INC.;

14 (b) On the California Secretary of State's website
15 (<https://businesssearch.sos.ca.gov/>) and CARRIAGE SERVICES,
16 INC.'s SEC Form 10-K filing for 2020, CARRIAGE FUNERAL
17 HOLDINGS, INC.; CARRIAGE SERVICES, INC.; CARRIAGE
18 CEMETERY SERVICES, INC.; CARRIAGE CEMETERY SERVICES
19 OF CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES OF
20 CALIFORNIA, INC.; ROLLING HILLS MEMORIAL PARK; and
21 WILSON & KRATZER MORTUARIES share the same entity address
22 and/or entity mailing address, "3040 Post Oak B[ou]l[e]v[ar]d, S[ui]te
23 300, Houston, TX 77056;" and

24 (c) According to their most recent "Statement of Information" forms filed
25 with the California Secretary of State and CARRIAGE SERVICES,
26 INC.'s website², CARRIAGE SERVICES, INC.; CARRIAGE

27 ¹ 10-K Annual Report 03/02/2021, "SEC Filings – Carriage Services, Inc.,"
28 <https://investors.carriageservices.com/sec-filings> (last accessed May 17, 2021).

² See "Officers – Carriage Services," available at

1 FUNERAL HOLDINGS, INC.; CARRIAGE CEMETERY SERVICES,
2 INC.; CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC.;
3 CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.;
4 ROLLING HILLS MEMORIAL PARK; and WILSON & KRATZER
5 MORTUARIES share the same officers and/or directors, including, but
6 not limited to:

- 7 i. Melvin C. Payne, who serves as Chief Executive Officer of
8 CARRIAGE SERVICES, INC.; CARRIAGE FUNERAL
9 HOLDINGS, INC.; CARRIAGE CEMETERY SERVICES,
10 INC.; CARRIAGE CEMETERY SERVICES OF
11 CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES
12 OF CALIFORNIA, INC.; ROLLING HILLS MEMORIAL
13 PARK; and WILSON & KRATZER MORTUARIES;
- 14 ii. Viki King Blinderman, who serves as Secretary for
15 CARRIAGE FUNERAL HOLDINGS, INC.; CARRIAGE
16 CEMETERY SERVICES, INC.; CARRIAGE CEMETERY
17 SERVICES OF CALIFORNIA, INC.; CARRIAGE
18 FUNERAL SERVICES OF CALIFORNIA, INC.; ROLLING
19 HILLS MEMORIAL PARK; and WILSON & KRATZER
20 MORTUARIES, and as Director of CARRIAGE FUNERAL
21 SERVICES OF CALIFORNIA, INC. and WILSON &
22 KRATZER MORTUARIES; and
- 23 iii. Carl Benjamin Brink, who serves as Chief Financial Officer
24 of CARRIAGE SERVICES, INC.; CARRIAGE FUNERAL
25 HOLDINGS, INC.; CARRIAGE CEMETERY SERVICES,
26 INC.; CARRIAGE CEMETERY SERVICES OF
27 CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES

28 <https://www.carriageservices.com/officers/> (last visited May 17, 2021).

1 OF CALIFORNIA, INC.; ROLLING HILLS MEMORIAL
2 PARK; and WILSON & KRATZER MORTUARIES, and as
3 Director of CARRIAGE CEMETERY SERVICES, INC. and
4 ROLLING HILLS MEMORIAL PARK.

- 5 (d) According to their most recent "Statement of Information" forms filed
6 with the California Secretary of State, CARRIAGE FUNERAL
7 HOLDINGS, INC.; CARRIAGE CEMETERY SERVICES, INC.;
8 CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC.;
9 CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.;
10 ROLLING HILLS MEMORIAL PARK; and WILSON & KRATZER
11 MORTUARIES share the same agent for service of process,
12 CORPORATION SERVICE COMPANY WHICH WILL DO
13 BUSINESS IN CALIFORNIA AS CSC - LAWYERS
14 INCORPORATING SERVICE (C1592199); and
- 15 (e) On information and belief, CARRIAGE FUNERAL HOLDINGS, INC.;
16 CARRIAGE CEMETERY SERVICES, INC.; CARRIAGE
17 CEMETERY SERVICES OF CALIFORNIA, INC.; CARRIAGE
18 FUNERAL SERVICES OF CALIFORNIA, INC.; ROLLING HILLS
19 MEMORIAL PARK; and WILSON & KRATZER MORTUARIES
20 utilize the same standardized employment forms and issue the same
21 standardized employment forms and issue the same employment
22 policies.

23 GENERAL ALLEGATIONS

24 23. Defendants are a provider of funeral and cemetery services and products in the
25 United States. Upon information and belief, Defendants maintain a single, centralized Human
26 Resources ("HR") department at their company headquarters in Houston, Texas, which is
27 responsible for the recruiting and hiring of new employees, and communicating and
28 implementing Defendants' company-wide policies, including timekeeping policies and meal

1 and rest period policies, to employees throughout California.

2 24. In particular, Plaintiff and class members, on information and belief, received
3 the same standardized documents and/or written policies. Upon information and belief, the
4 usage of standardized documents and/or written policies, including new-hire documents,
5 indicate that Defendants dictated policies at the corporate level and implemented them
6 company-wide, regardless of their employees' assigned locations or positions. Upon
7 information and belief, Defendants set forth uniform policies and procedures in several
8 documents provided at an employee's time of hire.

9 25. Upon information and belief, Defendants maintain a centralized Payroll
10 department at their company headquarters in Houston, Texas, which processes payroll for all
11 non-exempt, hourly paid employees working for Defendants at their various locations and
12 jobsites in California, including Plaintiff and class members. Based upon information and
13 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
14 employees in California, irrespective of their work locations. Upon information and belief,
15 Defendants process payroll for departing employees in the same manner throughout the State
16 of California, regardless of the manner in which each employee's employment ends.

17 26. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

19 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
21 and advisors knowledgeable about California labor and wage law, employment and personnel
22 practices, and about the requirements of California law.

23 28. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
24 members were not paid for all hours worked because all hours worked were not recorded.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive certain wages for
27 overtime compensation and that they were not receiving certain wages for overtime
28 compensation.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to be paid at a regular rate
3 of pay, and corresponding overtime rate of pay, that included as eligible income all
4 remuneration required by law, including but not limited to, all income derived from incentive
5 pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all
6 forms of remuneration in calculating the regular rate of pay for Plaintiff and class members.

7 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive at least minimum
9 wages for compensation and that they were not receiving at least minimum wages for work
10 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
11 and class members were not paid at least minimum wages for work done off-the-clock.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to meal periods in
14 accordance with the California Labor Code and the applicable IWC Wage Order or payment
15 of one (1) additional hour of pay at their regular rates of pay when they were not provided
16 with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class
17 members were not provided with all meal periods or payment of one (1) additional hour of
18 pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30)
19 minute meal period.

20 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to rest periods in
22 accordance with the California Labor Code and applicable IWC Wage Order or payment of
23 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
24 permitted to take a compliant rest period. In violation of the Labor Code, Plaintiff and class
25 members were not authorized and permitted to take compliant rest periods, nor did Defendants
26 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
27 regular rates of pay when they were not authorized and permitted to take a compliant rest
28 period.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive complete and
3 accurate wage statements in accordance with California law. In violation of the California
4 Labor Code, Plaintiff and class members were not provided complete and accurate wage
5 statements.

6 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that they had a duty to maintain accurate and complete payroll records in
8 accordance with the California Labor Code and the applicable IWC Wage Order, but willfully,
9 knowingly, and intentionally failed to do so.

10 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to timely payment of all
12 wages earned upon termination of employment. In violation of the California Labor Code,
13 Plaintiff and class members did not receive payment of all wages due, including, but not
14 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
15 permissible time periods.

16 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to timely payment of wages
18 during their employment. In violation of the California Labor Code, Plaintiff and class
19 members did not receive payment of all wages, including, but not limited to, overtime wages,
20 minimum wages, and/or meal and rest period premiums, within permissible time periods.

21 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they were prohibited from issuing instruments for the payment of
23 wages that were not payable in cash on demand, without discount and with authorization, but
24 did so, in violation of the California Labor Code.

25 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to the portion of wages
27 previously paid and subsequently unlawfully deducted by Defendants.

28 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to payment of wages as
2 designated by statute. In violation of the California Labor Code, Defendants secretly paid
3 Plaintiff and class members lower wages than required by statute while purporting to pay
4 them proper wages.

5 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive full
7 reimbursement for all business-related expenses and costs they incurred during the course and
8 scope of their employment and that they did not receive full reimbursement of applicable
9 business-related expenses and costs incurred.

10 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to compensate
12 Plaintiff and/or class members for time associated with mandatory drug tests, and to pay for or
13 reimburse Plaintiff and/or class members for drug testing fees and/or mileage expenses
14 associated with mandatory drug tests, but failed to do so, in violation of the California Labor
15 Code.

16 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants knew or should have known that they had a duty to compensate
18 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
19 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
20 falsely represented to Plaintiff and class members that they were properly denied wages, all in
21 order to increase Defendants' profits.

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 44. At all times herein set forth, PAGA provides that any provision of law under
24 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
25 assessed and collected by the LWDA for violations of the California Labor Code and
26 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
27 civil action brought on behalf of themselves and other current or former employees pursuant
28 to procedures outlined in California Labor Code section 2699.3.

1 45. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
2 person who was employed by the alleged violator and against whom one or more of the
3 alleged violations was committed.”

4 46. Plaintiff and other current and former employees of Defendants are “aggrieved
5 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
6 or former employees and one or more of the alleged violations were committed against them.

7 47. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
8 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
9 following requirements have been met:

- 10 a) The aggrieved employee or representative shall give written notice by
11 online filing with the LWDA and by certified mail to the employer of
12 the specific provisions of the California Labor Code alleged to have
13 been violated, including the facts and theories to support the alleged
14 violation.
- 15 b) An aggrieved employee’s notice filed with the LWDA pursuant to
16 2699.3(a) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 c) The LWDA shall notify the employer and the aggrieved employee or
19 representative by certified mail that it does not intend to investigate the
20 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
21 the postmark date of the aggrieved employee’s notice. Upon receipt of
22 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
23 (65) calendar days of the postmark date of the aggrieved employee’s
24 notice, the aggrieved employee may commence a civil action pursuant
25 to California Labor Code section 2699 to recover civil penalties.

26 48. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
27 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
28 provision other than those listed in Section 2699.5 after the following requirements have been

1 met:

- 2 a) The aggrieved employee or representative shall give written notice by
3 online filing with the LWDA and by certified mail to the employer of
4 the specific provisions of the California Labor Code alleged to have
5 been violated (other than those listed in Section 2699.5), including the
6 facts and theories to support the alleged violation.
- 7 b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(c) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 c) The employer may cure the alleged violation within thirty-three (33)
11 calendar days of the postmark date of the notice sent by the aggrieved
12 employee or representative. The employer shall give written notice
13 within that period of time by certified mail to the aggrieved employee or
14 representative and by online filing with the LWDA if the alleged
15 violation is cured, including a description of actions taken, and no civil
16 action pursuant to Section 2699 may commence. If the alleged violation
17 is not cured within the 33-day period, the aggrieved employee may
18 commence a civil action pursuant to Section 2699.

19 49. On May 21, 2021, Plaintiff provided written notice by online filing to the
20 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
21 Code alleged to have been violated, including facts and theories to support the alleged
22 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
23 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
24 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
25 Plaintiff PAGA Case Number LWDA-CM-832873-21. A true and correct copy of Plaintiff's
26 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1".

27 50. As of the filing date of this complaint, over 65 days have passed since Plaintiff
28 sent the notice described above to the LWDA, and the LWDA has not responded that it

1 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

2 51. Thus, Plaintiff has satisfied the administrative prerequisites under California
3 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
4 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223,
5 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

6 52. Labor Code section 558(a) provides "[a]ny employer or other person acting on
7 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the Industrial Welfare
9 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
10 dollars (\$50) for each underpaid employee for each pay period for which the employee was
11 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
12 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
13 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
14 to any other civil or criminal penalty provided by law."

15 53. Defendants, at all times relevant to this complaint, were employers or persons
16 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
17 rights by violating various sections of the California Labor Code as set forth above.

18 54. As set forth below, Defendants have violated numerous provisions of both the
19 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
20 Order.

21 55. Pursuant to PAGA, and in particular, California Labor Code sections 225.5,
22 256, 226.3, 558, 1174.5, 1197.1, 2699(a) and 2699(f)-(g), 2699.3(a) and 2699.3(c), and
23 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment
24 and collection of civil penalties for himself, all other aggrieved employees, and the State of
25 California against Defendants for violations of California Labor Code sections 201, 202, 203,
26 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
27 1197, 1197.1, 1198, and 2802.

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CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

57. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

58. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

59. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

60. Members of the Class and Subclass are referred to herein as "class members."

61. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

62. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiff's and class members' overtime rate of pay was based;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;

- 1 (d) Whether Defendants failed to provide Plaintiff and class members with
2 meal periods;
- 3 (e) Whether Defendants failed to authorize and permit Plaintiff and class
4 members to take rest periods;
- 5 (f) Whether Defendants provided Plaintiff and class members with
6 complete and accurate wage statements as required by California Labor
7 Code section 226(a);
- 8 (g) Whether Defendants maintained accurate payroll records as required by
9 California Labor Code section 1174(d);
- 10 (h) Whether Defendants failed to pay earned overtime wages, minimum
11 wages, and/or meal and rest period premiums due to Plaintiff and class
12 members upon their discharge;
- 13 (i) Whether Defendants failed timely to pay overtime wages, minimum
14 wages, and/or meal and rest period premiums due to Plaintiff and class
15 members during their employment;
- 16 (j) Whether Defendants issued instruments for the payment of wages that
17 were not payable in cash on demand and without discount, in violation
18 of Labor Code sections 212 and 213;
- 19 (k) Whether Defendants unlawfully deducted a portion of wages paid to
20 Plaintiff and class members, in violation of Labor Code sections 221
21 and 224;
- 22 (l) Whether Defendants secretly paid Plaintiff and class members lower
23 wages than required by statute, while purporting to pay the proper
24 wages, in violation of Labor Code section 223;
- 25 (m) Whether Defendants failed to reimburse Plaintiff and class members for
26 necessary and required business-related expenditures and/or losses
27 incurred by them in the scope of their employment;
- 28 (n) Whether Defendants failed to pay Plaintiff and class members for the

costs of mandatory physical examinations and/or drug testing, in violation of Labor Code section 222.5;

(o) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(p) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

63. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

3 (d) Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve
5 economies of time, effort, and expense as compared with separate
6 lawsuits, and will avoid inconsistent outcomes because the same issues
7 can be adjudicated in the same manner and at the same time for the
8 entire class.

9 (e) Public Policy Considerations: Employers in the State of California
10 violate employment and labor laws every day. Current employees are
11 often afraid to assert their rights out of fear of direct or indirect
12 retaliation. Former employees are fearful of bringing actions because
13 they believe their former employers might damage their future
14 endeavors through negative references and/or other means. Class
15 actions provide the class members who are not named in the complaint
16 with a type of anonymity that allows for the vindication of their rights
17 while simultaneously protecting their privacy.

18 **FIRST CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

20 **(Against all Defendants)**

21 64. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 65. Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
25 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
26 shall be the . . . standard conditions of labor for employees. The employment of any employee
27 . . . under conditions of labor prohibited by the order is unlawful.”

28 66. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the
3 number of hours worked by the person on a daily or weekly basis.

4 67. Specifically, the applicable IWC Wage Order provides that Defendants are and
5 were required to pay Plaintiff and class members working more than eight (8) hours in a day
6 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
7 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
8 workweek.

9 68. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
11 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
12 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
13 employee, including nondiscretionary bonuses and incentive pay.

14 69. California Labor Code section 510 codifies the right to overtime compensation
15 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
16 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
17 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
18 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
19 in a day on the seventh (7th) day of work.

20 70. During the relevant time period, Defendants willfully failed to pay all overtime
21 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
22 class members were not paid overtime premiums for all of the hours they worked in excess of
23 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
24 hours in a week, because all hours worked were not recorded.

25 71. On information and belief, Defendants had, and continue to have, a company-
26 wide policy of strictly staffing their locations based on the labor hours allocated by each
27 location's labor or payroll budget, which, combined with heavy workloads, has resulted in,
28 and continues to result in, chronic understaffing and a lack of adequate meal period coverage,

1 because there were too few employees on duty to handle the workload. As a result of this
2 inadequate meal period coverage, Plaintiff and class members were not always afforded
3 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
4 period. For example, Defendants required Plaintiff to work through part or all of his meal
5 periods in order to complete his assigned duties and assist funeral service staff. Moreover,
6 Defendants had a practice of failing to schedule meal periods, which further caused Plaintiff
7 and class members to not be relieved of their duties for compliant meal periods.

8 72. Moreover, Defendants had, and continue to have, a policy and/or practice of
9 requiring that Plaintiff and class members carry a company-issued radio at all times to respond
10 to requests from management. Defendants' management contacted Plaintiff and class
11 members on their radios and/or personal mobile phones during unpaid meal periods to instruct
12 them to complete tasks and assist other working employees. For example, Plaintiff received
13 requests from management on his company-issued radio and/or personal mobile phone during
14 unpaid meal periods and would cut his meal periods short and/or work off-the-clock to
15 comply with these requests. Defendants knew or should have known that Plaintiff and class
16 members were being made to respond to management and complete tasks while off-the-clock
17 in order to meet Defendants' expectations, but failed to compensate them for this off-the-clock
18 work.

19 73. Defendants knew or should have known that as a result of these company-wide
20 practices and/or policies, Plaintiff and class members were performing their assigned duties
21 off-the-clock during meal periods, and were suffered or permitted to perform work for which
22 they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours a
23 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
24 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
25 for all of the overtime hours they actually worked.

26 74. Furthermore, Defendants did not pay Plaintiff and class members the correct
27 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
28 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,

1 and/or other forms of compensation. However, in violation of the California Labor Code,
2 Defendants failed to incorporate all compensation, including but not limited to, incentive pay
3 and nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
4 calculating the overtime wage rate. Therefore, during times when Plaintiff and class members
5 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
6 wages by paying a lower overtime rate than required.

7 75. Specifically, Defendants paid Plaintiff and class members incentive pay and/or
8 nondiscretionary bonuses, which were listed on Plaintiff's and class members' wage
9 statements as "Cash Bonus." During pay periods that Plaintiff and class members were paid
10 overtime wages, Defendants failed to incorporate the incentive pay and/or nondiscretionary
11 bonuses into Plaintiff's and class members' regular rate of pay and, as a result, paid them at
12 incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
13 Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular
14 rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
15 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class
16 members on a company-wide basis.

17 76. Defendants' failure to pay Plaintiff and class members the balance of overtime
18 compensation as required by California law, violates the provisions of California Labor Code
19 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
20 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
21 and attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**

24 **Minimum Wages**

25 **(Against all Defendants)**

26 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 78. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,

1 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
2 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
3 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 2-2001 as “the
4 time during which an employee is subject to the control of an employer, and includes all the
5 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
6 Code. Regs. tit. 8, § 11020(2)(G) (defining “Hours Worked”).

7 79. As stated above, due to Defendants’ practice of utilizing labor budgets,
8 assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal
9 period coverage, Plaintiff and class members were impeded from taking all uninterrupted meal
10 periods to which they were entitled and were required to work off-the-clock. Furthermore, as
11 set forth above, Defendants required Plaintiff and class members to perform work off-the-
12 clock, responding to and completing requests from management delivered over company-
13 issued radios and/or personal mobile phones, but did not compensate them for this time.

14 80. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
15 and class members. To the extent that these off-the-clock hours did not qualify for overtime
16 premium payment, Defendants did not pay at least minimum wages for those hours worked
17 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
18 1198.

19 81. Defendants’ failure to pay Plaintiff and class members minimum wages violates
20 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
21 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
22 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

23 **THIRD CAUSE OF ACTION**

24 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 25 **Violations** 26 **(Against all Defendants)**

27 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 83. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is
5 not more than six (6) hours, the meal period may be waived by mutual consent of both the
6 employer and the employee. Under California law, first meal periods must start after no more
7 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

8 84. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 85. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
12 1198, and the applicable IWC Wage Order also require employers to provide a second meal
13 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
14 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
15 the total hours worked is no more than twelve (12) hours, the second meal period may be
16 waived by mutual consent of the employer and the employee only if the first meal period was
17 not waived.

18 86. As stated, Defendants had, and continue to have, a company-wide policy of
19 utilizing labor budgets, assigning heavy workloads, and failing to schedule meal periods,
20 which prevented Plaintiff and class members from taking all timely, uninterrupted meal
21 periods to which they were entitled. As a result, Plaintiff and class members had to work
22 through part or all of their meal periods, have their meal periods interrupted, and wait
23 extended periods of time before taking meal periods.

24 87. Additionally, as stated, Defendants had, and continue to have, a policy and/or
25 practice of requiring that Plaintiff and class members carry a company-issued radio to respond
26 to requests from management at all times, including during meal periods. For example, as
27 stated, Plaintiff received work-related requests from management on his company-issued radio
28 and/or personal mobile phone during meal periods and would be forced to cut his meal periods

1 short to comply with these requests.

2 88. Defendants' practices and policies prevented Plaintiff and class members from
3 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
4 members were forced to work in excess of five (5) hours before taking a meal period and, at
5 times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
6 For example, as stated above, Defendants required Plaintiff to work through part or all of his
7 meal periods in order to complete his assigned duties and assist funeral service staff.
8 Additionally, Plaintiff would not be able to take meal periods until after his fifth hour of work
9 or later due to the heavy workloads Defendants assigned to him.

10 89. At all times herein mentioned, Defendants knew or should have known that, as
11 a result of these policies, Plaintiff and class members were prevented from being relieved of
12 all duties and required to perform some of their assigned duties during meal periods.
13 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
14 members all meal period premiums when meal periods were late, missed, shortened, or
15 interrupted.

16 90. Furthermore, Defendants engaged in a company-wide practice and/or policy of
17 not paying all meal period premiums owed when compliant meal periods are not provided.
18 Because of this practice and/or policy, Plaintiff and class members have not received all
19 premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that
20 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
21 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
22 premiums because Defendants systematically failed to include all forms of compensation,
23 such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the
24 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
25 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
26 and failed to pay the full meal period premiums due.

27 91. Defendants' conduct violates the applicable IWC Wage Order, and California
28 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore

1 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
2 rate of compensation for each work day that the meal period was not provided.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 5 **(Against all Defendants)**

6 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 93. At all relevant times herein set forth, the applicable IWC Wage Order and
9 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
10 members' employment by Defendants.

11 94. At all relevant times, the applicable IWC Wage Order provides that "[e]very
12 employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period" and that the "rest period time shall be
14 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
15 hours or major fraction thereof" unless the total daily work time is less than three and one-half
16 (3 ½) hours.

17 95. At all relevant times, California Labor Code section 226.7 provides that no
18 employer shall require an employee to work during any rest period mandated by an applicable
19 order of the California IWC. To comply with its obligation to authorize and permit rest
20 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
21 employer must "relinquish any control over how employees spend their break time, and
22 relieve their employees of all duties—including the obligation that an employee remain on
23 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
24 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
25 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
26 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
27 that a required rest period was not authorized and permitted.

28 96. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
2 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
3 practices, including utilizing labor budgets and assigning heavy workloads, prevented Plaintiff
4 and class members from being relieved of all duty to take rest periods. Additionally,
5 Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide
6 adequate rest period coverage, further led to Plaintiff and class members not being authorized
7 and permitted to take compliant rest periods.

8 97. Additionally, as stated, Defendants had, and continue to have, a policy and/or
9 practice of requiring that Plaintiff and class members carry a company-issued radio to respond
10 to requests from management at all times, including during rest periods. For example,
11 Plaintiff had his rest periods cut short and interrupted, or had to forego his rest periods
12 altogether to respond to maintenance requests on his company-issued radio and/or personal
13 mobile phone.

14 98. Furthermore, upon information and belief, Defendants maintained and
15 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
16 and class members remain on Defendants' premises during their rest periods. Because
17 Plaintiff and class members were restricted from leaving Defendants' premises during rest
18 periods, they were denied the ability to use their rest periods freely for their own purposes,
19 such as purchasing snacks and beverages from a nearby convenience store. Thus, Defendants
20 effectively maintained control over Plaintiff and class members during rest periods.

21 99. As a result of Defendants' practices and policies, Plaintiff and class members
22 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
23 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
24 Plaintiff missed rest periods and had rest periods cut short in order to complete all of the
25 work-related duties Defendants assigned to him.

26 100. Defendants have also engaged in a company-wide practice and/or policy of not
27 paying all rest period premiums owed when compliant rest periods are not authorized and
28 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members

one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them all rest period premiums due, in violation of California Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

101. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records (Against all Defendants)

102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

103. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

104. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay and/or

1 correct rates of pay for meal and rest premiums, and the corresponding number of hours
2 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
3 226(a)(5), and 226(a)(9).

4 105. Because Defendants did not record the time Plaintiff and Subclass members
5 spent working off-the-clock, Defendants did not list the correct amount of gross wages and net
6 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and
7 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
8 total number of hours worked by Plaintiff and Subclass members, in violation of section
9 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
10 and the corresponding accurate number of hours worked at each hourly rate, in violation of
11 section 226(a)(9).

12 106. Additionally, because Defendants did not calculate Plaintiff's and Subclass
13 members' regular rate of pay correctly for purposes of paying overtime and/or meal and rest
14 period premiums, Defendants did not list the correct amount of gross wages earned by
15 Plaintiff and Subclass members in compliance with section 226(a)(1). For the same reason,
16 Defendants failed to list the correct amount of net wages earned by Plaintiff and Subclass
17 members in violation of section 226(a)(5). Defendants also failed to correctly list all
18 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
19 overtime and/or meal and rest period premiums, in violation of section 226(a)(9).

20 107. The wage statement deficiencies also include, among other things, failing to list
21 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
22 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
23 only the last four digits of his or her social security number or an employee identification
24 number other than a social security number; failing to list the name and address of the legal
25 entity that is the employer; failing to list the inclusive dates of the period for which employees
26 were paid; and/or failing to state all hours worked as a result of not recording or stating the
27 hours they worked off-the-clock.

28 108. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
2 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
3 employment of any employees for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
5 Wage Order, employers are required to keep accurate time records showing when the
6 employee begins and ends each work period and meal period. During the relevant time
7 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
8 and meal period start and stop times for Plaintiff and Subclass members, in violation of
9 section 1198.

10 109. California Labor Code section 1174(d) provides that “[e]very person employing
11 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
12 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
13 plants or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
15 applicable piece rate paid to, employees employed at the respective plants or
16 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
17 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
18 members showing the daily hours they worked and the wages paid thereto as a result of failing
19 to record the off-the-clock hours that they worked.

20 110. Plaintiff and Subclass members are entitled to recover from Defendants the
21 greater of their actual damages caused by Defendants’ failure to comply with California Labor
22 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
23 employee.

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

3 **Upon Termination**

4 **(Against all Defendants)**

5 111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 112. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
9 Plaintiff and those class members no longer employed by Defendants upon their termination.

10 113. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
11 that if an employer discharges an employee, the wages earned and unpaid at the time of
12 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
13 her employment, his or her wages shall become due and payable not later than seventy-two
14 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
15 his or her intention to quit, in which case the employee is entitled to his or her wages at the
16 time of quitting.

17 114. Defendants willfully failed to pay Plaintiff and class members who are no
18 longer employed by Defendants the earned and unpaid wages set forth above, including but
19 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
20 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
21 employ.

22 115. Defendants' failure to pay Plaintiff and class members who are no longer
23 employed by Defendants their wages earned and unpaid at the time of discharge, or within
24 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
25 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
26 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
27 thirty (30) day maximum pursuant to California Labor Code section 203.

28 //

1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
3 **Employment**

4 **(Against all Defendants)**

5 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 117. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
9 Plaintiff and those class members.

10 118. At all times relevant herein set forth, Labor Code section 204 provides that all
11 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
12 days, inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
14 the month during which the labor was performed.

15 119. At all times relevant herein, Labor Code section 204 provides that all wages
16 earned by any person in any employment between the sixteenth (16th) and the last day,
17 inclusive, of any calendar month, other than those wages due upon termination of an
18 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
19 month.

20 120. At all times relevant herein, Labor Code section 204 provides that all wages
21 earned for labor in excess of the normal work period shall be paid no later than the payday for
22 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
23 204 provides that the requirements of this section are deemed satisfied by the payment of
24 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
25 seven (7) calendar days following the close of the payroll period.

26 121. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 class members all wages due including, but not limited to, overtime wages, minimum wages,
28 and/or meal and rest period premiums, within the time periods specified by California Labor

1 Code section 204.

2 122. Defendants' failure to pay Plaintiff and class members all wages due violates
3 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
4 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

7 **(Against all Defendants)**

8 123. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 124. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). The applicable wage order, IWC Wage Order No. 2-2001, provides that: "[w]hen
16 tools or equipment are required by the employer or are necessary to the performance of a job,
17 such tools and equipment shall be provided and maintained by the employer, except that an
18 employee whose wages are at least two (2) times the minimum wage provided herein may be
19 required to provide and maintain hand tools and equipment customarily required by the trade
20 or craft."

21 125. During the relevant time period, Defendants had a company-wide policy of
22 requiring Plaintiff and class members to utilize their own personal mobile phones to carry out
23 their job duties, but failed to reimburse them for all of the costs of their work-related mobile
24 phone expenses. Plaintiff and class members were required to use their personal mobile
25 phones to complete their work-related tasks, such as responding to requests from Defendants'
26 management at all times. For example, when Plaintiff was outside of range for his company-
27 issued radio, management would call and send text messages to Plaintiff on his personal
28 mobile phone in order to reach him. Although Defendants required Plaintiff and class

1 members to utilize their personal mobile phones to carry out their work-related
2 responsibilities, Defendants failed to fully reimburse them for this cost.

3 126. Defendants could have provided Plaintiff and class members with the actual
4 tools for use on the job, such as company phones, or, Defendants could have reimbursed
5 employees for the costs of their mobile phone usage. Instead, Defendants passed these
6 operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not
7 earn at least two (2) times the minimum wage.

8 127. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
10 have intentionally and willfully failed to reimburse Plaintiff and other class members for
11 necessary business-related expenses and costs.

12 128. Plaintiff and class members are entitled to recover from Defendants their
13 business-related expenses incurred during the course and scope of their employment, plus
14 interest.

15 **NINTH CAUSE OF ACTION**

16 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

17 **(Against all Defendants)**

18 129. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 130. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 212,
23 213(d), 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198,
24 and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
25 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
26 including sections 516 and 1182.12.

27 131. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiff and other
3 aggrieved employees with all required overtime pay and failure to
4 properly calculate the overtime rates paid to other aggrieved employees,
5 as alleged herein;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
7 and the applicable IWC Wage Order for Defendants' failure to
8 compensate Plaintiff and other aggrieved employees with at least
9 minimum wages for all hours worked, as alleged herein;
- 10 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
11 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
12 and other aggrieved employees with meal periods, as alleged herein;
- 13 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
14 IWC Wage Order for Defendants' failure to authorize and permit
15 Plaintiff and other aggrieved employees to take rest periods, as alleged
16 herein;
- 17 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
18 Wage Order for failure to provide accurate and complete wage
19 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 20 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, as alleged
22 herein;
- 23 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
24 earned wages upon termination, as alleged herein;
- 25 (h) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as alleged herein;
- 27 (i) Violation of Labor Code sections 212 and 213 for unlawful direct
28 deposit and discount of wages, as alleged herein;

- 1 (j) Violation of Labor Code sections 221 and 224 for unlawful deductions,
2 as set forth below;
- 3 (k) Violation of Labor Code section 223 for the secret payment of wages
4 lower than required by statute while purporting to pay legal wages, as
5 set forth below;
- 6 (l) Violation of Labor Code section 222.5 for failure to pay for costs of
7 mandatory physical examinations and/or drug testing, as set forth
8 below; and
- 9 (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
10 and other aggrieved employees for all business expenses necessarily
11 incurred, as alleged herein.

12 132. At all relevant times herein, California Labor Code section 221 provides that it
13 shall be unlawful for any employer to collect or receive from an employee any part of wages
14 theretofore paid by said employer to said employee. California Labor Code section 224 also
15 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
16 deduction is expressly authorized in writing by the employee."

17 133. During the relevant time period, Defendants unlawfully deducted a portion of
18 wages previously paid to other aggrieved employees in violation of California Labor Code
19 section 221. On information and belief, Defendants systematically, and on a company-wide
20 basis, provided other aggrieved employees with payroll debit cards as payment of their wages.
21 Under Defendants' payroll debit card program, other aggrieved employees were assessed
22 various fees in connection with their use of the payroll debit cards. For example, other
23 aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to
24 obtain and/or spend their earned and due wages. The fees charged to other aggrieved
25 employees resulted in a discount of their wages. Defendants' payroll debit card program,
26 which resulted in a discount of wages to employees, is tantamount to taking deductions from
27 other aggrieved employees' paychecks without their written authorization and therefore
28 constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224.

1 Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and
2 interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

3 134. At all relevant times herein, California Labor Code section 223 makes it
4 unlawful for an employer to secretly pay wages lower than required by statute while
5 purporting to pay legal wages.

6 135. During the relevant time period, Defendants willfully and systematically issued
7 payroll debit cards to other aggrieved employees that discounted their wages by charging
8 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
9 card program resulted in the payment of less than statutorily required wages to other
10 aggrieved employees. In doing so, Defendants acted with the intent to deprive other
11 aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or
12 minimum wages, to which they were entitled to under California law. Thus, Defendants paid
13 other aggrieved employees lower wages than those they were entitled to while purporting that
14 other aggrieved employees were properly paid. Defendants' failure to pay other aggrieved
15 employees the correct designated wage, while purporting to pay legal wages, is a violation of
16 California Labor Code section 223. Other aggrieved employees are entitled to recover civil
17 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5
18 and/or 2699(a), (f)-(g).

19 136. At all relevant times herein, California Labor Code section 222.5 requires
20 employers to pay for the costs an employee incurs for obtaining any required medical or
21 physical examination.

22 137. During the relevant time period, Defendants implemented, on a company-wide
23 basis, an employer-imposed requirement that other aggrieved employees undergo mandatory
24 drug testing and/or physical examinations, but required them to do so at their own expense.
25 As stated, Defendants had a company-wide policy requiring that other aggrieved employees
26 travel to a specified medical facility on their own time and use their own means of
27 transportation to undergo drug testing and/or physical examinations. At all times, Defendants
28 were in control of scheduling the date and time for the testing and/or examinations, selecting

1 the provider/facility where the testing and/or examinations were to take place, and
2 determining the scope of the testing and/or examinations. However, Defendants did not
3 compensate other aggrieved employees for the time they spent traveling to and from the
4 medical facilities, for the time they spent undergoing the drug testing and/or physical
5 examinations, or reimburse them for the travel expenses they incurred getting to and from the
6 medical facilities. Defendants' policy and/or practice of not paying for all costs other
7 aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations
8 is in violation of California Labor Code section 222.5. Other aggrieved employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
10 (g).

11 **TENTH CAUSE OF ACTION**

12 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

13 **Unlawful Business Practices**

14 **(Against all Defendants)**

15 138. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 139. Defendants are "persons" as defined by California Business & Professions
18 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
19 and/or associations.

20 140. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
21 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
22 suffered injury in fact and has lost money as a result of Defendants' unlawful business
23 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of Code of Civil Procedure section 1021.5.

25 141. Defendants' activities, as alleged herein, are violations of California law, and
26 constitute unlawful business acts and practices in violation of California Business &
27 Professions Code sections 17200, *et seq.*

28 142. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
2 policies and practices have violated state law in at least the following respects:

- 3 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
4 class members, to work overtime without paying them proper
5 compensation in violation of California Labor Code sections 510 and
6 1198 and the applicable IWC Wage Order, and paying Plaintiff and
7 class members overtime at a lower rate than required by law by failing
8 to properly calculate the regular rate of pay for purposes of overtime, as
9 alleged herein;
- 10 (b) Failing to pay at least minimum wage to Plaintiff and class members in
11 violation of California Labor Code sections 1182.12, 1194, 1197,
12 1197.1, and 1198 and the applicable IWC Wage Order, as alleged
13 herein;
- 14 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
15 members in violation of California Labor Code sections 226.7, 512(a),
16 516, 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (d) Failing to authorize and permit Plaintiff and class members to take
18 uninterrupted rest periods in violation of California Labor Code sections
19 226.7, 516, 1198, and the applicable IWC Wage Order, as alleged
20 herein;
- 21 (e) Failing to provide Plaintiff and class members with accurate wage
22 statements and failing to maintain accurate payroll records in violation
23 of California Labor Code sections 226(a), 1174(d), and 1198, and the
24 applicable IWC Wage Order, as alleged herein;
- 25 (f) Failing timely to pay all earned wages to Plaintiff and class members in
26 violation of California Labor Code section 204, as alleged herein;
- 27 (g) Issuing instruments to Plaintiff and class members for the payment of
28 wages that were not payable in cash on demand and without discount, in

1 violation of Labor Code sections 212 and 213, as set forth below; and
2 (h) Failing to reimburse Plaintiff and class members for all business
3 expenses necessarily incurred in violation of California Labor Code
4 sections 2802, as alleged herein.

5 143. At all times relevant herein, California Labor Code section 212 prohibits
6 employers from issuing any instruments for the payment of wages unless such instruments are
7 negotiable and payable in cash on demand and without discount. California Labor Code
8 section 213 permits employers to pay employees via direct deposit so long as the employee
9 authorizes payment via direct deposit.

10 144. Under California law, employers are permitted to fulfill their wage payment
11 obligations to employees by using payroll debit cards, but only so long as the employee is
12 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
13 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
14 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
15 Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible
16 relied heavily on:

17 . . . [T]he fact that the pay programs were optional, thereby
18 allowing an employee to either participate in the program or
19 receive his or her pay in some other way, such as direct deposit.
20 Specifically, the DLSE opined that “[t]he success of the described
21 procedure, in practice, will of course require that . . . it is
22 presented as an *alternative* method for wage payment for which
23 [the employees’] participation is optional.” The DLSE also stated,
24 “[i]t is significant that the program does not mandate employee
25 participation in the Money Network Service and that it is designed
26 to provide an alternative for employees receiving their wage
27 payment. Employees are also given the option of having their pay
28 direct deposited into an account of their choosing. . . .” (internal
citations omitted).

24 145. In addition, California law only permits employers to utilize payroll debit card
25 programs if they provide employees with effective access to their wages without discount.
26 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
27 payroll debit cards where the following requirements are satisfied:

28 . . . (1) [T]he “wages [are] payable at some established place of

business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

146. Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wage under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of page wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.” (Emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

147. During the relevant time period, Defendants had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Plaintiff received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit card program for the purpose of issuing his final wages to him without prior, voluntary approval from Plaintiff. Thus, Defendants’ payroll debit card program was and continues to be unlawful as it does not give departing employees the choice as to whether they would like to receive their final wages on a payroll debit card or via some other payment method.

148. California courts recognize a policy favoring the full and prompt payment of

1 wages to employees. Defendants' payroll card program is inconsistent with this policy
2 because Defendants' program is involuntary and denies Plaintiff and class members of easy
3 access to the entirety of their wages. Thus, Defendants' company-wide payroll debit card
4 program violates California Labor Code sections 212 and 213.

5 149. As a result of the violations of California law herein described, Defendants
6 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
7 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
8 herein.

9 150. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
10 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
11 Defendants during a period that commences four years prior to the filing of this complaint; a
12 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
13 class members; and an award of attorneys' fees pursuant to California Code of Civil
14 Procedure section 1021.5 and other applicable laws; and an award of costs.

15 **ELEVENTH CAUSE OF ACTION**

16 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

17 **Unfair Business Practices**

18 **(Against all Defendants)**

19 151. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 152. Defendants are "persons" as defined by California Business & Professions
22 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
23 and/or associations.

24 153. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
25 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
26 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
27 seeks to enforce important rights affecting the public interest within the meaning of Code of
28 Civil Procedure section 1021.5.

154. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

155. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

156. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in

1 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
2 reserves the right to amend his prayer for relief to seek a different amount.

3 **Class Certification**

- 4 2. That this case be certified as a class action;
5 3. That Plaintiff be appointed as the representative of the Class and Subclass;
6 4. That counsel for Plaintiff be appointed as class counsel.

7 **As to the First Cause of Action**

8 5. That the Court declare, adjudge, and decree that Defendants violated California
9 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
10 pay all overtime wages due to Plaintiff and class members;

11 6. For general unpaid wages at overtime wage rates and such general and special
12 damages as may be appropriate;

13 7. For pre-judgment interest on any unpaid overtime compensation commencing
14 from the date such amounts were due, or as otherwise provided by law;

15 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
16 California Labor Code section 1194(a); and

17 9. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Second Cause of Action**

20 10. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
22 Order by willfully failing to pay minimum wages to Plaintiff and class members;

23 11. For general unpaid wages and such general and special damages as may be
24 appropriate;

25 12. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due, or as otherwise provided by law;

27 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
28 California Labor Code section 1194(a);

- 1 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
2 15. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Third Cause of Action**

5 16. That the Court declare, adjudge, and decree that Defendants violated California
6 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by
7 willfully failing to provide all meal periods to Plaintiff and class members;

8 17. That the Court make an award to the Plaintiff and class members of one (1)
9 hour of pay at each employee's regular rate of pay for each workday that a meal period was
10 not provided;

11 18. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 19. For premiums pursuant to California Labor Code section 226.7(c);

14 20. For pre-judgment interest on any unpaid meal period premiums from the date
15 such amounts were due, or as otherwise provided by law;

16 21. For attorneys' fees pursuant to California Code of Civil Procedure section
17 1021.5, or as otherwise provided by law; and

18 22. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Fourth Cause of Action**

21 23. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
23 failing to authorize and permit Plaintiff and class members to take all rest periods;

24 24. That the Court make an award to the Plaintiff and class members of one (1) hour
25 of pay at each employee's regular rate of pay for each workday that a rest period was not
26 authorized and permitted;

27 25. For all actual, consequential, and incidental losses and damages, according to
28 proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor

1 Code section 203 for all employees who have left Defendants' employ;

2 39. For pre-judgment interest on any unpaid wages from the date such amounts
3 were due, or as otherwise provided by law;

4 40. For attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5, or as otherwise provided by law; and

6 41. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Seventh Cause of Action**

9 42. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
11 overtime wages, minimum wages, and/or meal and rest period premiums during their
12 employment;

13 43. For all actual, consequential and incidental losses and damages, according to
14 proof;

15 44. For statutory penalties according to proof pursuant to California Labor Code
16 section 210;

17 45. For pre-judgment interest on any unpaid wages from the date such amounts
18 were due, or as otherwise provided by law;

19 46. For attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5, or as otherwise provided by law; and

21 47. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Eighth Cause of Action**

24 48. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
26 related expenses and costs incurred by Plaintiff and class members;

27 49. For unpaid business-related expenses and such general and special damages as
28 may be appropriate;

1 50. For pre-judgment interest on any unpaid business-related expenses from the
2 date such amounts were due, or as otherwise provided by law;

3 51. For all actual, consequential, and incidental losses and damages, according to
4 proof;

5 52. For attorneys' fees and costs pursuant to California Labor Code section
6 2802(c), or as otherwise provided by law; and

7 53. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Ninth Cause of Action**

10 54. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
12 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
13 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
14 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
15 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
17 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
18 employment); 212 and 213 (by unlawfully issuing instruments for the payment of wages that
19 are not negotiable and payable in cash on demand and without discount); 224 and 224 (by
20 unlawfully deducting from wages); 223 (by secretly paying wages lower than required by
21 statute while purporting to pay legal wages); 222.5 (by failing to pay the costs of mandatory
22 physical examinations and/or drug testing); and 2802 (by failing to reimburse business
23 expenses);

24 55. For civil penalties pursuant to the California Labor Code, including sections
25 225.5, 256, 226.3, 558, 1174.5, 1197.1, 2699(a) and 2699(f)-(g), 2699.3(a) and 2699.3(c) and
26 2699.5, for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221,
27 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
28 and 2802;

1 56. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510,
4 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

5 57. For pre-judgment and post-judgment interest as provided by law; and

6 58. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Tenth Cause of Action**

9 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
10 to provide Plaintiff and class members all overtime wages due to them, failing to provide
11 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
12 class members all meal periods, failing to authorize and permit Plaintiff and class members to
13 take all rest periods, failing to provide Plaintiff and class members accurate and complete
14 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
15 failing to timely pay Plaintiff and class members all earned wages during employment, failing
16 to provide access to wages upon demand and without discount, and failing to reimburse
17 Plaintiff and class members for business-related expenses, constitutes an unlawful business
18 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

19 60. For restitution of unpaid wages to Plaintiff and all class members and
20 prejudgment interest from the day such amounts were due and payable;

21 61. For the appointment of a receiver to receive, manage, and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violations of California Business & Professions Code sections
24 17200, *et seq.*;

25 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Code of Civil Procedure section 1021.5; and

27 63. For such other and further relief as the Court may deem equitable and
28 appropriate.

1 **As to the Eleventh Cause of Action**

2 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
3 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
4 an unfair business practice in violation of California Business and Professions Code sections
5 17200, *et seq.*;

6 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
7 from Plaintiff and class members and prejudgment interest from the day such amounts were
8 due and payable;

9 66. For the appointment of a receiver to receive, manage, and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

13 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5;

15 68. For pre-judgment and post-judgment interest as provided by law; and

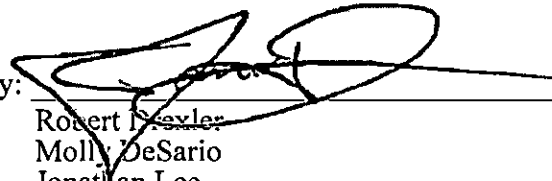
16 69. For such other and further relief as the Court may deem equitable and
17 appropriate.

18
19 Dated: September 28, 2021

Respectfully submitted,

Capstone Law APC

20
21
22 By: _____


Robert Nessler
Molly DeSario
Jonathan Lee

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24 Attorneys for Plaintiff Roberto Chinchilla
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26
27
28

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 21, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Roberto Chinchilla v. Carriage Funeral Holdings, Inc., et al.*

Dear PAGA Administrator:

This office represents Roberto Chinchilla in connection with his claims under the California Labor Code. Mr. Chinchilla was an employee of CARRIAGE FUNERAL HOLDINGS, INC.; CARRIAGE SERVICES, INC.; CARRIAGE CEMETERY SERVICES, INC.; CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.; ROLLING HILLS MEMORIAL PARK; and/or WILSON & KRATZER MORTUARIES. For the purpose of this letter, Mr. Chinchilla collectively refers to these entities as "CARRIAGE."

The employers may be contacted directly at the addresses below:

CARRIAGE FUNERAL HOLDINGS, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

CARRIAGE FUNERAL SERVICES OF
CALIFORNIA, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

CARRIAGE SERVICES, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

ROLLING HILLS MEMORIAL PARK
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

CARRIAGE CEMETERY SERVICES, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

WILSON & KRATZER MORTUARIES
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

CARRIAGE CEMETERY SERVICES OF
CALIFORNIA, INC.
3040 POST OAK BLVD STE 300
HOUSTON TX 77056

Mr. Chinchilla intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Chinchilla seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARRIAGE as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARRIAGE employed Mr. Chinchilla as an hourly paid, non-exempt employee from approximately February 2018 to March 2021. Mr. Chinchilla worked as a Cemetery Maintenance employee for CARRIAGE at its Rolling Hills Memorial Park property located in Richmond, California. During his employment, Mr. Chinchilla typically worked eight (8) hours or more per day, and five (5) days per week. At the time his employment ended, Mr. Chinchilla was compensated approximately \$18.50 per hour. His job duties included, without limitation, installing headstones and monuments, operating an excavator, mowing and maintaining grass, disposing of trash, and assisting with funeral services.

CARRIAGE committed one or more of the following Labor Code violations against Mr. Chinchilla, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

CARRIAGE's Company-Wide and Uniform Payroll and HR Practices

CARRIAGE FUNERAL HOLDINGS, INC. and CARRIAGE SERVICES, INC. are Delaware corporations and CARRIAGE CEMETERY SERVICES, INC. is a Texas corporation. CARRIAGE CEMETERY SERVICES OF CALIFORNIA, INC.; CARRIAGE FUNERAL SERVICES OF CALIFORNIA, INC.; ROLLING HILLS MEMORIAL PARK; and WILSON & KRATZER MORTUARIES are California corporations. Together, they provide funeral and cemetery services and products in the United States. Upon information and belief, CARRIAGE maintains a single, centralized Human Resources (HR) department at its company headquarters in Austin, Texas, for all non-exempt, hourly paid employees working for CARRIAGE in California, including Mr. Chinchilla and other aggrieved employees. At all relevant times, CARRIAGE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Chinchilla and other aggrieved employees, regardless of their location or position.

Upon information and belief, CARRIAGE maintains a centralized Payroll department at its company headquarters in Austin, Texas, which processes payroll for all non-exempt, hourly paid employees working for CARRIAGE in California, including Mr. Chinchilla and other aggrieved employees. Further, CARRIAGE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Chinchilla and other aggrieved

¹ These facts, theories, and claims are based on Mr. Chinchilla's experience and counsel's review of those records currently available relating to Mr. Chinchilla's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Chinchilla reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, CARRIAGE utilized the same methods and formulas when calculating wages due to Mr. Chinchilla and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CARRIAGE willfully failed to pay all overtime wages owed to Mr. Chinchilla and other aggrieved employees. During the relevant time period, Mr. Chinchilla and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

On information and belief, CARRIAGE had, and continues to have, a company-wide policy of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget, which, combined with heavy workloads, has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result of this inadequate meal period coverage, Mr. Chinchilla and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, CARRIAGE required Mr. Chinchilla to work through part or all of his meal periods in order to complete his assigned duties and assist funeral service staff. Moreover, CARRIAGE had a practice of failing to schedule meal periods, which further caused Mr. Chinchilla and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Moreover, CARRIAGE had, and continues to have, a policy and/or practice of requiring that Mr. Chinchilla and other aggrieved employees carry a company-issued radio at all times to respond to requests from management. CARRIAGE's management contacted Mr. Chinchilla and other aggrieved employees on their radios and/or personal mobile phones during unpaid meal periods to instruct them to complete tasks and assist other working employees. For example, Mr. Chinchilla received requests from management on his company-issued radio and/or personal mobile phone during unpaid meal periods and would cut his meal periods short and/or work off-the-clock to comply with these requests. CARRIAGE knew or should have known that Mr. Chinchilla and other aggrieved employees were being made to respond to management and complete tasks while off-the-clock in order to meet CARRIAGE's expectations, but failed to compensate them for this off-the-clock work.

CARRIAGE knew or should have known that as a result of these company-wide practices and/or policies, Mr. Chinchilla and other aggrieved employees were performing their assigned duties off-the-clock during meal periods, and were suffered or permitted to perform work for which they were

not paid. Because Mr. Chinchilla and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Chinchilla and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CARRIAGE did not pay Mr. Chinchilla and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CARRIAGE paid Mr. Chinchilla and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of compensation. However, in violation of the California Labor Code, CARRIAGE failed to incorporate all compensation, including but not limited to, incentive pay and nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Chinchilla and other aggrieved employees worked overtime and received these other forms of pay, CARRIAGE failed to pay all overtime wages by paying a lower overtime rate than required.

For example, CARRIAGE paid Mr. Chinchilla and other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Mr. Chinchilla's and other aggrieved employees' wage statements as "Cash Bonus." During pay periods that Mr. Chinchilla and other aggrieved employees were paid overtime wages, CARRIAGE failed to incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Chinchilla's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, CARRIAGE paid Mr. Chinchilla and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. CARRIAGE's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Chinchilla and other aggrieved employees on a company-wide basis.

Accordingly, Mr. Chinchilla and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 2-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11020(2)(G) (defining "Hours Worked").

As stated above, due to CARRIAGE's practice of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Chinchilla and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Furthermore, as set forth above, CARRIAGE required Mr. Chinchilla and other aggrieved employees to perform work off-the-clock, responding to and completing requests from management disseminated over company-issued radios and/or personal mobile phones, but did not compensate them for this time.

Moreover, CARRIAGE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, CARRIAGE was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CARRIAGE gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of CARRIAGE. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing CARRIAGE's mandatory drug tests and/or physical examinations. However, CARRIAGE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

Thus, CARRIAGE did not pay at least minimum wages for all hours worked by Mr. Chinchilla and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CARRIAGE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CARRIAGE regularly failed to pay at least minimum wages to Mr. Chinchilla and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, CARRIAGE had, and continues to have, a company-wide policy of utilizing labor budgets, assigning heavy workloads, and failing to schedule meal periods, which prevented Mr. Chinchilla and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Chinchilla and other aggrieved employees had to work through part or all

of their meal periods, have their meal periods interrupted, and wait extended periods of time before taking meal periods.

Additionally, as stated, CARRIAGE had, and continue to have, a policy and/or practice of requiring that Mr. Chinchilla and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during meal periods. For example, as stated, Mr. Chinchilla received work-related requests from management on his company-issued radio and/or personal mobile phone during meal periods and would be forced to cut his meal periods short to comply with these requests.

CARRIAGE's practices and policies prevented Mr. Chinchilla and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Chinchilla and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, as stated above, CARRIAGE required Mr. Chinchilla to work through part or all of his meal periods in order to complete his assigned duties and assist funeral service staff. Additionally, Mr. Chinchilla would not be able to take meal periods until after his fifth hour of work or later due to the heavy workloads CARRIAGE assigned to him.

Additionally, CARRIAGE did not provide other aggrieved employees with all second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) or more hours per day, but were not always provided second 30-minute meal periods. Mr. Chinchilla and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CARRIAGE knew or should have known that, as a result of these policies, Mr. Chinchilla and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CARRIAGE further knew or should have known that it did not pay Mr. Chinchilla and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, or missed.

Moreover, CARRIAGE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of CARRIAGE's practices and/or policies, Mr. Chinchilla and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that CARRIAGE did pay Mr. Chinchilla and other aggrieved employees premium pay for missed, late, and interrupted meal periods, CARRIAGE did not pay Mr. Chinchilla and other aggrieved employees at the correct rate of pay for premiums because CARRIAGE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, CARRIAGE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Chinchilla and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

5

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CARRIAGE regularly failed to authorize and permit Mr. Chinchilla and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CARRIAGE's company-wide practices, including utilizing labor budgets and assigning heavy workloads, prevented Mr. Chinchilla and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CARRIAGE failed to schedule rest periods, which, coupled with CARRIAGE's failure to provide adequate rest period coverage, further led to Mr. Chinchilla and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, as stated, CARRIAGE had, and continue to have, a policy and/or practice of requiring that Mr. Chinchilla and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during rest periods. For example, Mr. Chinchilla had his rest periods cut short and interrupted, or had to forego his rest periods altogether to respond to maintenance requests on his company-issued radio and/or personal mobile phone.

Furthermore, upon information and belief, CARRIAGE maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Chinchilla and other aggrieved employees remain on CARRIAGE's premises during their rest periods. Because Mr. Chinchilla and other aggrieved employees were restricted from leaving CARRIAGE's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as purchasing snacks and beverages from a nearby convenience store. Thus, CARRIAGE effectively maintained control over Mr. Chinchilla and other aggrieved employees during rest periods.

As a result of CARRIAGE's practices and policies, Mr. Chinchilla and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Chinchilla missed rest periods and had rest periods cut short in order to complete all of the work-related duties CARRIAGE assigned to him.

CARRIAGE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Chinchilla and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CARRIAGE did pay Mr. Chinchilla and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CARRIAGE did not pay Mr. Chinchilla and other aggrieved employees at the correct rate of pay for premiums because CARRIAGE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARRIAGE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Chinchilla and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CARRIAGE has not provided Mr. Chinchilla and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CARRIAGE has knowingly and intentionally provided Mr. Chinchilla and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CARRIAGE issued uniform wage statements to Mr. Chinchilla and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, CARRIAGE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CARRIAGE did not record the time Mr. Chinchilla and other aggrieved employees spent working off-the-clock, CARRIAGE did not list the correct amount of gross wages and net wages earned by Mr. Chinchilla and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CARRIAGE failed to accurately list the total number of hours worked by Mr. Chinchilla and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because CARRIAGE did not calculate Mr. Chinchilla's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, CARRIAGE did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, CARRIAGE also failed to list the correct amount of net wages in violation of section 226(a)(5). CARRIAGE also

failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, 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. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CARRIAGE willfully failed to maintain accurate payroll records for Mr. Chinchilla and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CARRIAGE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Chinchilla and other aggrieved employees, in violation of section 1198. Furthermore, in light of CARRIAGE’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, CARRIAGE kept no records of meal start and end times for second meal periods.

Because CARRIAGE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Chinchilla and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Chinchilla and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CARRIAGE failed to pay Mr. Chinchilla and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within any time period specified by California Labor Code section 204.

Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

CARRIAGE willfully failed to pay Mr. Chinchilla and other aggrieved employees who are no longer employed by CARRIAGE all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving CARRIAGE's employ.

Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long

as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both

an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, CARRIAGE had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Mr. Chinchilla received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, CARRIAGE automatically enrolled Mr. Chinchilla in its payroll debit card program for the purpose of issuing his final wages to him without prior, voluntary approval from Mr. Chinchilla.

Moreover, under CARRIAGE’s payroll debit card program, on information and belief, other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, were charged a 50-cent per-transaction fee on point of transaction sales, and/or encountered \$3.50 ATM fees each time they utilized an out-of-network ATM to withdraw funds from their payroll debit cards, which resulted in a discount in their pay. In sum, CARRIAGE’s payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for Mr. Chinchilla and/or other aggrieved employees to access their entire wages without discount and without delay.

Thus, CARRIAGE’s payroll debit card program was and continues to be unlawful as it does not give departing employees the choice as to whether they would like to receive their final wages on a payroll debit card or via some other payment method and did not give Mr. Chinchilla and/or other aggrieved employees easy access to the entirety of their wages without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. CARRIAGE’s payroll card program is inconsistent with this policy because CARRIAGE’s program is involuntary and denies Mr. Chinchilla and other aggrieved employees of easy access to the entirety of their wages. Thus, CARRIAGE’s company-wide payroll debit card program violates California Labor Code sections 212 and 213. Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee’s wages if “a deduction is expressly authorized in writing by the employee.”

During the relevant time period, CARRIAGE unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, CARRIAGE systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under CARRIAGE’s payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

CARRIAGE's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, CARRIAGE willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. CARRIAGE's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, CARRIAGE acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, CARRIAGE paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

CARRIAGE's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, CARRIAGE implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, CARRIAGE had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, CARRIAGE was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, CARRIAGE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. CARRIAGE's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 2-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, CARRIAGE had a company-wide policy of requiring Mr. Chinchilla and other aggrieved employees to utilize their own personal mobile phones to carry out their job duties, but failed to reimburse them for all of the costs of their work-related mobile phone expenses. Although Mr. Chinchilla and other aggrieved employees were provided company-issued radios, there were occasions when the radios did not work or were out of range. Since Mr. Chinchilla and other aggrieved employees did not work in an office setting, they had no access to phones other than their own, and they had to respond to requests from CARRIAGE’s management at all times. For example, when Mr. Chinchilla was outside of range for his company-issued radio, management would call and send text messages to Mr. Chinchilla on his personal mobile phone in order to reach him. Although CARRIAGE required Mr. Chinchilla and other aggrieved employees to utilize their personal mobile phones to carry out their work-related responsibilities, CARRIAGE failed to fully reimburse them for this cost.

Moreover, as stated, CARRIAGE had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, CARRIAGE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Although CARRIAGE required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, CARRIAGE never reimbursed them for their travel expenses.

CARRIAGE could have provided Mr. Chinchilla and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles. Or, CARRIAGE could have fully reimbursed employees for their mobile phone usage, mileage, and travel expenses. Instead, CARRIAGE passed these operating costs off onto Mr. Chinchilla and other aggrieved employees. At all relevant times, Mr. Chinchilla did not earn at least two (2) times the minimum wage.

Thus, CARRIAGE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Chinchilla and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CARRIAGE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Chinchilla's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Chinchilla seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Chinchilla, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARRIAGE for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Chinchilla seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

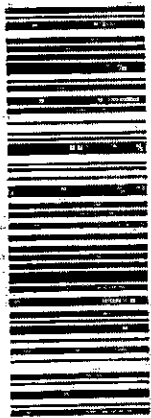
Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

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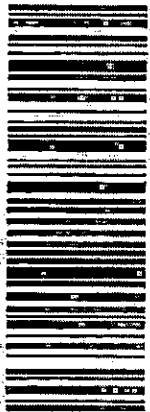
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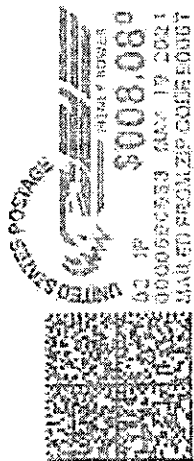
Robert v.
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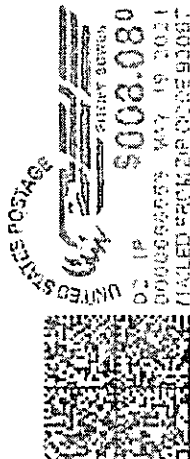
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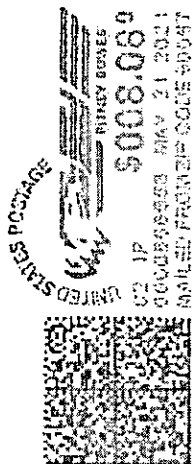
Chinchilla v. Carriage
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X
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

CARRIAGE CEMETERY SERVICES OF CALIFORNIA,
INC.
3040 POST OAK BLVD STE 300
HOUSTON TX 77056

7020 1290 0001 8879 3979

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only**

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee
\$ 3.60
Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 1.63
Total Postage and Fees
\$ 8.08

Sent To
CARRIAGE CEMETERY SERVICES OF
CALIFORNIA, INC.
Street and Apt. No., or PO Box No.
3040 POST OAK BLVD STE 300
City, State, ZIP+4®
HOUSTON TX 77056

Postmark
Here
Chinchilla V. Carriage
Cemetery Services of
California, Inc.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ROLLING HILLS MEMORIAL PARK
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056



9590 9403 0424 5163 3672 60

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3986

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL®



7020 1290 0001 8879 3986

ROLLING HILLS MEMORIAL PARK
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

7020 1290 0001 8879 3986

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**

Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.85

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

ROLLING HILLS MEMORIAL PARK

Street and Apt. No. 3040 POST OAK BOULEVARD, SUITE 300

City, State, ZIP+4® HOUSTON TX 77056

PS Form 3800, April 2015 PSN 7530-02-000-9047

Postmark
Here
Chinchilla v. Rolling
Hills Memorial Park

* See Reverse for Instructions

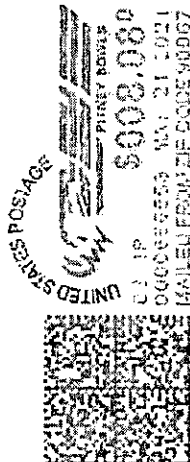
one
AW APC
Park East, Ste 1000
CA 90067

CERTIFIED MAIL®



7020 1290 0001 8879 3993

one
AW^{APC}
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**CARRIAGE CEMETERY SERVICES, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056**



9590 9403 0424 5163 3672 53

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3993

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

**CARRIAGE CEMETERY SERVICES, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056**

7020 1290 0001 8879 3993

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only**

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) **\$ 2.85**
- ☐ Return Receipt (electronic) **\$**
- ☐ Certified Mail Restricted Delivery **\$**
- ☐ Adult Signature Required **\$**
- ☐ Adult Signature Restricted Delivery **\$**

Postage

\$ 4.63

Total Postage and Fees

\$ 8.08

Sent To

**CARRIAGE CEMETERY SERVICES, INC.
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056**

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

Postmark
Here
**Chinchilla v. Carriage
Cemetery Services,
Inc.**

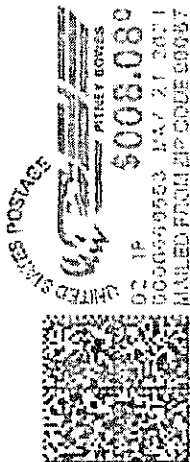
See Reverse for Instructions

CERTIFIED MAIL®



7020 1290 0001 8879 4006

ine
AW APC
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**WILSON & KRATZER MORTUARIES
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056**



9590 9403 0424 5163 3672 46

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4006

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

- ☐ Yes
- ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

WILSON & KRATZER MORTUARIES
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056

7020 1290 0001 8879 4006

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

**WILSON & KRATZER MORTUARIES
3040 POST OAK BOULEVARD, SUITE 300
HOUSTON TX 77056**

Postmark

Here
Chinchilla v. Wilson
& Kratzer Mortuaries

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I declare that I am over the age of eighteen
4 (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century
5 Park East, Suite 1000, Los Angeles, California 90067.

6 On September 28, 2021, I served the within document(s) described below as:

7 **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT**
8 **ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT,**
9 **CALIFORNIA LABOR CODE §§ 2698, ET SEQ.**

10 on the interested parties in this action addressed as follows:

11 Jason M. Richardson
12 Andrew Chang
13 SHOOK, HARDY & BACON, LLP
14 555 Mission Street, Suite 2300
15 San Francisco, CA 94105
16 *jmrichardson@shb.com*
17 *achang@shb.com*

- 18 () **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes
19 were mailed with postage thereon fully prepaid.
20 (X) **BY E-MAIL:** Due to the National Emergency and public health orders in California
21 related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and
22 staff are working remotely and therefore have limited capabilities to send physical mail in
23 the normal course of business. On this date, I personally transmitted the foregoing
24 document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.
25 () **PERSONAL:** I caused such envelope to be delivered by hand to the
26 individual(s) listed above at the address listed above via a messenger service (Prolegal).
27 () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered
28 via overnight courier service (FedEx) to the individuals at the address listed above.
() **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-
named person at the telephone numbers above.
(X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

EXECUTED this document on September 28, 2021, at Los Angeles, California.

25 
26 _____
27 Sandy S. Acevedo
28