

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann, CA Bar No. 229832
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Phone: (310) 277-0614
7 Fax: (310) 277-0635

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5 **EMPLOYMENT RIGHTS LAW GROUP, APC.**

6 Amir H. Seyedfarshi, CA Bar No. 301656
7 amir@employmentrightslawgroup.com
8 1180 South Beverly Drive, Suite 610
9 Los Angeles, California 90035
10 Telephone: (424) 777-0964

11 *Attorneys for Plaintiff, the Class, and the Aggrieved Employees*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 VINCENT MCKINNEY, an individual, on
15 behalf of the State of California, as a private
16 attorney general, and on behalf of all others
17 similarly situated,

18 PLAINTIFF,

19 v.

20 THE CHURCH OF JESUS CHRIST, a Utah
21 Entity, and DOES 1 to 50, inclusive,

22 DEFENDANTS.

CASE NO. 37-2021-00025511-CU-OE-CTL

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST PERIODS TO AND/OR PAY REST BREAK PREMIUMS (LABOR CODE § 226.7 AND SECTION 12 OF IWC WAGE ORDER NO. 4);
- (2) FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL PERIODS TO AND/OR PAY MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 512, AND SECTION 11 OF IWC WAGE ORDER NO. 4);
- (3) FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 510, 1198; IWC WAGE ORDER NO. 4);
- (4) FAILURE TO PROVIDE COMPLETE/ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226(a);
- (5) FAILURE TO PAY ALL WAGES OWED UPON TERMINATION (LABOR CODE §§ 201-203)
- (6) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204);
- (7) PAGA AND OTHER PENALTIES (LABOR CODE §§ 2699, et seq., and 558).

DEMAND FOR JURY TRIAL

1 Plaintiff Vincent McKinney (“Plaintiff”), on behalf of himself, the State of California as a
2 private attorney general, and all others similarly situated (hereinafter “Class Members” or
3 “aggrieved employees” as defined below), complains and alleges as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as
6 a class action pursuant to California Code of Civil Procedure § 382 and as a PAGA representative
7 action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the California general public,
8 against Defendant the Church of Jesus Christ (“Defendant”) and DOES 1 to 50 (collectively,
9 “Defendants”) for Defendants’ (1) failure to provide timely and off-duty rest breaks and/or pay
10 missed rest break premiums; (2) failure to provide timely and off-duty meal periods and/or pay
11 missed meal period premiums; (3) failure to pay daily overtime; (4) failure to provide complete
12 and accurate wage statements within one year prior to the filing of this Complaint; (5) failure to
13 pay all wages owed upon termination, based on the foregoing; (6) unfair business practices based
14 on the foregoing; and (7) PAGA and other penalties based on the foregoing. As a result of the
15 foregoing, Defendants have violated California statutory laws as described below.

16 2. The “Class Period” is designated as the period from four years prior to the filing of
17 this action through the date that a class is certified in this case. The PAGA Period is the period
18 from September 25, 2019 and ongoing. Defendants’ violations of California’s wage and hour
19 laws and unfair competition laws, as described more fully below, have been ongoing throughout
20 the Class Period and throughout the PAGA period and are ongoing.

21 **II. JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction over any and all causes of action
23 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
24 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
25 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
26 arises under the laws of the State of California or is subject to adjudication in the courts of the
27 State of California.

28 4. This Court has personal jurisdiction over Defendants because Defendants have a

1 temple located in San Diego County and have caused injuries in the County of San Diego and
2 State of California through their acts, and by their violation of the California Labor Code and
3 California state common law.

4 5. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil
5 Procedure § 395. Defendants operate within California and do business within San Diego
6 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
7 Defendants' employees within San Diego County.

8 6. Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C.
9 §1332, because the aggregate amount in controversy for Plaintiff and the Class Members,
10 including attorneys' fees, is significantly less than \$5,000,000.

11 **III. THE PARTIES**

12 **A. PLAINTIFF**

13 7. Plaintiff Vincent McKinney is a citizen of California, a resident of Santa Clara
14 County, and, until his resignation in November 2020, worked for Defendants in Santa Clara
15 County during the Class Period and the PAGA Period. Specifically, Plaintiff was employed by
16 Defendants as an hourly, nonexempt employee from sometime in 2000 until November 2020 as a
17 security guard.

18 8. Plaintiff represents the state of California as well as a group of aggrieved
19 employees defined as: all persons, including the Plaintiff, who are or were employed by The
20 Church of Jesus Christ or its predecessor or merged entities (collectively, "Defendants") in
21 California, who were classified as non-exempt security guards, and who worked at least one shift
22 for Defendants that was longer than 3.5 hours at any time from September 25, 2019 and ongoing
23 ("aggrieved employees").

24 9. Plaintiff also seeks to represent a class of employees defined as: all persons,
25 including the Plaintiff, who are or were employed by The Church of Jesus Christ (collectively,
26 "Defendant") or its predecessor or merged entities in California who were classified as non-
27 exempt security guards, and who worked at least one shift at for Defendant that was longer than
28 3.5 hours at any time from four years ago through the date of certification (the "Class" or "Class

Members”).

10. Plaintiff, Class Members, and all aggrieved employees at all times pertinent hereto, are, or were, employees of Defendants in California.

11. Upon information and belief, Plaintiff, Class Members and the aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001, since churches and non-profit organizations are covered by that wage order.

B. DEFENDANTS

12. Defendant The Church of Jesus Christ is a Utah nonprofit entity that owns and operates *inter alia* several temples in California. The Church of Jesus Christ employed Plaintiff, Class Members and the aggrieved employees within California. The Church of Jesus Christ has done and does business throughout the State of California including in San Diego County.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

IV. FACTUAL BACKGROUND

15. Plaintiff, Class Members, and the aggrieved employees who are and were security guards posted at Defendants’ temples in California are, and were at all times pertinent hereto, classified as non-exempt employees by Defendants.

1 16. Plaintiff, Class Members, and the aggrieved employees consistently worked shifts
2 more than four (4) hours or a major fraction thereof, including shifts in excess of eight (8) hours.

3 17. Under Section 12 of IWC Wage Order 4-2001 an employer must authorize and
4 permit all employees to take ten (10) minute duty free rest periods for every major fraction of four
5 (4) hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to
6 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
7 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). *See*
8 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest
9 periods employers must relieve employees of all duties and relinquish control over how
10 employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion
11 that it could provide an on-duty rest period to employees who worked as security guards and
12 further explained “that employers [must] relinquish any control over how employees spend their
13 break time, and relieve their employees of all duties.” *Id.* at 273.

14 18. At all times pertinent hereto, and throughout the Class Period and the PAGA
15 Period, Defendants failed to promulgate a lawful rest policy that informed Plaintiff, the Class
16 Members, and all aggrieved employees of their right to take duty-free rest periods for shifts that
17 were a major fraction of a four (4) hour work period and/or to make compliant rest breaks
18 available to these employees.

19 19. In *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), the California
20 Supreme Court held that ABM’s on-call policy of requiring security guards to keep their radios
21 and pagers on at all times, and to remain vigilant and respond when needs arise, including during
22 rest breaks, violated its duty to provide duty-free rest breaks as required by § 226.7 and § 12 of
23 the applicable Wage Order. *Id.* at 260-61, 270.¹ With strong implications for the issue here, the
24 Court declared “. . . one cannot square the practice of compelling employees to remain at the
25 ready, *tethered by time and policy to particular locations or communication devices*, with the
26 requirement to relieve employees of all work duties and employer control during 10-minute rest

27 ¹ Notably, the wage order at issue in *Augustus*, IWC Wage Order No. 4-2001 is the same wage order at issue in the
28 immediate action, The California Supreme Court in *Augustus* also noted that IWC wage order provisions are
interpreted liberally to effectuate the purpose of the Legislature and IWC, which is the protection of employees.
Augustus, 2 Cal. 5th at 262.

breaks.” *Augustus*, 2 Cal. 5th at 269 (emphasis added). Defendant’s on-premises rest period policy tethers employees to their work locations expressly and more directly than the on-call rule which as a practical matter disallowed a walk “five minutes out, five minutes back” but—unlike Defendant’s policy—did not completely disallow employees from venturing outside and off-premises. Imposing greater control over location during the rest periods than the on-call rule, Defendant’s on-premises rest break policy is more clearly unlawful. Moreover, the Court’s use of the disjunctive in *Augustus*—disapproving a rest break policy either requiring an employee to remain tethered during rest breaks to particular communication devices *or* to particular locations—is strong indication that Defendant’s policy prohibiting employees from leaving the “Company premises” and directing them to take breaks in “Company-designated areas” unlawfully tethers them to particular locations.

20. Defendants’ on-premises rest break policy in this case constitutes control over its guards such that their rest breaks are not duty-free. See *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968 (1995) and *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000), holding that California employers exercise sufficient “control” over workers such that they are “on-duty” and must be paid for their “hours worked” for all time during which the employer merely requires them to remain on its premises, including for such time associated with meal breaks or during travel time on a company bus, without any additional job duties. By way of background, the numerous IWC Wage Orders, including Wage Order No. 4, all require California employers to pay employees no less than minimum wage for all hours worked. See e.g., IWC Wage Order No. 9, section 4(B). The phrase “hours worked” is defined 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.” *Id.*, section 2(G). The California Court of Appeals has held that an employer’s policy of requiring an employee to remain on premises for lunch periods transforms what would otherwise be a duty-free, unpaid 30- minute meal period (see Section 11 of the various IWC Wage Orders) into paid, on-duty time that counts as “hours worked” that is subject to the employer’s control for purposes of the Wage Order. See *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 977 (1995).

21. In *Bono Enterprises*, where employees at a manufacturing plant were required to remain on premises during their 30-minute lunch break, during which time they were relieved of all duties and permitted to eat or relax at the employer's on-site cafeteria, the Court of Appeals upheld the Labor Commissioner's interpretation of IWC Order 1-89 (the predecessor order to IWC Wage Order No. 1-2001), that employees were entitled to compensation for any such meal period during which they were restricted to the employer's premises. *Id.* at 977. The Court noted: "When an employer directs, commands or restrains an employee from leaving the workplace during his or her lunch hour and thus prevents the employee from using the time effectively for his or her own purposes, ***that employee remains subject to the employer's control.*** According to IWC Order 1-89, the employee must be paid." *See Bono Enterprises*, 32 Cal. App. 4th at 977 (emphasis added).²

22. The *Bono* Court's interpretation of "hours worked" was approved by the California Supreme Court in *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000) (agricultural employees were subject to employer control during time spent riding to and from fields when required to ride in employer provided buses and thus such time was compensable under the applicable IWC Wage Order). The California Supreme Court there noted that: "The two phrases [in Section 2(G) of the Wage Order's definition of "hours worked"] – "time during which an employee is subject to the control of an employer" and "time the employee is suffered or permitted to work, whether or not required to do so"—can also be interpreted as independent factors, each of which defines whether certain time spent is compensable as "hours worked". Thus, an employee who is subject to an employer's control does not have to be working during that time to be compensated under Wage Order 14-80 [internal citation to *Bono* omitted]." *Morillion*, 22 Cal.4th at 582. Based on the foregoing, California's Department of Labor Standards Enforcement ("DLSE") also has concluded that "...employees who were not paid for meal breaks during which they were prohibited from leaving the employer's premises, notwithstanding the fact that they were relieved

² See also *Brinker Restaurant Corp., v. Sup. Ct.*, 53 Cal. 4th 1004 (Cal. 2012) (agreeing with DLSE Opinion Letter No. 1988.01.05, that states, "The Division has historically taken the position that unless employees are relieved of all duties and are free to leave the premises, the meal period is considered hours worked."); *Aguilar v. Association for Retarded Citizens*, 234 Cal.App.3d 21, 30 (1991) (employees should be compensated for the time they spend sleeping while on the employer's premises, even though they performed no work then).

1 from all duty during those meal periods, are entitled to compensation for their unpaid meal
2 periods.” See DLSE Opinion letter, Jan. 12, 2001.³ That employees’ mandatory on-premises meal
3 break time is considered “hours worked” that is subject to employer control and thus
4 compensable weighs heavily in favor of a reading of *Augustus*, that on-premises rest breaks are
5 also subject to employer control.

6 23. Notably, the DLSE has also disapproved of on-premises rest period policies, like
7 the one at issue here. As the state agency “empowered to enforce wage orders and state labor
8 statutes,” the DLSE has been recognized by the California Supreme Court as being “in a position
9 to accumulate both knowledge and experience relevant to the administration of wage orders”. See
10 *Augustus*, 1 Cal.5th at 267. “While its opinion letters are not controlling, they reflect the type of
11 experience and considered judgment that may properly inform our [the California Supreme
12 Court’s] judgment. *Id.* (citing *Yamaha Corp. v. State Board of Equalization*, 19 Cal. 4th 1, 14
13 (1998). To share its experience and expertise, the State of California’s Department of Industrial
14 Relations and its DLSE also maintain a website available for the public addressing various
15 aspects of California’s Labor Law, including “Rest Periods/Lactation Accommodation.” See
16 www.dir.ca.gov/dlse/faq_restperiods.htm.

17 24. Notably, on the DLSE’s website, following a summary of California’s rest break
18 laws, the DLSE expressly states that mandatory on-premises rest period policies violate
19 California’s duty-free rest break laws. Specifically, following a summary of California’s rest
20 break laws, the DLSE’s website has a series of questions and answers, including: **“5. Q. Can my
21 employer require that I stay on the work premises during my rest period? A:** No, your
22 employer cannot impose any restraints not inherent in the rest period requirement itself.
23 In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme
24 Court held that the rest period requirement “obligates employers to permit-and authorizes
25 employees to take-off-duty rest periods. That is, during rest periods employers must relieve
26 employees of all duties and relinquish control over how employees spend their time.” (citation

27
28 ³ DLSE opinion letters can be found here: <https://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm>, including the
cited letter: <https://www.dir.ca.gov/dlse/opinions/2001-01-12.pdf> (both links last checked on 7/9/19).

omitted). As a practical matter, however, if an employee is provided a ten- minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.” See www.dir.ca.gov/dlse/faq_restperiods.htm (Question 5).

25. The California Supreme Court’s recent decision in *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (Feb. 13, 2020), by its own logic, also indicates that an on-premises rest break policy do not pass muster under California law. The Court in *Frlekin* reaffirmed its holding in *Morillion* that “[t]he level of the employer’s control over its employees, rather than the mere fact that the employer requires the employees’ activity, is determinative’ concerning whether an activity is compensable under the Wage Order’s ‘hours worked’ control clause. *Frlekin v. Apple Inc.*, 8 Cal. 5th at 1056, *quoting Morillion*, 22 Cal. 4th at 587. By that measure, the time spent by employees undergoing theft-prevention-related bag searches after the end of their shifts was subject to the employer’s control and counted as “hours worked” and compensable. *Id.* at 1056-57.⁴ Again embracing *Bono*, the Court stated: “[w]hen an employer directs, commands *or restrains an employee from leaving the work place* . . . and thus prevents the employee from using the time effectively for his or her own purposes, that employee remains subject to the employer’s control[and a]ccording to [the applicable Wage Order], that employee must be paid.” *Frlekin*, 8 Cal. 5th at 1047, *quoting Bono*, 32 Cal. App. 4th at 975. (Emphasis added). Time spent by Defendant’s employees who are confined to the premises during rest periods is no less subject to employer control than that spent by Apple employees after their shifts while confined to the location for on-premises exit searches. Although the issue in *Frlekin* was compensability of security check time, as opposed to whether there was sufficient “control” during a break to trigger the employer’s obligation to make a premium payment under Labor Code § 226.7 for an on-duty rest break, the logic underlying the *Frlekin* decision applies with equal and inexorable force to the rest break control analysis here.

26. In summary, the California appellate courts in *Bono*, *Morillion*, and *Frlekin* all support the DLSE’s and Plaintiff’s position here that policies unconditionally requiring

⁴ The Court adhered to its practice of construing wage orders “so as to promote employee protection”, emphasizing that “‘wage orders are the type of remedial legislation that must be liberally construed in a manner that serves its remedial purposes’ of protecting and benefiting employees.” *Id.* at 1045-46 (citations omitted).

1 employees to remain on-premises during rest breaks are unlawful. *See Bono*, 32 Cal. App. 4th at
2 975 (“When an employer directs, commands, or restrains an employee from leaving the work
3 place during his or her lunch hour and thus prevents the employee from using the time effectively
4 for his or her own purposes, that employee remains subject to the employer’s control [and] must
5 be paid.”)⁵; *Morillion*, 22 Cal. 4th at 582 (holding that agricultural employees must be paid for
6 mandatory time spent riding to and from fields on employer buses, because “an employee who is
7 subject to an employer’s control does not have to be working during that time to be compensated
8 under [the applicable Wage Order.]”); *Frlekin*, 8 Cal. 5th at 1056 (holding that employer’s
9 requirement of on-premises exit searches, which were “enforced through threat of discipline[,]”
10 are compensable time under the Wage Order’s “hours worked” control clause). No California
11 Court of Appeals is contrary to these decisions.

12 27. As a result of Defendants’ unlawful uniform rest break policy, Defendants did not
13 permit Plaintiff, the Class Members, and/ or the aggrieved employees to leave the premises of
14 their temples during their rest periods as required by Labor Code § 226.7 and Wage Order 4-
15 2001. *Augustus*, 2 Cal. 5th at 269. In fact, Defendants required that Plaintiff, the Class Members,
16 and the aggrieved employees remain on-duty and on-site through their rest periods. Accordingly,
17 as a result of its unlawful uniform, faulty rest period policies, Defendants regularly and
18 consistently failed to authorize and permit Plaintiff, the Class Members, and all aggrieved
19 employees to take Labor Code and Wage Order compliant rest periods.

20 28. The *Brinker* Court explained in the context of rest breaks that employer liability
21 attaches from adopting an unlawful policy:

22 An employer is required to authorize and permit the amount of rest break time called
23 for under the wage order for its industry. If it does not—if, for example, it adopts a
24 uniform policy authorizing and permitting only one rest break for employees working a
seven-hour shift when two are required—***it has violated the wage order and is liable.***

25 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

26 29. Following *Brinker*, the Courts of Appeal have confirmed that liability for not

27 ⁵ That employees’ mandatory on-premises meal break time is considered “hours worked” that is subject to employer
28 control, and thus compensable pursuant to *Bono*, weighs heavily against a reading of *Augustus* that on-premises rest
breaks are somehow different and not subject to employer control, especially since the *Augustus* court stated that
employer’s responsibilities relating to providing duty-free meal breaks and rest breaks are the same. *Augustus*, 2
Cal. 5th at 265.

1 providing compliant rest or meal breaks arises when an employer adopts a uniform policy that
2 fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the
3 California Court of Appeal applied *Brinker*: “In *Faulkinbury I*, we concluded that even if
4 [defendant]’s on-duty meal break policy was unlawful, [defendant] would be liable only when it
5 actually failed to provide a required off-duty meal break. *Brinker* leads us now to conclude
6 [defendant] would be liable upon a determination that [defendant]’s uniform on-duty meal break
7 policy was unlawful.” (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220 The
8 Court further explained: “the employer’s liability arises by adopting a uniform policy that violates
9 the wage and hour laws. Whether or not the employee was able to take the required break goes to
10 damages...” (*Ibid.* [citations omitted]; *see also Benton v. Telecom Network Specialists, Inc.*
11 (2013) 220 Cal. App. 4th 701, 728.)

12 30. Since Defendants did not offer Plaintiff, the Class Members, and the aggrieved
13 employees the opportunity to receive a compliant off-duty rest period, “the court may not
14 conclude employees voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health*
15 *Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f an employer fails to provide legally compliant
16 meal or rest breaks, the court may not conclude employees voluntarily chose to skip those
17 breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that
18 was required by law but never authorized; if a break is not authorized, an employee has no
19 opportunity to decline to take it.”).

20 31. Further, even an employer who maintains an otherwise compliant rest period
21 policy, “reminded their employees of their availability—and the importance—of taking breaks on
22 a daily basis, and even went so far as to conduct regular audits to ensure that employees were
23 being offered rest breaks” will still be liable for rest period violations if the employees were
24 provided non-compliant rest periods. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS
25 66842 * (E.D. Cal. May 19, 2016) *aff’d Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016
26 WL 4440966, at *11 (E.D. Cal. Aug. 22, 2016); *rev. denied* by 9th Cir. Case No. 0:16-23f-80120
27 (9th Cir. Nov. 16, 2016).

28 32. Labor Code § 226.7 provides “an employer shall not require an employee to work

1 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
2 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, under
3 IWC Wage Order 4-2001 prohibits an employer from “employ[ing] any person for a work period
4 of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order
5 4-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of
6 pay at the employee’s regular rate of compensation for each workday that the meal period is not
7 provided. Accordingly, for each day that Plaintiff, the Aggrieved Employees, and the Class
8 Members did not receive compliant meal periods, they are entitled to receive meal period
9 premiums pursuant to Labor Code § 226.7 and Wage Order 4-2001.

10 33. Plaintiff, the Class Members, and all aggrieved employees were required to work
11 in 8-hour long shifts, and during this time, Plaintiff, the Class Members, and all aggrieved
12 employees could not leave their posts. Therefore, Plaintiff, the Class Members, and all aggrieved
13 employees were subject to Defendant’s on-premises meal break policy.

14 34. In addition, during the Class Period and the PAGA Period, Plaintiff, the Class
15 Members, and all aggrieved employees were not compensated with one (1) hours’ worth of pay at
16 their regular rate of compensation when they were not provided with a compliant rest period or a
17 compliant meal period or at the proper rate based upon Defendants’ unlawful compensation
18 policies detailed above.

19 35. Labor Code § 510 requires an employer to compensate an employee who works
20 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
21 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
22 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
23 employees at no less than twice the regular rate of pay when an employee works more than
24 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

25 36. Labor Code § 1194 provides that any employee receiving less than the legal
26 overtime compensation applicable to the employee is entitled to recover in a civil action the
27 unpaid balance of the full amount of this overtime compensation, including interest thereon,
28 reasonable attorney’s fees, and costs of suit.

1 37. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and
2 the standard conditions of labor fixed by the commission shall be the maximum hours of work
3 and the standard conditions of labor for employees. The employment of any employee for longer
4 hours than those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.”

6 38. Plaintiff, the Class, and the Aggrieved Employees occasionally worked shifts over
7 eight hours per day and were not paid overtime wages at the proper rate. Instead, Plaintiff, Class
8 Members, and the Aggrieved Employees were paid their regular rate for hours worked over eight
9 hours in a day. Defendant violated Labor Code § 510 by failing to pay Plaintiff, the Class, and the
10 Aggrieved Employees their overtime wages at the proper rate.

11 39. Labor Code § 226(a)(1), (2), (5) and (9), requires employers semimonthly or at the
12 time or each payment of wages, furnish each of his or her employees, an accurate itemized
13 statement in writing showing the gross wages earned, the total hours worked by the employee, the
14 net wages earned, as well as all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 40. From at least September 25, 2019 through the present, Defendants knowingly and
17 intentionally failed to issue accurate and complete itemized wage statements in writing to
18 Plaintiff, the Class Members, and all aggrieved employees that accurately indicate the gross
19 wages earned, total hours worked by the employee, the net wages earned, as well as all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at
21 each hourly rate by the employee because those wage statements did not include compensation
22 for overtime at the proper rate, rest break premiums and meal break premiums, as required by
23 Cal. Labor Code §§ 226.7 and 510.

24 41. Due to Defendants’ failure to provide employees with overtime wages at the
25 proper rate and with lawful off-duty rest and meal periods, the wage statements issued by the
26 Defendants to Plaintiff, the Class Members and the aggrieved employees further do not indicate
27 the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at

1 each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Thus, Plaintiff is an
2 aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code
3 §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Class, and all aggrieved employees.

4 42. Plaintiff fully and completely exhausted his administrative remedies under PAGA
5 prior to proceeding with this action. On September 25, 2020, Plaintiff filed his PAGA Notice
6 online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified
7 mail to Defendants setting forth the facts and theories of the violations alleged against
8 Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code §
9 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to
10 investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff
11 is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.
12 On May 24, 2021, Plaintiff submitted his supplemental PAGA Notice setting forth additional
13 facts and theories of the violations alleged against Defendants.

14 **III. CLASS ACTION ALLEGATIONS**

15 43. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
16 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
17 composed of and defined as

18 all persons who are or were employed as security guards by The Church of
19 Jesus Christ or its predecessor or merged entities (“Defendant”) in the State
20 of California, who are or were classified as non-exempt, and who worked
21 at least one shift, for Defendant that was longer than 3.5 hours at any time
22 from four years prior to the filing of this Complaint and ongoing.

23 44. This action has been brought and may properly be maintained as a class action
24 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
25 litigation, the proposed class is easily ascertainable, and Plaintiff, is a proper representative of the
26 Class:

27 a. Numerosity: The potential members of the Class as defined are so
28 numerous that joinder of all the members of the Class is impracticable. According to Defendants
the Class consists of approximately 46 individuals. The Class Members are dispersed throughout

1 California. Joinder of all members of the proposed classes is therefore not practicable.

2 b. Commonality: There are questions of law and fact common to Plaintiff and
3 the Class that predominate over any questions affecting only individual members of the Class.
4 These common questions of law and fact include, without limitation:

5 i. Whether Defendants violated Labor Code section 226.7 and Section 12 of
6 Wage Order 4-2001 by not relieving the Class Members of all duties during their statutorily
7 mandated rest periods;

8 ii. Whether Defendants violated section 226.7 and Section 12 of Wage Order
9 4-2001 by promulgating a uniform on-premises rest break policy applicable to Class Members;

10 iii. Whether Defendants violated Labor Code section 226.7 failing to pay one
11 hour of premium pay to each member of the Class for each day that an off-duty rest break was not
12 provided in California during the Class Period;

13 iv. Whether Defendants violated Labor Code section 226.7, 512, and Section 11
14 IWC Wage Order 4-2001 by not relieving the Class Members of all duties during the statutorily
15 mandated meal periods;

16 v. Whether Defendants violated Labor Code section 226.7 failing to pay one
17 hour of premium pay to each member of the Class for each day that an off-duty meal period was not
18 provided in California during the Class Period;

19 vi. Whether Defendants violated Labor Code section 510 by failing to pay
20 Class Members overtime wages at the proper rate;

21 vii. Whether Defendants failed to provide Plaintiff and the members of the
22 Class complete wage statements with information included about their total hours worked, the
23 gross wages earned, the net wages paid, overtime wages at the proper rate, and premium
24 payments for non-compliant meal and rest periods in violation of Labor Code Section 226(a) and
25 226.3;

26 viii. Whether Defendants failed to pay all wages owed to Plaintiff and the
27 members of the Waiting Time Penalty Class upon termination in violation of Cal. Labor Code
28 §§201-203.

ix. Whether Defendants engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide Plaintiff and the Class with rest periods free of all duties;

x. Whether Defendants engaged in an unfair practice and violated section 17200 et seq. of the California Business and Professions Code by failing to pay rest break premiums for all days on which only on-duty rest breaks were taken by members of the Class pursuant to Defendant's on premises rest break policy in violation of Section 12 of IWC Wage Order No. 4;

xi. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code § 17200 et seq.;

xii. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members; and

xiii. The nature and extent of class-wide damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represents Plaintiff are competent and experienced in litigating wage and hour class actions, including numerous cases virtually identical to this one, and other employment class and PAGA actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been

1 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
2 practices as described herein. Certification of this case as a class action will allow those similarly
3 situated persons to litigate their claims in the manner that is most efficient and economical for the
4 parties and the judicial system. Certifying this case as a class action is superior because it allows
5 for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining
6 its unlawful compensation policies and will thereby effectuate California's strong public policy of
7 protecting employees from deprivation or offsetting of compensation earned in their employment.
8 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
9 or most Class Members to bring individual actions to recover monies unlawfully withheld from
10 their lawful compensation due from Defendants, due to the relatively small amounts of such
11 individual recoveries relative to the costs and burdens of litigation.

12 **FIRST CAUSE OF ACTION**
13 **FAILURE TO PROVIDE OFF-DUTY REST PERIODS**
14 **AND PAY MISSED REST PERIOD PREMIUMS**
15 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 4-2001]**
16 **On behalf of Plaintiff and the Class Against All Defendants**

17 45. Plaintiff re-alleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraphs.

19 46. The actionable period for this cause of action is three years prior to the filing of
20 this Complaint through the present, and on-going until the violations are corrected, or the class is
21 certified.

22 47. Under IWC Wage Order 4-2001 an employer must authorize and permit all
23 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
24 worked. Labor Code § 226.7 provides "an employer shall not require an employee to work
25 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
26 regulation, standard, or order of the Industrial Welfare Commission." By operation of law,
27 Defendants had a duty to provide Plaintiff and Class with rest periods completely free of all
28 duties and to enable Plaintiff and the Class to leave the worksite during those rest periods if they
so desired. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding

1 that “during rest periods employers must relieve employees of all duties and relinquish control
2 over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s
3 assertion that it could provide an on-duty rest period to employees who worked as security guards
4 and further explained “that employers [must] relinquish any control over how employees spend
5 their break time, and relieve their employees of all duties.” *Id.* at 273. But in violation of §226.7,
6 and Wage Order 4-2001, Defendants did not provide Plaintiff, the Class Members and the
7 Aggrieved Employees with rest periods completely free of all duties, nor did Defendants enable
8 Plaintiff, the Aggrieved Employees, or the Class Members to leave the worksite during any rest
9 period.

10 48. By way of their policies requiring employees to stay on site during their shifts, and
11 stay on-call during their rest periods, Defendants failed to provide Plaintiff and the Class with
12 duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours
13 worked. Specifically, Defendant failed to have a lawful rest period policy in place that informed
14 Plaintiff and the Class of their right to take duty-free rest periods for shifts that were a major
15 fraction of a four (4) hour work period and to make duty-free rest breaks available to these
16 employees. Further, Defendants did not permit Plaintiff or the Class to leave the premises during
17 rest periods as required by Labor Code § 226.7 and Wage Order 4-2001 and in violation of
18 *Augustus*, 2 Cal. 5th at 269. Accordingly, as a result of its on-premises rest period policies,
19 Defendants regularly and consistently failed to authorize and permit Plaintiff and the Class to take
20 compliant off duty rest periods.

21 49. In addition to failing to authorize and permit compliant rest periods, and instead
22 requiring on-premises rest breaks, Plaintiff and the Class were not compensated with one (1)
23 hours’ worth of pay at their regular rate of compensation when they were not provided with a
24 compliant rest period in accordance with Labor Code § 226.7(b) and IWC Wage Order 4-2001
25 Section 12(B).

26 50. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
27 provided off duty rest periods and so are entitled to recovery under Cal. Labor Code §226.7 in the
28 amount of one additional hour of pay at the employee’s regular rate of compensation for each

1 work period during each day in which Defendants failed to provide duty-free rest periods as
2 required by California law.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PROVIDE TIMELY DUTY-FREE MEAL BREAKS**
5 **AND PAY MISSED MEAL BREAK PREMIUMS**
6 **[Cal. Labor Code §§ 226.7, 512; Section 11 Of IWC Wage Order No. 4)]**
7 **On Behalf of Plaintiff and the Class Against All Defendants**

8 51. Plaintiff incorporates all paragraphs above as though fully set forth herein.

9 52. At all times relevant herein, Section 11050 of 8 California Code of Regulations
10 provided in relevant part:

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

15 B. An employer may not employ an employee for a work period of more than
16 ten (10) hours per day without providing the employee with a second meal period
17 of not less than 30 minutes, except that if the total hours worked is no more than
18 12 hours, the second meal period may be waived by mutual consent of the
19 employer and the employee only if the first meal period was not waived.

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

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

53. Likewise, California Labor Code Section 512(a): An employer may not employ an
employee for a work period of more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total work period per day of the
employee is no more than six hours, the meal period may be waived by mutual consent of both
the employer and employee. An employer may not employ an employee for a work period of

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

5 54. California Labor Code Section 226.7 requires an employer to pay an additional
6 hour of compensation for each meal period the employer fails to provide in accordance with the
7 applicable statute or Industrial Welfare Commission Wage Order.

8 55. During Plaintiff's employment, Defendants failed to provide Plaintiff and other
9 members of the Class with meal periods in accordance with the applicable Industrial Welfare
10 Commission Wage Order and California Labor Code Sections 226.7 and 512. Specifically,
11 Defendants violated Labor Code § 512 and IWC Wage Order 4-2001 § 11 by requiring Plaintiff
12 and the Class Members to take their meal periods on-site and on-call, and thus were not relieved
13 of all duties during their meal periods. Plaintiff and the Class Members were required to remain
14 on-site during their meal breaks and were only able to take their 30-minute duty-free meal break
15 at the end of their eight-hour shifts.

16 56. Pursuant to California Labor Code Section 226.7, Plaintiff and other members of
17 the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal
18 period, in a sum to be proven at trial.

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO PAY OVERTIME WAGES**
21 **[Labor Code §§ 510, 1194, 1194.2, 1197 and 1198; IWC Wage Order No. 4]**
22 **On Behalf of Plaintiff and the Class Against Defendants**

23 57. Plaintiff re-alleges and incorporates by reference each and every allegation set
24 forth in the preceding paragraph.

25 58. Labor Code § 510 requires an employer to compensate an employee who works
26 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
27 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
28 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
employees at no less than twice the regular rate of pay when an employee works more than

1 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

2 59. Labor Code § 1194 provides that any employee receiving less than the legal
3 overtime compensation applicable to the employee is entitled to recover in a civil action the
4 unpaid balance of the full amount of this overtime compensation, including interest thereon,
5 reasonable attorney's fees, and costs of suit.

6 60. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and
7 the standard conditions of labor fixed by the commission shall be the maximum hours of work
8 and the standard conditions of labor for employees. The employment of any employee for longer
9 hours than those fixed by the order or under conditions of labor prohibited by the order is
10 unlawful."

11 61. Plaintiff and the Class occasionally worked over eight hours per day and were not
12 paid overtime wages at the proper rate. Defendant violated Labor Code § 510 by failing to pay
13 Plaintiff and the Class their overtime wages at the proper rate.

14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**
16 **[Cal. Labor Code §§ 226 and 226.3]**
17 **On Behalf of Plaintiff and Subclass Members Against All Defendants**

18 62. Plaintiff re-alleges and incorporates by reference each and every allegation set
19 forth in the preceding paragraphs.

20 63. The actionable period for this cause of action is one year prior to the filing of this
21 Complaint through the present, and on-going until the violations are corrected, or the subclass is
22 certified.

23 64. Section 226(a) of the California Labor Code provides, in relevant part:

24 Every employer shall.... furnish each of his or her employees...an accurate
25 statement in writing showing (1) gross wages earned, (2) total hours worked by the
26 employee, except for any employee whose compensation is solely based in a salary
27 and who is exempt from payment of overtime under subdivision (a) of Section 515
28 or any applicable order of the Industrial Welfare Commission, (3) the number of
piece-rate units earned, and any applicable piece rate if the employee is paid on a
piece-rate basis, (4) all deductions, provided that all –deductions made on written
orders of the employee may be aggregated and shown as one item, (5) net wages
earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and only the last four digits of his or her social security

1 number or an employee identification number other than a social security number,
2 (8) the name and address of the legal entity that is the employer, and (9) all
3 applicable hourly rates in effect during the pay period and the corresponding
4 number of the hours worked at each hourly rate by the employee...

5 65. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay
6 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to
7 exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in
8 which the employer fails to provide accurate itemized statements to the employee causing the
9 employee to suffer injury.

10 66. Due to Defendants' failure to provide employees with overtime wages at the
11 proper rate and with lawful off-duty rest periods, off-duty meal periods, or pay Plaintiff and the
12 Class Members rest period premiums and meal period premiums, as detailed above, the wage
13 statements issued by Defendants do not indicate the correct amount of gross wages earned, total
14 hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate in violation of Labor Code §
16 226(a)(1), (2), (5) and (9).

17 67. Defendants' failure to provide Plaintiff and Class Members with accurate itemized
18 wage statements during the Class Period has caused Plaintiff and Class Members who worked
19 within the actionable period for this cause of action (the "Subclass Members") to incur economic
20 damages in that they were not aware that they were owed and not paid compensation for their
21 time spent on statutory rest breaks. The failure to include meal and rest break premiums on wage
22 statements gives rise to a claim under Labor Code section 226. *See Brewer v. Gen. Nutrition*
23 *Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant's motion for
24 summary judgment because "the premium payments due under section 226.7 are to be considered
25 "wages" for purposes of sections 203 and 226.7"]; *see also Parson v. Golden State FC, LLC*, 2016
26 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (a failure to pay
27 rest period premiums can support claims under Labor Code §§ 203 and 204);⁶ Cal. Labor Code §
28 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section

⁶ The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the
2 gross or net wages earned by the employee during the pay period).

3 68. As a result of Defendants' failure to issue accurate and complete itemized wage
4 statements to Plaintiff and Class Members in violation of section 226(a) of the California Labor
5 Code, Plaintiff Class Members who worked for Defendants within the one year preceding the
6 filing of this Complaint are each entitled to recover an initial penalty of \$50, and subsequent
7 penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 for each
8 member of the Class, including Plaintiff, from Defendants pursuant to section 226(e) of the
9 California Labor Code.

10 **FIFTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES FOR**
12 **FAILURE TO PAY WAGES DUE ON TERMINATION**
13 **[Cal. Labor Code §§ 201-203]**

14 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against All Defendants**

15 69. Plaintiff re-alleges and incorporates by reference each and every allegation set
16 forth in the preceding paragraphs.

17 70. The actionable period for this cause of action is three years prior to the filing of
18 this Complaint through the present, and on-going until the violations are corrected, or the class is
19 certified.

20 71. Sections 201 and 202 of the California Labor Code require Defendants to pay all
21 compensation due and owing to former sales representatives in the Class during the actionable
22 period for this cause of action at or around the time that their employment is or was terminated or
23 ended.

24 72. Section 203 of the California Labor Code provides that if an employer willfully
25 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201
26 and 202, then the employer is liable for penalties in the form of continued compensation up to
27 thirty (30) workdays.

28 73. Defendant willfully failed to pay Plaintiff and other members of the Waiting Time
Penalty Subclass (i.e., those members of the class whose employment with Defendant ended

1 during the actionable period for this cause of action) who are no longer employed by Defendants,
2 overtime wages at the proper rate, rest period premiums for their on-duty rest periods and meal
3 period premiums for their on-duty meal periods, upon termination or separation from employment
4 with Defendant as required by California Labor Code §§ 201 and 202.

5 74. Further, Plaintiff and the Waiting Time Penalty Subclass are entitled to waiting
6 time penalties for Defendants' failure to pay rest period premiums and meal period premiums. *See*
7 *e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying
8 the CPS's motion for summary judgment on the plaintiff's claim for waiting time penalties based
9 upon the failure to provide rest period premiums and finding that the California Court of Appeals
10 decision in *Ling vs. P.F. Chang's China Bistro, Inc.* 245 Cal. App. 4th 1242 (2016) "concerned
11 only whether 'a section 203 waiting time claim based on section 226.7 premium pay is an action
12 brought for the non-payment of wages under section 218.5'"); *Brewer v. Gen. Nutrition Corp.*
13 (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying CPS's motion for summary
14 judgment because "the premium payments due under section 226.7 are to be considered "wages"
15 for purposes of sections 203 and 226.7"]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
16 2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding "Plaintiff section 203 claim
17 for failure to pay wages...can be based on amounts owed under section 226.7.".)

18 75. As a result, Defendants are liable to Plaintiff and other members of the Waiting
19 Time Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff
20 and each such Class member pursuant to California Labor Code § 203. See, e.g., DLSE Manual,
21 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover
22 waiting time penalties).

23 **SIXTH CAUSE OF ACTION**
24 **UNFAIR COMPETITION LAW VIOLATIONS**
25 **[Bus. & Prof. Code §§ 17200]**
26 **On Behalf of Plaintiff and the Class Against All Defendants**

27 76. Plaintiff re-alleges and incorporates by reference each and every allegation set
28 forth in the preceding paragraphs.

77. Section 17200 of the California Business & Professions Code prohibits any

1 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
2 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
3 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
4 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

5 78. Under section 17208 of the California Business and Professions Code, the statute
6 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period
7 for this cause of action is four years prior to the filing of this Complaint through the present, and
8 on-going until the violations are corrected, and/or the class is certified.

9 79. Section 90.5(a) of the Labor Code states that it is the public policy of California to
10 enforce vigorously minimum labor standards in order to ensure employees are not required to
11 work under substandard and unlawful conditions, and to protect employers who comply with the
12 law from those who attempt to gain competitive advantage at the expense of their workers by
13 failing to comply with minimum labor standards.

14 80. As a direct and proximate result of Defendants’ unlawful business practices,
15 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
16 its unlawful, unfair, and/or fraudulent acts and practices.

17 81. Plaintiff and similarly situated Class Members are entitled to monetary relief
18 pursuant to Business & Professions Code § 17203 and 17208 for all unpaid overtime wages and
19 meal and rest break premium wages due and interest thereon, from at least four years prior to the
20 filing of this Complaint through the date of such restitution, at rates specified by law. Defendants
21 should be required to disgorge all the profits and gains it has reaped and restore such profits and
22 gains to Plaintiff and Class Members, from whom they were unlawfully taken.

23 82. Through its action alleged herein, Defendants have engaged in unfair competition
24 within the meaning of section 17200 of the California Business & Professions Code, because
25 Defendants’ conduct, as herein alleged has damaged Plaintiff and the Class Members by
26 wrongfully denying them wages and/or penalties due for overtime and rest period premiums and
27 meal period premiums and therefore was substantially injurious to Plaintiff and the Class
28 Members.

1 83. Defendants engaged in unfair competition in violation of Section 17200 *et seq.* of
2 the California Business & Professions Code by violating section 226.7 of the California Labor
3 Code, and Sections 11 and 12 of the Wage Order No. 4-2001.

4 84. Defendants' course of conduct, act and practice in violation of the California laws
5 mentioned above constitute independent violations of Sections 17200 *et seq.* of the California
6 Business & Professions Code.

7 85. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
8 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

9 86. Plaintiff has assumed the responsibility of enforcement of the laws and public
10 policies specified herein by suing on behalf of themselves and other similarly situated Class
11 Members previously or presently employed by Defendants. Plaintiff's success in this action will
12 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
13 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
14 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

15
16 **SEVENTH CAUSE OF ACTION**
17 **FOR PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***
18 **FOR VIOLATIONS OF LABOR CODE §§201- 203, 226, 226.3, 226.7, 510, 512, 1198; and**
19 **Wage Order 4-2001**
20 **On Behalf of Plaintiff and All Aggrieved Employees Against Defendant Church of Jesus**
21 **Christ**

22 87. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
23 incorporates by reference all previous paragraphs.

24 88. All administrative prerequisites to the filing of this PAGA action have been
25 satisfied, including sending in a timely PAGA letter and paying the required \$75 fee.

26 89. Based on the above allegations incorporated by reference, The Church of Jesus
27 Christ violated Labor Code §§ 201- 203, 226, 226.3, 226.7, 510, 512, 1198 as well as IWC Wage
28 Order 4-2001, Sections 11 and 12 and 7(A).

 90. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
all other aggrieved employees are entitled to penalties in an amount to be shown at the time of

1 trial subject to the following formula:

2 \$100 for the initial violation per employee per pay period; and

3 \$200 for each subsequent violation per employee per pay period.

4 These penalties will be allocated 75% to the Labor Workforce Development Agency and
5 25% to the affected employees.

6 91. In addition, as set forth above, The Church of Jesus Christ failed to provide
7 Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with
8 Labor Code § 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates
9 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
10 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
11 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
12 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
13 of Section 226.”

14 92. Although the law is somewhat unsettled, some courts have held that PAGA
15 penalties can be stacked for each underlying Labor Code violation. *See e.g. Hernandez v. Towne*
16 *Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D.
17 Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that
18 “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same
19 pay period for different Labor Code violations.”); *Lopez v. Friant & Assocs., LLC*, 15 Cal. App.
20 5th at 788 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor
21 Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
22 requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately
23 under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Schiller v. David’s Bridal, Inc.*,
24 No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010);

25 93. The foregoing factual and legal allegations are sufficient to trigger the payment of
26 PAGA penalties by Defendant to the LWDA and the aggrieved employees, who are and were
27 security guards employed by Defendants in California.

28 94. Plaintiff need not seek or obtain certification for this PAGA representative action.

1 *See Arias v. Superior Court*, 46 Cal. 4th 969 (Cal. 2009) (class certification not needed in PAGA
2 representative actions where class action rules do not apply).

3 95. Further, for purposes of PAGA penalties, Plaintiff, as an aggrieved employee, need
4 not demonstrate or prove that The Church of Jesus Christ's conduct in refusing to provide
5 accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant &*
6 *Assocs., LLC*, (2017) 15 Cal. App. 5th 773, 788, ("Consistent with the PAGA statutory
7 framework and the plain language and legislative history of section 226(e), we hold a plaintiff
8 seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the
9 "injury" and "knowing and intentional" requirements of section 226(e)(1)."); *see Willner v.*
10 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA
11 claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as
12 discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011)
13 (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of
14 Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*,
15 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to
16 establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").⁷

17 96. As a result of the acts alleged above, Plaintiff and the aggrieved employees seek
18 penalties under Labor Code § 2699, et seq. because of The Church of Jesus Christ's violation of
19 Labor Code §§ 226, 226.3, 226.7, 510 512, 1198, as well as IWC Wage Order 4-2001.

20 **RELIEF REQUESTED**

21 Wherefore, Plaintiff, on behalf of himself and the members of the Class, pray for

22 ⁷ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1,
23 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab. Code §
24 226(a) because "the presence or absence of injury is irrelevant to the standing inquiry under PAGA.") *Pelton v.*
25 *Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268 ("[T]he Court
26 rejects CPS's argument that plaintiff 'lacks any PAGA injury.' Pursuant to Cal. Labor Code § 2699, 'any provision
27 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
28 Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
herself or herself and other current or former employees.' Sections 2699.5 and 2699.3(a) provide that such a claim
may be brought for a violation of § 226(a) . . ."); *accord Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal.,
July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-6 ("It is undisputed that GAT's paychecks do not indicate
the applicable hourly rate of pay for the employee's regular rate, overtime rate, or double-time rate of pay...The
failure to provide this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section
2699(f) penalties are available.").

1 judgment against Defendants as follows:

2 1. An Order that this action may proceed and be maintained as a class action;

3 2. On the First Cause of Action:

4 a. A declaratory judgment that Defendants have violated California Labor
5 Code § 226.7, and Section 12 of IWC Wage Order No. 4-2001;

6 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the
7 Class Members for an hour of pay for each day that an off-duty rest period was not provided
8 in California during the Class Period;

9 3. On the Second Cause of Action:

10 a. A declaratory judgment that Defendants have violated California Labor
11 Code §§ 226.7, 512, and Section 11 of IWC Wage Order No. 4-2001;

12 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the
13 Class Members for an hour of pay for each day that a compliant meal period was not
14 provided in California during the Class Period;

15 4. On the Third Cause of Action:

16 a. A declaratory judgment that Defendant violated Labor Code § 510;

17 b. Pursuant to Labor Code section 510, an award to Plaintiff and the Class of
18 the unpaid overtime wages during the Class Period;

19 5. On the Fourth Cause of Action:

20 a. A declaratory judgment that Defendants violated California Labor
21 Code §§ 226 and 226.3 by issuing inaccurate and/or incomplete wage statements;

22 b. An award to Plaintiff and Class Members of \$50 for each initial pay
23 period in which a violation of Section 226 occurred and \$100 for each subsequent pay period
24 in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the
25 Class, as well as an award of costs and reasonable attorney's fees.

26 6. On the Fifth Cause of Action

27 a. A declaratory judgment that Defendant violated California Labor Code §§
28 201-203;

1 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
2 the Waiting Time Penalty Subclass members for waiting time penalties in the amount of 30 days'
3 wages per waiting time penalty subclass Class Member.

4 7. On the Sixth Cause of Action:

5 a. That the Court find and declare that Defendants violated the UCL and
6 committed unfair and unlawful business practices by failing to provide Plaintiff and the Class
7 members with overtime wages at the proper rate, off-duty rest and meal periods, and/or rest and
8 meal period premiums, as required by Cal. Labor Code §226.7;

9 b. Restitution, including, but not limited to, the relief permitted by sections
10 226.7 of the California Labor Code (i.e., meal and rest period premiums);

11 8. On the Seventh Cause of Action:

12 a. A civil penalty against The Church of Jesus Christ in the amount of \$100
13 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2)
14 of the California Labor Code for Plaintiff and for the aggrieved employees during all of the pay
15 periods in the PAGA Period;

16 b. All penalties available under 226.3 of the California Labor Code and the
17 Labor Code Private Attorneys General Act of 2004;

18 c. An award of reasonable attorney's fees against The Church of Jesus Christ
19 as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel
20 in connection with the PAGA claims;

21 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
22 connection with Plaintiff's and aggrieved employees' PAGA claim against Defendant The
23 Church of Jesus Christ as provided for in Labor Code § 2699(g)(1);

24 9. All other relief as this Court deems proper.

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Dated: June 10, 2021

Respectfully submitted,

By:

Ph

Craig J. Ackermann, Esq.
Amir H. Seyedfarshi, Esq.
*Attorneys for Plaintiff, the Class, and the Aggrieved
Employees*