

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

*Michael Curtin v. Catholic Funeral and Cemetery Services of the Diocese of
Sacramento, Inc., et al.*

**Sacramento County Superior Court
Case Number 34-2021-00312006**

This Settlement Agreement (“Agreement”) is made by and between Defendant Catholic Funeral and Cemetery Services of the Diocese of Sacramento (collectively “Defendant”) and Plaintiff Michael Curtin (“Plaintiff”) for himself and on behalf of all others similarly situated under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”). Defendant, Plaintiff, and the PAGA Class, as defined herein, are sometimes collectively referred to as the “Parties.” This Agreement shall be effective once fully executed by Plaintiff and Defendant. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Agreement.

Subject to the Court’s approval of this Settlement Agreement, the Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Fifty-Five Thousand Dollars (\$55,000.00) in settlement of the Released Claims, as hereafter defined. The above sums shall be inclusive of PAGA Class Counsel’s attorneys’ fees and costs, Plaintiff’s Incentive Payment, the Settlement Administrator Payment, as hereafter defined, and any and all other claims, costs alleged to have been incurred, or penalties to be due, in the Action.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Action” shall refer to the lawsuit entitled: *Michael Curtin v. Catholic Funeral and Cemetery Services of the Diocese of Sacramento, Inc., et al.*, Sacramento Superior Court, Case No. 340292100312006.
- (b) “Court” means the Sacramento County Superior Court.
- (c) “Counsel for Defendant” is:
Thomas K. Hockel, Esq.

Klein, Hockel, Iezza & Patel, P.C.
1982 North Broadway, Suite 220
Walnut Creek, CA 94596
415.951.0535

- (d) "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment. the date the Court enters the order approving the Settlement.
- (e) "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- (f) "Judgment" means the judgment entered by the Court based upon the Final Approval.
- (g) "Gross Settlement Amount" refers to the \$55,000.00, which shall be paid by Defendant to fund the PAGA Settlement, and from which all attorneys' fees and costs, Plaintiff's incentive payment, settlement administration costs, and any and all other claims, costs alleged to have been incurred, or penalties to be due, in the Action shall be paid.
- (h) "Net Settlement Amount" means the Gross Settlement Amount, less PAGA Class Counsel's fees and costs, Plaintiff's Incentive Payment, and the Settlement Administrator Payment, referenced in Section 3.01(a), (b) and (c).
- (i) "PAGA Class" is defined as: all persons within the State of California who are or were employed by Defendant as Family Service Advisors at any location in California during the Release Period.
- (j) "PAGA Class Counsel" is:
Drew Lewis, Esq.
Drew Lewis, PC
2999 Douglas Blvd. Suite 180
Roseville, CA 95661
(833) 600-7400
- (k) "PAGA Class Member" means an individual who is a member of the PAGA Class.
- (l) "Plaintiff's Individual Claims" means Plaintiff's individual claims in the Action for meal and rest break premiums, whistleblower retaliation and wrongful termination in violation of public policy, and any and all other claims or causes of action which Plaintiff has or had allegedly arising out of his employment with or termination from Defendant.
- (m) "Release Period" and/or "PAGA Period" means June 23, 2020, to the Effective Date.

- (n) "Released Claims" means all claims under PAGA for violation of Labor Code sections 201-203, 204, 210, 226, 226, 510, 1194, and 2802, and for PAGA penalties related thereto.
- (o) "Released Parties" means Defendant and its present and former officers, directors, shareholders, agents, representatives, attorneys, successors and assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant.
- (p) "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- (q) "Settlement Administrator" means ILYM Group, Inc., or such other administrator as is appointed to administer payment of that portion of the Net Settlement Amount payable to PAGA Class Members.

Article II.

Section 2.01 Agreed Facts

- (a) On June 23, 2021, Plaintiff filed a letter with the California Labor and Workforce Development Agency alleging Labor Code violations by Defendant.
- (b) On December 2, 2021, Plaintiff filed the Action in the Sacramento County Superior Court. The Action was brought by Plaintiff under, *inter alia*, the Private Attorneys General Act on behalf of himself and as a representative action on behalf of the State of California and other aggrieved employees, based on various alleged violations of the California Labor Code.
- (c) Defendant answered the Complaint, denying all material allegations.
- (d) Subsequently, the Parties engaged in written discovery.
- (e) On January 12, 2023, the parties attended a full-day mediation with Jeffrey Owensby and agreed to a settlement during the mediation.
- (f) This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that any of Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the PAGA Class on those claims.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through a stipulation and order, or if required by the Court, an unopposed motion or *ex parte* application, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

(a) PAGA Class Counsel's Fees and Costs.

PAGA Class Counsel will request from the Court and be paid up to 35% of the Gross Settlement Amount (\$19,250.00) for attorneys' fees. PAGA Class Counsel will request actual Court costs anticipated not to exceed Three Thousand Nine Hundred Ninety-Five Dollars (\$3,995.95). If PAGA Class Counsel's request is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the State of California and to the PAGA Class Members. Payroll tax withholding and deductions will not be taken from the PAGA Class Counsel fees and costs; a Form 1099 will be issued to PAGA Class Counsel by the Settlement Administrator with respect to this payment. PAGA Class Counsel shall forward to the Settlement Administrator its Tax ID number no later than five days after the Court's approval of the Settlement.

(b) Incentive Payment.

In addition to any payments that Plaintiff may receive as a PAGA Class Member, Plaintiff will request from the Court an incentive payment of Five Hundred Dollars (\$500.00) to Plaintiff individually. Payroll tax withholding and deductions will not be taken from this incentive payment; a Form 1099 will be issued to Plaintiff by the Settlement Administrator with respect to this payment. PAGA Class Counsel shall forward Plaintiff's W-9 to the Settlement Administrator no later than five days after the Court's approval of the Settlement.

(c) Settlement Administrator Payment.

An amount not to exceed Two Thousand Six Hundred Fifty Dollars (\$2,650.00) will be paid to the Settlement Administrator.

(d) Net Settlement Amount.

The Net Settlement Amount shall be determined by deducting PAGA Class Counsel's fees and costs award, Plaintiff's Incentive Payment, and the Settlement Administrator Payment as set forth in section 3.01(a), (b) and (c) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.03(b).

The Parties agree to fully cooperate in good faith and exercise their best efforts in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval of the Agreement and implementation of the payments set forth herein.

Section 3.02 Court Approval.

As soon as possible after the execution of this Agreement, PAGA Class Counsel will file the proposed Stipulated Order attached hereto as Exhibit A with the Superior Court. If the Court requires, the Parties will timely file a joint motion(s) or ex parte application(s) to obtain approval of this Agreement. Pursuant to Labor Code section 2699(1)(2), PAGA Class Counsel will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court.

Section 3.03 Settlement Payment Procedures.

(a) Payment of Net Settlement Amount.

Either no later than ninety (20) days after the Effective Date, or by August 14, 2023, whichever comes first, Defendant shall pay the Gross Settlement Amount to the Settlement Administrator. Within five business days following the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall issue payments to the PAGA Class Members, as follows: (1) PAGA Class Members who are still employed by Defendant may be paid by check mailed to the address provided by Defendant; and (2) PAGA Class Members who are former employees shall be paid by check mailed to their last known address. Such checks shall be valid for at least 90 days, after which time they may be void if not cashed. Payments to PAGA Class Members will not be subject to withholdings because they represent payment of penalties under PAGA. All unclaimed funds shall escheat to the State of California Unclaimed Wage Fund in the name of the PAGA Class Members.

(b) PAGA Payments.

The total sum available for payment of PAGA penalties (the "Net Settlement Amount") shall be calculated by deducting PAGA Class Counsel's fees and costs, Plaintiff's incentive payment and the Settlement Administrator's payment referenced in Section 3.01(a), (b) and (c) from the Gross Settlement Amount. The Net Settlement Amount is estimated at \$28,604.05 and shall be characterized as 100% civil penalties. The Settlement

Administrator shall pay seventy-five percent (75%) of the Net Settlement Amount to the LWDA (which is estimated at \$21,453.38), no later than sixty (60) days after the Effective Date. The remaining twenty-five percent (25%) of the Net Settlement Amount (which is estimated at \$7,150.67) (the "Employee Net Settlement Amount") shall be paid by the Settlement Administrator to PAGA Class Members. The Settlement Administrator will calculate each Employee Net Settlement Amount by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,150.67) by the total number of PAGA Period Pay Periods worked by all PAGA Class Members during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. All PAGA Class Members who cash their settlement checks will receive an IRS Form 1099 for their portion of the settlement. If the Settlement Administrator's expenses are less than the Settlement Administrator Fee, any surplus shall be paid to the LWDA.

(c) Attorneys' Fees and Costs and Incentive Payment.

No later than forty-five (45) days after the Effective Date, the Settlement Administrator shall pay the Court approved attorneys' fees and costs to PAGA Class Counsel, and Plaintiff's Incentive Payment to Plaintiff. These payments will be mailed to PAGA Class Counsel's office.

Article IV.

Limitations on Use Of This Settlement

Section 4.01 No Admission

Defendant denies liability for any claims alleged by Plaintiff on his own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the PAGA Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Section 4.02 Nullification.

- (a) If the Court should for any reason refuse to approve the Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this

Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. If the Court conditions approval on modifications to any of the terms of this Agreement, the Agreement shall be null and void unless all Parties agree, in writing, to accept the Agreement with such modifications within ten (10) days of the Court's order.

- (b) If the Court does not approve the Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator David Rotman to resolve any disputes.
- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims

Section 5.01 Release of PAGA Claims Relating to the Action

- (a) Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.
- (b) Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and

benefits, if any, of section 1542 of the California Civil Code, which reads: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

- (c) Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the operative Complaint, and the PAGA Notice.
- (d) Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendant who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under

this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the PAGA claims in the Action.

Section 6.06 Waiver of Compliance

Any failure of any Party, and/or PAGA Class Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A scanned or faxed signature shall be valid as an original signature. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, PAGA Class Counsel and Defendant' counsel shall meet and confer to attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Sacramento.

Section 6.10 Fair Settlement

Plaintiff, Defendant, PAGA Class Counsel, and Defendant's Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation in conjunction with the proposal of a neutral mediator with substantial experience in the settlement of complex class actions and PAGA representative actions, taking into account all relevant factors, including, but not limited to, the potential liability on the facts known in view of the size of possible recovery and degree of probability of claimant's success, and is consistent with public policy, and fully complies with applicable provisions of law.

Section 6.11 Binding Effect of Agreement

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.12 Waiver of Appeals

Provided that the "Judgment" as entered by the Court is consistent with the terms and conditions of this Agreement and the Stipulated Order filed by the Parties, Plaintiff, PAGA Class Members, Defendant, and their respective counsel hereby waive any and all rights to appeal from the "Judgment," including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, an amended or supplemental pleading,

and any extraordinary writ, and the “Judgment” therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings.

Section 6.13 Vacating, Reversal, or Material Modification of Judgment on Appeal or Review

If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the “Judgment” such that there is a material modification to the Settlement, and that court’s decision is not completely reversed and the “Judgment” is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than 15 days after the reviewing court’s decision vacating, reversing, or materially modifying the “Judgment” becomes Final.

Section 6.14 Continuing Jurisdiction

After entry of the order approving this Agreement and settlement of the Action via a “Judgment,” which shall not be deemed as an adverse judgment for or against any Party, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing any other such matters as may be appropriate under court rules or applicable law.

Section 6.15 Attorney Authorization

PAGA Class Counsel and Defendant’s Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.

Section 6.16 Cooperation in Drafting

The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

Section 6.17 Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

BY SIGNING BELOW, EACH OF THE PERSON SIGNING THIS SETTLEMENT AGREEMENT REPRESENTS THAT HE/SHE HAS READ AND UNDERSTANDS THIS SETTLEMENT AGREEMENT, THAT HE/SHE IS AUTHORIZED TO SIGN THE SETTLEMENT AGREEMENT, AND THAT THE PARTY ON WHOSE BEHALF HE/SHE SIGNS AGREES TO BE BOUND BY ITS TERMS.

Dated: 06 / 19 / 2023

Michael J Curtin

Michael Curtin

Dated: June 21, 2023

Catholic Cemetery and Funeral Services

Jerry Del Core

Name: JERRY DEL CORE

Title: PRESIDENT & CEO

APPROVED AS TO FORM:

Dated: 6/19/2023, 2023

DREW LEWIS, PC

Drew Lewis

Drew Lewis
Attorneys for Plaintiff

Dated: June 21, 2023

KLEIN, HOCKEL, IEZZA & PATEL, P.C.

Thomas K. Hockel

Thomas K. Hockel
Attorneys for Defendant

Amendment A

This Amendment to the Private Attorneys General Action Settlement Agreement (the "Amendment"), which was executed on June 21, 2023 by the parites, is entered into by and between Michael Curtin ("Plaintiff") and Catholic Funeral and Cemetery Services of the Diocese of Sacramento ("Defendant"). The term "Party" or "Parties" as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate. This Amendment adds Section 3.03 (d) as follows:

Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Executed on _____, 2023

MICHAEL CURTIN

Executed on 8.9., 2023

By:



JERRY DEL CORE
On Behalf of Defendant

Approved as to form and content.

KLEIN, HOCKEL, IEZZA & PATEL, P.C.

Executed on August 9, 2023

By:



THOMAS K. HOCKEL

Attorneys for Defendant

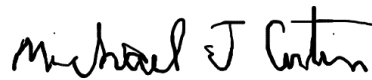
Amendment A

This Amendment to the Private Attorneys General Action Settlement Agreement (the “Amendment”), which was executed on June 21, 2023 by the parties, is entered into by and between Michael Curtin (“Plaintiff”) and Catholic Funeral and Cemetery Services of the Diocese of Sacramento (“Defendant”). The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate. This Amendment adds Section 3.03 (d) as follows:

Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller’s Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Executed on 08/09, 2023



MICHAEL CURTIN

Executed on _____, 2023

By: _____

JERRY DEL CORE

On Behalf of Defendant

Approved as to form and content.

KLEIN, HOCKEL, IEZZA & PATEL, P.C.

Executed on _____, 2023

By: _____

THOMAS K. HOCKEL

Attorneys for Defendant

DREW LEWIS, PC

Executed on August 8, 2023

By: 
Attorneys for Plaintiff