

FILED
Superior Court Of California,
Sacramento
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By _____, Deputy
Case Number:
34-2021-00312006

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SUPERIOR COURT STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

MICHAEL CURTIN, individually and on
behalf of all aggrieved employees

Plaintiff(s),

vs.

CATHOLIC FUNERAL AND
CEMETERY SERVICES OF THE
DIOCESE OF SACRAMENTO, INC, a
California Corporation, DOES 1-10,
inclusive,

Defendant(s).

Case No.:

**PLAINTIFF'S COMPLAINT FOR
DAMAGES**

1. Failure to Pay Overtime (Lab. Code, §§ 510, 1194; Wage Order 4)
2. Failure to Pay Minimum Wage (Lab. Code, §§ 1194, 1194.2, Wage Order 4)
3. PAGA (Lab. Code, § 2699 et seq.)
4. Failure to Timely Pay Wages During Employment (Lab. Code, §§ 204, 210)
5. Inaccurate Wage Statement Penalties (Lab. Code, § 226)
6. Failure to Reimburse Work-Related Expenses (Lab. Code, § 2802)
7. Waiting-Time Penalties (Lab. Code, §§ 201-203)

INTRODUCTION

1. This Complaint is brought by Plaintiff Michael Curtin who was employed by Defendant Catholic Funeral and Cemetery Services of the Diocese of Sacramento, Inc to sell funeral service arrangements for families doing advanced planning or who had an immediate

1 need. During his employment with Defendant, Curtin was mischaracterized as an exempt
2 employee. As a result of Defendant's intentional and willful mischaracterization, it failed to pay
3 him for all hours worked, including overtime. Plaintiff brings this suit to recover his unpaid
4 wages.

5 **VENUE & JURISDICTION**

6 2. The amount in controversy exceeds the jurisdictional minimum of this Court. At
7 all times alleged herein, one or more Defendants were residents of, or were doing business in,
8 the State of California, County of Sacramento.

9 3. Venue in this Court is proper pursuant to section 395 and 395.5 of the Code of
10 Civil Procedure in that at all relevant times herein, one or more Defendants conducted
11 substantial business and/or committed violations of law in the County of Sacramento.

12 **PARTIES**

13 4. Plaintiff Michael Curtin was employed by DEFENDANTS and at all times
14 relevant to this complaint resided in the County of Sacramento.

15 5. Defendant Catholic Funeral and Cemetery Services of the Diocese of
16 Sacramento, Inc employed PLAINTIFF and at all times relevant to this complaint did business
17 in the County of Sacramento California.

18 6. Plaintiff does not know the true names and capacities of Defendants sued in this
19 Complaint as DOES 1 through 10, inclusive, and therefore sues these Defendants by fictitious
20 names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1
21 through 10, inclusive, when ascertained. Plaintiff is informed, believes, and thereupon alleges
22 that each of the Defendants named herein as DOES 1 through 10, inclusive, is responsive in
23 some manner for the occurrence, injury, and other damages alleged in this Complaint.

24 7. Plaintiff is informed, believes, and thereupon alleges, that each Defendant was in
25 some manner responsible for the acts and damages alleged herein, and/or are indebted to
26 Plaintiff as alleged herein, and that each Defendant was the agent, employer and co-conspirator
27 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.
28 In this Complaint where Plaintiff refers to Defendant singularly, such reference shall be

1 construed to be a reference to all Defendants named herein, including those named fictitiously.

2 **FACTUAL ALLEGATIONS**

3 8. Plaintiff Michael Curtin began working for Defendant on or about March 4,
4 2020 as a Family Service Advisor (“FSA”). As an FSA, he was responsible for selling funeral
5 arrangements for families doing advanced planning or who had experienced a recent death.
6 Curtin worked principally out of the cemetery office located in Citrus Heights.

7 9. Defendant characterized Curtin as exempt and paid him a salary plus
8 commission. Curtin routinely worked more than 8 hours in a day and/or 40 hours in a
9 workweek. Despite this, Defendant failed to pay him for the overtime he worked.

10 10. Plaintiff also incurred work-related expenses for which he was not reimbursed.
11 Curtin traveled to the homes of Defendant’s clients on occasion in order to finalize a sell. He
12 was not reimbursed for his mileage when he did this.

13 11. Defendant also failed to provide Curtin with proper paystubs accurately
14 displaying the total hours he worked, and the compensation earned during the relevant time
15 period.

16 12. Curtin was terminated on or about May 18, 2021. At the time of his discharge,
17 Defendant failed to pay him for all outstanding wages owed, including overtime. Those wages
18 have remained outstanding and unpaid to this date.

19 13. Upon information and belief, Plaintiff alleges that Defendant utilized a similar
20 practice for all FSAs. Specifically, Defendant mischaracterized its FSAs as exempt, paying them
21 a salary, when they failed to meet the requirements of any applicable exemption. As a result,
22 Defendant failed to pay these FSAs overtime when they worked more than 8 hours in a day or
23 40 hours in a workweek. This resulted in the issuance of improper paystubs.

24 14. Plaintiff further alleges upon information and belief that Defendant failed to pay
25 its other FSAs all wages, including the unpaid overtime that resulted from Defendant’s
26 mischaracterization, upon termination of the FSAs’ employment with Defendant.

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Administrative Exhaustion— PAGA

15. As to penalty claims under the Labor Code Private Attorney General Act, on June 23, 2022¹ Plaintiffs, et al., via counsel, sent correspondence to the LWDA and Defendants via certified U.S. Mail indicating that Plaintiffs are pursuing the claims alleged in this Complaint.

16. The statutory period under the PAGA for Plaintiffs has expired from the date of letter alleged above and the LWDA did not serve Plaintiffs with notice of its intent to assume jurisdiction over the applicable penalty claims and did not provide notice as set forth in Labor Code § 2699.3 (a)(2)(A) within the statutory period.

17. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies to pursue claims and remedies as authorized by the PAGA.

18. The Causes of Action alleged herein are appropriately suited for a Representative Action under the PAGA (Labor Code § 2698, et seq.) because: a) This action involves allegations of violations of provisions of the California Labor Code that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies, or employees; b). Plaintiff is "aggrieved employees" because Plaintiff was employed by the alleged violator and had one or more of the Labor Code violations alleged on this Complaint committed against them; and c) Plaintiff has satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Failure to pay Overtime
(Lab. Code, §§ 510, 1194; Wage Order 4)**

19. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

20. Labor Code § 510 requires employers to pay overtime compensation to all employees, unless they are exempt from the overtime pay requirements. During all periods of employment, Plaintiff was non-exempt employees.

21. Plaintiff worked in excess of eight (8) hours in a workday and forty (40) hours in

1 a workweek.

2 22. Defendant failed or otherwise refused to pay Plaintiff overtime compensation for
3 all overtime hours worked in the manner required by California law.

4 23. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, Plaintiff suffered damages, including loss of earnings for hours of overtime worked on
6 behalf of Defendant.

7 24. Plaintiff requests relief as described below.

8 **SECOND CAUSE OF ACTION**
9 **Failure to pay Minimum Wage**
10 **(Lab. Code, §§ 1194, 1194.2, Wage Order 4)**

11 25. Plaintiff incorporates in this cause of action each and every allegation of the
12 preceding paragraphs, as though fully set forth herein.

13 26. Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission ("IWC")
14 Wage Order 4 require employers to pay an amount equal to or greater than the minimum wage
15 for each hour worked in excess of 8 in a workday and 40 in a workweek.

16 27. Defendant failed to pay Plaintiff at least the minimum wage for each hour
17 worked.

18 28. As a direct and proximate result of Defendant's unlawful conduct, as set forth
19 herein, Plaintiff has suffered damages, including loss of earnings for time worked on behalf of
20 Defendant.

21 29. Plaintiff requests relief as described below.

22 **THIRD CAUSE OF ACTION**
23 **PAGA**
24 **(Lab. Code, § 2699 et seq.)**

25 30. Plaintiffs incorporate in this cause of action each and every allegation of the
26 preceding paragraphs, as though fully set forth herein.

27 31. Plaintiffs are aggrieved employees under PAGA because they were employed by
28 Defendants during the applicable statutory period and suffered one or more of the Labor Code
violations set forth in this complaint. Plaintiffs seek to recover on their behalf, on behalf of the
State, and on behalf of all current and former aggrieved employees of Defendants, the civil

1 penalties provided by PAGA, plus reasonable attorney's fees and costs in this representative
2 action.

3 32. Plaintiffs seek penalties pursuant to PAGA for violation of the following Labor
4 Code sections:

5 A. Failure to Pay Overtime (Lab. Code §§ 1194, 510, Wage Orders)

6 B. Failure to Pay Minimum Wage (Lab. Code § 1194)

7 C. Failure to Pay all Wages During Pay Period (Lab. Code §§ 204, 210)

8 D. Failure to Provide Meal Periods (Lab. Code § 226.7)

9 E. Inaccurate Wage Statement Penalties (Lab. Code § 226)

10 F. Failure to Reimburse Work-related Expenses (Lab. Code § 2802)

11 G. Waiting-Time Penalties (Lab. Code §§ 201-203)

12 33. With respect to violations of Labor Code §§1194, 510, Labor Code § 558
13 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for
14 initial violations for each underpaid employee for each pay period in addition to an amount
15 equal to the employee's underpaid wages, one hundred dollars (\$100) for subsequent violations
16 for each underpaid employee for each pay period in addition to an amount equal to the
17 employee's underpaid wages. Plaintiffs seek civil penalties in the amount of unpaid wages owed
18 to aggrieved employees pursuant to Labor Code § 558(a)(3).

19 34. With respect to violations of Labor Code §204, Labor Code § 210 imposes a civil
20 penalty (apart from other penalties) of one hundred dollars (\$100) for each initial violation, and
21 two hundred dollars (\$200) for each subsequent violation, in addition to 25% of the amount
22 unlawfully withheld.

23 35. With respect to violations of Labor Code §226, Labor Code §226.3 imposes a
24 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)
25 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
26 employee for each subsequent violation of Labor Code §226(a).

27 36. With respect to violations of Labor Code §2802, Labor Code §2802(a) and (c)
28 sets forth that the employer shall indemnify the employee of "all necessary expenditures or

1 losses incurred by the employee in direct consequence of the discharge of his or her duties”
2 which includes, but “is not limited to, attorney’s fees incurred by the employee enforcing the
3 rights granted by this section.”

4 37. With respect to violations of Labor Code §§201-203, Labor Code 203(a) sets
5 forth that if an employer willfully fails to pay any wages of an employee who is discharged or
6 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the
7 same rate until paid or until an action therefor is commenced; but the wages shall not continue
8 for more than 30 days.

9 38. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100)
10 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per
11 pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for
12 which a civil penalty is not specifically provided.

13 39. To the extent applicable, Plaintiffs have or will satisfy the requirements of Labor
14 Code section 2699. et seq.

15 40. Plaintiffs request relief as described below.

16 **FOURTH CAUSE OF ACTION**
17 **Failure to Timely Pay Wages During Employment**
18 **(Lab. Code, §§ 204, 210)**

19 41. Plaintiff incorporates in this cause of action each and every allegation of the
20 preceding paragraphs, as though fully set forth herein.

21 42. Labor Code section 204 requires Plaintiff be paid wages at least twice per month.
22 If an employer fails to pay wages during the proper pay period, the employee is entitled to a
23 penalty of one hundred dollars (\$100) for an initial violation and two hundred dollars (\$200) for
24 each subsequent or willful or intentional violation. Additionally, the employee is entitled to 25%
25 of the amount unlawfully withheld.

26 43. Defendant failed to properly and timely compensate Plaintiff all wages earned
27 during Plaintiff's pay period(s).

28 44. Defendant's acts were willful and/or intentional.

45. As a result of Defendant's conduct, Plaintiff is entitled to the penalty set forth in

1 section 210 of the Labor Code.

2 46. Plaintiff requests relief as described below.

3 **FIFTH CAUSE OF ACTION**
4 **Inaccurate wage statement penalties**
5 **(Lab. Code, § 226)**

6 47. Plaintiff incorporates in this cause of action each and every allegation of the
7 preceding paragraphs, as though fully set forth herein.

8 48. Labor Code § 226(a) requires employers to provide Plaintiff with regular
9 itemized written statements showing, among other things, total hours worked, all applicable
10 hourly rates during the pay period, and the corresponding number of hours worked at each rate
11 by the employee. Defendant knowingly and intentionally failed to provide timely, accurate
12 itemized wage statements including this required information.

13 49. Labor Code § 226(e) provides that an employee suffering injury as a result of a
14 knowing and intentional failure by an employer to comply with section 226(a) is entitled to
15 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
16 a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,
17 up to a maximum amount of four thousand (\$4,000).

18 50. Labor Code § 226(e)(2) provides that an employee is deemed to suffer injury for
19 the purposes of Labor Code § 226 if the employer fails to provide the employee his or her wage
20 statement.

21 51. Defendant knowingly and intentionally failed to provide Plaintiff with his
22 accurate itemized wage statements.

23 52. Plaintiff requests relief as described below.

24 **SIXTH CAUSE OF ACTION**
25 **Failure to reimburse Work-Related Expenses**
26 **(Lab. Code, § 2802)**

27 53. Plaintiff incorporates in this cause of action each and every allegation of the
28 preceding paragraphs, as though fully set forth herein.

54. Labor Code §2802 requires employers to indemnify employees for any work-
related expenses incurred in the discharge of their duties.

1 55. Plaintiff incurred expenses in the discharge of his duties for which Defendant
2 failed to reimburse employee.

3 56. As a result of Defendant's conduct, Plaintiff is entitled to reimbursement of work-
4 related expenses.

5 57. Plaintiff requests relief as described below.

6 **SEVENTH CAUSE OF ACTION**

7 **Waiting-Time Penalties**
8 **(Lab. Code, §§ 201-203)**

9 58. Plaintiff incorporates in this cause of action each and every allegation of the
preceding paragraphs, as though fully set forth herein.

10 59. Labor Code §§ 201 and 202 require Defendant to pay their employees all wages
11 due immediately upon discharge, or within seventy-two (72) hours of quitting without notice.
12 Labor Code § 203 provides that where an employer willfully fails to make such timely payment,
13 the employer must, as a penalty, continue to pay the subject employees' wages until the back
14 wages are paid in full or an action is commenced, up to a maximum of thirty (30) days' wages.

15 60. Plaintiff was discharged from employment by Defendant without being paid all
16 wages that were due to him within the time required by Labor Code §§ 201 and 202.
17 Defendant's failure to pay these wages has been and continues to be willful.

18 61. As a result of Defendant's conduct, Plaintiff is entitled to waiting time penalties
19 in the amount of up to thirty (30) days' wages under Labor Code § 203.

20 62. Plaintiff requests relief as described below.

21 **PRAYER**

- 22 1. For unpaid wages;
23 2. For statutory penalties;
24 3. For pre-judgment, post-judgment and statutory interest and all amounts subject
25 herein;
26 4. For equitable relief;
27 5. For costs of suit incurred in this action;
28 6. For attorneys' fees according to statute including, but not limited to, under Code

1 of Civil section 1021.5;

2 7. For civil penalties according to statute;

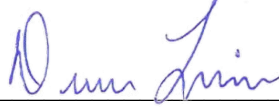
3 8. For tax-neutralization of damages awarded;

4 9. For attorneys' fees under Labor Code section 218.5;

5 10. For declaratory relief;

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8 **DREW LEWIS, PC**

9 Dated: December 1, 2021

10 By: 
11 Drew Lewis
12 Attorney for Plaintiff(s)
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