

1 Thomas E. Daugherty, Bar No. 269063
KLINEDINST PC
2 501 West Broadway, Suite 1100
San Diego, California 92101
3 (619) 400-8000/FAX (619) 238-8707
tdaugherty@klinedinstlaw.com

4 Attorneys for Plaintiff APRIL AVENDANO
5
6
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
9/26/2024 1:30:01 PM
Clerk of the Superior Court
By A. Villasenor ,Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10

11 APRIL AVENDANO,

12 Plaintiff,

13 v.

14 CHRIST EVANGELICAL LUTHERAN
CHURCH OF LA MESA, CALIFORNIA dba
15 CHRIST LUTHERAN CHURCH
MINISTRIES,

16 Defendant.
17
18
19

Case No. 24CU013665C

**CLASS ACTION AND PAGA
REPRESENTATIVE COMPLAINT**

1. Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Periods, Labor Code § 226.7
4. Failure to Indemnify, Labor Code § 2802
5. Wage Statement Violations, Labor Code § 226(a)
6. Waiting Time Penalties, Labor Code § 203
7. Business & Professions Code § 17200
8. PAGA penalties, Labor Code § 2699 et seq.

20 Plaintiff, April Avendano (hereafter “Plaintiff” and “Plaintiff”), on behalf of herself and all
21 others similarly situated, complains and alleges as follows:

22 **I. INTRODUCTION:**

23 1. Plaintiff brings this class action for alleged violations of the California Labor Code,
24 Industrial Welfare Commission Wage Order No. 5-2001 (hereafter “the Wage Order”), and the
25 California Business and Professions Code against Defendant CHRIST EVANGELICAL
26 LUTHERAN CHURCH OF LA MESA, CALIFORNIA dba CHRIST LUTHERAN CHURCH
27 MINISTRIES (“Defendant”).

28 ///

2. As set forth in more detail below, Plaintiff alleges that Defendant is liable to her and other similarly situated and aggrieved employees for unpaid wages, statutory penalties, interest, and related relief. These claims are based on Defendant's failures to:

A. Pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

B. Pay all earned and unused vacation pay;

C. Provide all meal periods;

D. Authorize and permit all rest breaks;

E. Pay premium wages for unprovided meal periods;

F. Pay premium wages for unprovided rest breaks;

G. Indemnify for necessary work-related expenditures;

H. Issue only accurate and complete itemized wage statements;

I. Issue statements of the total hours of rest and recovery periods; and

J. Timely pay wages upon termination of employment

3. Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory penalties, attorneys' fees, costs, and related relief through this class action.

II. JURISDICTION AND VENUE

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

5. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of San Diego and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, et seq.

///

6. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Class and PAGA Members within the State of California and the County of San Diego.

7 [intentionally left blank]

III. THE PARTIES

8. Plaintiff APRIL AVENDANO is a resident of California.

9. Defendant CHRIST EVANGELICAL LUTHERAN CHURCH OF LA MESA, CALIFORNIA (referred to as “Defendant” and “DEFENDANT”) is a corporation organized and existing under the laws’ of California and also a citizen of California, with its principal place of business located in San Diego County, based on Plaintiff’s information and belief.

10. [intentionally left blank]

11. [intentionally left blank]

12. [intentionally left blank]

13. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendant acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class and PAGA Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

14. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein. Furthermore, Defendants acted in all respects as the employer of Plaintiff and the Class and PAGA members. Defendant exercised control over the wages, hours or working conditions of Plaintiff and the Class and PAGA members, or suffered or permitted Plaintiff and the Class and PAGA members to work, or engaged, thereby creating a common law employment relationship, with Plaintiff and the Class and PAGA members. Therefore, Defendant employed Plaintiff and the Class and PAGA members.

1 **IV. CLASS ALLEGATIONS**

2 15. This action has been brought and may be maintained as a class action pursuant to
3 California Code of Civil Procedure section 382 because there is a well-defined community of
4 interest among the persons who comprise the readily ascertainable class defined below and
5 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a
6 class action.

7 16. **Class Definition**: The Class is defined as follows: All persons Defendants
8 employed in California hourly, non-exempt employees, individuals performing work comparable
9 to the aforementioned, compensated comparably to the aforementioned, individuals in similar
10 positions, at any time during the period beginning December 23, 2018 through the Court's grant of
11 preliminary approval of the settlement of this lawsuit (referred to as the "Class" or "Class
12 Members").

13 17. **Reservation of Rights**: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
14 right to amend or modify the class definition with greater specificity, by further division into
15 subclasses and/or by limitation to particular issues.

16 18. **Numerosity**: The Class Members are so numerous that the individual joinder of
17 each individual Class Member is impractical. While Plaintiff does not currently know the exact
18 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
19 minimum required for numerosity under California laws.

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

23 A. Whether Defendants failed to pay all wages earned to Class Members for all
24 hours worked at the correct rates of pay, including meal period premium, rest period premium, and
25 overtime premium wages;

26 B. Whether Defendants failed to provide the Class Members with all meal
27 periods in compliance with California law;

28 ///

C. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

D. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

E. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

F. Whether Defendants willfully failed to provide the class with timely final wages;

G. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

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

20. **Typicality**: Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

21. **Adequacy of Class Representative**: Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

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

23. **Superiority**: A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary

1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual Class Members are likely to be relatively small and
3 would thus make it difficult, if not impossible, for individual Class Members to both seek and
4 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
5 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
6 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **PAGA ALLEGATIONS**

8 24. This action has been brought and may be maintained as a PAGA representative
9 action pursuant to California Labor Code §§ 2698, *et seq.*, because while employed by
10 Defendants, Plaintiff suffered multiple Labor Code violations as the result of the actions and
11 inactions of Defendants, and other aggrieved employees also suffered Labor Code violations
12 during the relevant time period.

13 25. PAGA Group Definition: The PAGA Group is defined as follows: All persons who
14 were employed by Defendants in the State of California as a non-exempt employee as at any time
15 from December 23, 2021 through the date of preliminary approval of a settlement of this matter, or
16 through the date that final judgment is entered in this action, whichever comes first (“PAGA
17 Members”).

18 26. California Labor Code section 2699 provides the right of recovery of civil penalties
19 for violation of provisions of the California Labor Code through civil action brought by an
20 aggrieved employee, as well as attorneys' fees and costs.

21 27. California Labor Code section 2699.3 sets forth requirements that aggrieved
22 employees must satisfy prior to bringing PAGA claims. Plaintiff has satisfied all statutory
23 prerequisites to bring PAGA claims against Defendants, and each of them. Specifically, on or
24 about December 30, 2022, Plaintiff provided a Notice of PAGA Claims under Labor Code section
25 2699, *et seq.*, (the "NOTICE") to the State of California Labor and Workforce Development
26 Agency ("LWDA"), via the State of California Department of Industrial Relations online PAGA
27 website, and Defendants and/or their agents for service of process, as listed with the California
28 Secretary of State, by certified mail. The NOTICE identifies the specific provisions of the

1 California Labor Code alleged to have been violated, and alleges the facts and legal theories to
2 support the alleged violation. A true and correct copy of this NOTICE and the emailed receipt of
3 the same, from the LWDA is attached hereto as **Exhibit 1**, and incorporated as though fully set
4 forth herein. Additionally, Plaintiff paid the required \$75 filing fee to the LWDA for the NOTICE.

5 28. Plaintiff received no response or notice of intent to assume jurisdiction over the
6 applicable penalty claims from the LWDA and the LWDA has not provided notice as set forth in
7 California Labor Code section 2699(a)(2)(A).

8 29. Therefore, Plaintiff has exhausted the required administrative procedures and/or
9 remedies.

10 **V. STATEMENT OF FACTS**

11 30. At all relevant times during the applicable limitations period, the Defendants,
12 Plaintiff, and all of the Class and PAGA Members were covered by IWC Wage Order 5-2001
13 (“the Wage Order”) the Wage Order because the Defendants operated, and Plaintiff, and all of the
14 Class and PAGA Members worked for, one or more establishments operated as providing private
15 religious, educational, and/or child care services, which provided food to its students.
16 Accordingly, Plaintiff and all of the other Class and PAGA Members are entitled to the
17 protections the Wage Order provides.

18 31. Defendants employed Plaintiff in San Diego in the position of hourly, non-exempt
19 Teacher. The Defendants continuously employed her in that capacity until on or about October 27,
20 2022 when Defendants terminated her employment.

21 32. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
22 Class and PAGA Members on a bi-weekly basis and paid them by the hour. At all relevant times,
23 the Defendants classified Plaintiff and all of the other Class and PAGA Members as non-exempt
24 employees entitled to the protections of the Labor Code and the Wage Order.

25 ///

26 ///

27 ///

28 ///

VIOLATION OF CALIFORNIA LABOR CODE 226.7 and 512

33. California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order dictate that an employer must provide a 10-minute rest period for every four hours of work. If an employer fails to provide such a rest period, the Plaintiff is entitled to recover one hour of premium pay wages for each day a rest break was not provided. (Cal. Lab. Code § 226.7.).

34. An employer may not employ an employee for a work period of more than five hours per day without providing the employee with an uninterrupted 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. (Cal. Lab. Code § 512.). No employer may require an employee to work during any mandatory meal or rest period. (Cal. Lab. Code § 226.7.)

35. Defendant, on a company-wide basis, consistently failed to provide Plaintiff, and Class and PAGA members, timely scheduled meal and rest breaks as required by the California Labor Code and the applicable Wages Orders. For example, Defendant's meal period policy provides that workers who work for than 5 hours in a given day, are provided with a 30-minute meal period, to be taken approximately in the middle of the work day. As a result, Plaintiff, and Class and PAGA members, did not take a meal break until the end of the sixth hour worked, in violation of California law. Defendant's meal period policy contained in its employee handbook does not comply with California law and demonstrates the systemic nature of its meal period violations. Employees must begin their meal break no later than the end of the 5th hour of work, not approximately in the middle of the workday.

36. Defendant also systematically, and on a company-wide basis, did not schedule second rest period as required. Employees must be permitted to take a ten (10) minute rest break for every four (4) hours of work, or a major fraction thereof. The required rest period times must be based on the total hours worked daily. Plaintiff, and Class and PAGA members, regularly clocked eight (8) hours of work a day, however, and were only permitted to take one rest break in the morning, a meal break, but was prohibited from taking a second rest break as required by law.

///

1 Defendant had a systematic practice of "automatically" clocking a second rest break in the
2 afternoon, but not actually providing such a break to its employees.

3 37. Based on Defendant's practice of not providing timely meal and rest breaks,
4 Plaintiff and Class and PAGA members are entitled to premium pay for meal and rest break
5 violations under the California Labor Code, and accordingly, civil penalties under PAGA.

6 **VIOLATION OF CALIFORNIA LABOR CODE 510 and 1198**

7 38. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order
8 require employers to pay employees working more than eight (8) hours in a day or more than forty
9 (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all
10 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.
11 The applicable IWC Wage Order further provides that employers are required to pay employees
12 working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times
13 their regular rate of pay. An employee's regular rate of pay includes all remuneration for
14 employment paid to, or on behalf of, the employee, including commissions, non-discretionary
15 bonuses and incentive pay.

16 39. Defendant willfully failed to pay all overtime wages owed to its non-exempt,
17 aggrieved employees, including Plaintiff. For example, Plaintiff and other Class and PAGA
18 members were regularly required to prepare lessons and materials prior to the start of their
19 scheduled shifts for which they were not compensated. During the relevant time period, Plaintiff
20 and other Class and PAGA members were not paid overtime premiums for all of the hours they
21 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in
22 excess of forty (40) hours in a week, because Defendant did not allow this off-the-clock time to be
23 recorded and therefore failed to compensate them for all overtime hours worked. As a result,
24 Defendant failed to pay them the required minimum wage for all time worked off the clock. This
25 results in a violation of and claims under Labor Code sections 1194, 1194.2, with attendant civil
26 penalties under PAGA and liquidated damages and attorneys' fees.

27 ///

28 ///

**FAILURE TO ADEQUATELY DOCUMENT WAGES EARNED, OFF-THE-CLOCK
WORK, UNLAWFUL ROUNDING PRACTICES, FAILURE TO PAY MINIMUM WAGE,
FAILURE TO PAY ALL EARNED WAGES, WAGE STATEMENT VIOLATIONS,
WAITING TIME PENALTIES:**

40. For its non-exempt employees, Defendant engaged in multiple overlapping and related practices with respect to tracking the employees' meal and rest breaks that resulted in the unlawful underpayment of earned wages to Defendant employees.

41. As alleged above, Defendant frequently did not allow the employees to take timely meal breaks. Plaintiff and other Class and PAGA members were not permitted to take their meal break before the end of the 5th hour worked. Defendant denied its employees, including Plaintiff, the ability to take timely paid rest breaks of at least ten minutes for every four hours of work, or major portion thereof. The employees were simply required to work without taking a duty-free break on a daily basis. These various meal and rest break violations were not compensated with an extra hour of premium pay for each day a violation occurred. This resulted in underpayment to wages.

42. Defendant also engaged in unlawful rounding practices related to employees' meal breaks. Defendant automatically clocked employees out for lunch and then clocked them back in exactly 30 minutes later, regardless of the actual time the employee took for lunch. This rounding practice creates a presumption of violations. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61.

43. Based on this practice of not compensating its employees for meal and rest period premiums and rounding time punches for meal periods, Defendant is also liable for waiting time penalties under Labor Code §203 for failing to pay employees all wages due at the time of the termination of employment.

VIOLATION OF CALIFORNIA LABOR CODE §§ 1182.12, 1194, 1197, 1197.1, and 1198

44. California Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful.

1 Compensable work time is defined in IWC Wage Orders as "the time during which an employee is
2 subject to the control of an employer, and includes all the time the employee is suffered or
3 permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 1 1070(2)(G)
4 (defining "Hours Worked").

5 45. As described above, due to Defendant's company-wide practices of failure to record
6 meal and rest break violations and compensate its non-exempt employees for all time worked
7 resulted in minimum wage violations. The California Supreme Court recently held, "missed-break
8 premium pay constitutes wages for purposes of Labor Code section 203, and so waiting time
9 penalties are available under that statute if the premium pay is not timely paid." *Naranjo v.*
10 *Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 117.

11 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226(a), 1174(d), and 1198**

12 46. California Labor Code section 226(a) requires employers to make, keep and
13 provide true, accurate, and complete employment records. Defendant has not provided the
14 aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides
15 that if an employer fails to comply with providing an employee with properly itemized wages
16 statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual
17 damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee
18 for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code section
19 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in
20 the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage statement or fails to keep the required records pursuant to Section 226(a).

23 47. During the relevant time period, Defendant has knowingly and intentionally
24 provided aggrieved employees with uniform, incomplete and inaccurate wage statements.
25 Defendant issued uniform wage statements to Plaintiff and Class and PAGA members, that fail to
26 correctly list: the gross wages earned; net wages earned; and all applicable hourly rates in effect
27 during the pay period, including meal and rest period premiums. Specifically, Defendant violated
28 sections 226(a)(1), 226(a)(5), and 226(a)(9). Because Defendant did not calculate the employees'

1 meal and rest period premiums, Defendant did not list the correct amount of gross wages earned
2 by Plaintiff and Class and PAGA members in compliance with section 226(a)(1). For the same
3 reason, Defendant failed to list the correct amount of net wages earned by Plaintiff and Class and
4 PAGA members in violation of section 226(a)(5). Defendant also failed to correctly list all
5 applicable hourly rates in effect during the pay period, namely, correct rates of pay for premium
6 wages, in violation of section 226(a)(9).

7 48. California Labor Code section 1174(d) provides that "[e]very person employing
8 labor in this state shall [k]eep a record showing the names and addresses of all employees
9 employed and the ages of all minors" and "[keep, at a central location in the state or at the plants
10 or establishments at which employees are employed, payroll records showing the hours worked
11 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
12 piece rate paid to, employees employed at the respective plants or establishments..." Labor Code
13 section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain
14 accurate and complete records as required by section 1174(d). During the relevant time period, and
15 in violation of Labor Code section 1174(d), Defendant willfully failed to maintain accurate payroll
16 records for non-exempt, aggrieved employees showing meal and rest period premiums, the
17 applicable rate of pay, and the net and gross wages earned, and therefore the daily hours they
18 worked and the wages paid thereto.

19 49. California Labor Code section 1198 provides that the maximum hours of work and
20 the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
21 the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any
22 employees for longer hours than those fixed by the order or under conditions of labor prohibited
23 by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to
24 keep accurate time records showing when the employee begins and ends each work period and
25 meal period. During the relevant time period, Defendant failed, on a company-wide basis, to keep
26 records of meal period start and stop times for non-exempt, aggrieved employees in violation of
27 section 1198. During the relevant time period, Defendant failed, on a company-wide basis, to keep
28 accurate records of meal period start and stop times for non-exempt, aggrieved employees, in

1 violation of section 1198. Also, in light of Defendant's failure to provide non-exempt, aggrieved
2 employees with a timely 30-minute meal periods to which they were entitled, Defendant kept no
3 records of aggrieved employees actual meal start and end times or accurate records for the second
4 rest period.

5 50. Because Defendant failed to provide the correct net and gross wages earned,
6 applicable rates of pay, and number of total hours worked on wage statements, non-exempt,
7 aggrieved employees have been prevented from verifying, solely from information on the wage
8 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and Class and
9 PAGA members have had to look to sources outside of the wage statements themselves and
10 reconstruct time records to determine whether in fact they were paid correctly and the extent of
11 underpayment, thereby causing them injury.

12 51. "[A]n employer's obligation under Labor Code section 226 to report wages earned
13 includes an obligation to report premium pay for missed breaks. This means that, provided the
14 conditions specified in the statute are otherwise met, failure to report premium pay for missed
15 breaks can support monetary liability under section 226 for failure to supply an accurate
16 itemized statement reflecting an employee's gross wages earned, net wages earned, and credited
17 hours worked." *Naranjo, supra*, 13 Cal.5th at p. 121.

18 52. Thus, Plaintiff and Class and PAGA members are entitled to recover statutory and
19 civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e),
20 226.3, 1174.5, and/or 2699(a), (f)-(g).

21 **VIOLATION OF CALIFORNIA LABOR CODE 201, 202, 203, 256, 1197.1, 1197.2**

22 53. California Labor Code sections 201, 202, and 203 provide that if an employer
23 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
24 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
25 shall become due and payable not later than seventy-two (72) hours thereafter, unless the
26 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
27 case the employee is entitled to his or her wages at the time of quitting. Defendant willfully failed
28 to pay Plaintiff and Class and PAGA members who are no longer employed by Defendant all their

1 earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest
2 period premium wages, either at the time of discharge, or within seventy-two (72) hours of their
3 leaving Defendant's employ in violation of California Labor Code sections 201, 202, and 203.

4 54. Plaintiff, Class and PAGA members are entitled to recover statutory and civil
5 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 203, 256,
6 1197.1, 1197.2, and/or 2699(f)-(g).

7 **VIOLATION OF LABOR CODE § 2802: FAILING TO REIMBURSE EMPLOYEES FOR**
8 **NECESSARY BUSINESS EXPENSES**

9 55. California Labor Code section 2802 provides that an employer shall indemnify his
10 or her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties..." (Cal. Lab. Code, § 2802.). The term
12 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to,
13 attorney's fees incurred by the employee enforcing the rights granted by this section. (*Id.*)

14 56. Plaintiff and Class and PAGA members often worked at home prior to starting their
15 scheduled shift. Consequently, they were required to purchase and prepare lesson materials at
16 home, in order to perform their job duties. Defendant required Plaintiff and other similarly
17 situated and aggrieved employees to use their own personal paper, scissors, and other materials in
18 order to prepare their lessons. Plaintiff and the other similarly situated and aggrieved employees
19 necessarily incurred costs construction paper, glue, and scissors, as a necessary business expense.
20 Defendant failed to reimburse them for these necessarily incurred business expenses. Labor Code
21 § 2802 requires that employers reimburse employees "for all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
23 her obedience to the directions of the employer." Accordingly, Defendant violated § 2802, and
24 Plaintiff and Class and PAGA members are entitled to recover damages, and statutory and civil
25 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2802, and/or
26 2699(f)-(g).

27 ///

28 ///

1 **VIOLATIONS OF CALIFORNIA LABOR CODE § 558**

2 57. The IWC Wage Orders require employers to pay employees at least the minimum
3 wage for all hours worked, overtime pay for all work in excess of eight (8) hours in any workday
4 or 40 hours in any workweek. The IWC Wage Orders also require employers to provide
5 employees with meal and rest breaks. The IWC Wage Orders provide in relevant part:

6 No employer shall employ any person for a work period of more than five (5) hours
7 without a meal period. . . If an employer fails to provide an employee a meal
8 period in accordance with the applicable provisions of this order, the employer
9 shall pay the employee one (1) hour of pay at the employee's regular rate of
10 compensation for each workday that the meal period is not provided.
11 Every employer shall authorize and permit all employees to take rest periods,
12 which insofar as practicable shall be in the middle of each work period. The
13 authorized rest period time shall be based on the total hours worked daily at the rate
14 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . .
15 Authorized rest period time shall be counted as hours worked for which there shall
16 be no deduction from wages. . . If an employer fails to provide an employee a rest
17 period in accordance with the applicable provisions of this order, the employer
18 shall pay the employee one (1) hour of pay at the employee's regular rate of
19 compensation for each workday that the rest period is not provided.

20 58. California Labor Code section 558(a) provides "[a]ny employer or other person
21 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
22 any provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars
24 (\$50) for each underpaid employee for each pay period for which the employee was underpaid in
25 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation,
26 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
27 employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor
28 Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition
to any other civil or criminal penalty provided by law." Defendant, at all relevant times, was an
employer or person acting on behalf of an employer(s) who violated the rights of Plaintiff and
Class and PAGA members by violating various sections of the IWC Wage Orders by (as described
in detail above) failing to pay minimum wage for all hours worked, failing to pay overtime for
work in excess of eight (8) hours in any workday or 40 hours in any workweek, failing to provide
timely, uninterrupted, and off-duty meal and rest breaks as required.

1 59. Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for
2 herself, the State of California, and all other aggrieved employees.

3 60. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
4 unlawful practices and policies, Plaintiff and the Class and PAGA Members were:

- 5 A. Not paid for all time worked;
- 6 B. Not paid overtime for hours worked in excess of eight in a day and forty in
7 a week;
- 8 C. Not provided with all off duty meal periods;
- 9 D. Not authorized and permitted to take all rest break periods;
- 10 E. Not paid one hour's pay for each workday in which Defendants failed to
11 authorize and permit them to take one or more timely rest periods;
- 12 F. Not paid one hour's pay for each workday in which Defendants failed to
13 provide them with one or more timely meal periods;
- 14 G. Not indemnified for all necessary business expenditures incurred during the
15 discharge of their duties;
- 16 H. Not provided with accurate and complete wage statements; and
- 17 I. Not timely paid all earned and unpaid wages at the time their employment
18 ended.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES AND/OR OVERTIME**

21 **Labor Code §§ 510, 1194, and 1199**

22 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

23 61. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 62. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
25 employees at the rate of no less than one and one-half times the regular rate of pay for any work in
26 excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one
27 workweek.

28 ///

63. Plaintiff and all of the other Class and PAGA Members were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Specifically, Defendants failed to accurately track, record, and maintain accurate time-keeping records for all time actually worked by Plaintiff and all of the other Class and PAGA Members. Additionally, Defendants did not pay any overtime premium wages when Plaintiff and all of the other Class and PAGA Members worked more than eight hours in a day, or forty hours in a week.

64. Furthermore, Defendants required Plaintiff and all other Class and PAGA Members to remain on-call during all rest and meal breaks. As a result, they are entitled to minimum wage for each and every rest and meal period provided by Defendant.

65. Additionally, Plaintiff and all of the other Class and PAGA Members had to work into and/or through their present meal periods on occasion, but Defendants did not count, track, or record this working time, and did not pay Plaintiff or any of the other Class and PAGA Members their regular wages for it. By their policy of failing to pay for all hours worked, and by requiring Plaintiff and members of the Proposed Classes to work through their rest and meal breaks without compensation, and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

66. As a result of the unlawful acts of Defendant, Plaintiff and the members of both Proposed Classes have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

67. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

///

68. At all relevant times during the applicable limitations period, Plaintiff and the Class and PAGA Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

69. In relevant part, California Labor Code § 1198 states

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

70. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30-minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

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

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

Meal Periods:

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

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

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

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

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

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

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

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

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

73. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class and PAGA Members were entitled to uninterrupted meal periods of at least 30-minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

74. Defendants intentionally failed to provide Plaintiff and the Class and PAGA Members with all required 30-minute duty free meal periods in accordance with the Wage Order.

75. At all relevant times, Defendants failed to provide Plaintiff and the Class and PAGA Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class and PAGA Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class and PAGA Members with timely meal periods.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

Lab. Code § 226.7

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

15 79. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

16 80. At all relevant times during the applicable limitations period, Plaintiff and the Class

17 and PAGA Members have been employees of Defendants and entitled to the benefits and

18 protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

19 81. In relevant part, California Labor Code § 1198 states:

20 The maximum hours of work and the standard conditions of labor

21 fixed by the commission shall be the maximum hours of work and

22 the standard conditions of labor for employees. The employment of

23 any employee for longer hours than those fixed by the order or

24 under conditions of labor prohibited by the order is unlawful.

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

26 Rest Periods:

27 (A) Every employer shall authorize and permit all employees to

28 take rest periods, which insofar as practicable shall be in the

middle of each work period. The authorized rest period time

shall be based on the total hours worked daily at the rate of ten

(10) minutes net rest time per four (4) hours or major fraction

thereof. However, a rest period need not be authorized for

employees whose total daily work time is less than three and

one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

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

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

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

84. Pursuant to the Wage Order, Plaintiff and the Class and PAGA Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

85. Defendants intentionally failed to authorize and permit Plaintiff and the Class and PAGA Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

86. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class and PAGA Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class and PAGA Members for days on which they failed to authorize and permit Plaintiff and the other Class and PAGA Members to take timely rest periods.

87. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class and PAGA Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of

1 the Wage Order from the California Division of Labor Standards Enforcement. Moreover,
2 Defendants failed to pay Plaintiff and the Class and PAGA Members premium wages on
3 workdays they failed to authorize and permit them to take 10-minute rest periods every four hours
4 worked or major fraction thereof.

5 88. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not authorizing and permitting Plaintiff and the Class and PAGA
8 Members to take all rest breaks required by California law.

9 89. Defendants failed to provide Plaintiff and the Class and PAGA Members with all
10 required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and
11 thereon alleges that, at relevant times within the applicable limitations period, Defendants had a
12 policy, practice, or a lack of a policy which resulted in Defendants not providing the Class and
13 PAGA Members with all rest breaks required by California law.

14 90. Defendants failed to pay Plaintiff and the Class and PAGA Members the additional
15 wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff
16 is informed and believes and thereon alleges that, at relevant times within the applicable
17 limitations period, Defendants have maintained a policy, practice, or a lack of a policy which
18 resulted in Defendants not providing the Class and PAGA Members with additional wages for all
19 rest breaks not provided to them as required by California Labor Code § 226.7.

20 91. As a result of Defendants' unlawful conduct, Plaintiff and the Class and PAGA
21 Members have suffered damages in amounts subject to proof to the extent they were not paid
22 additional wages owed for all rest breaks not provided to them.

23 92. By reason of the above, Plaintiff and the Class and PAGA Members are entitled to
24 premium wages for workdays in which one or more rest breaks were not provided to them
25 pursuant to California Labor. Code § 226.7.

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

93. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9 (B).

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

96. At all relevant times, and as described above, Defendants required Plaintiff and the Class and PAGA Members to incur certain business expenses in the course of performing their duties, including but not limited to home internet plans, utilities such as gas, water, and electricity, and personal mobile phones. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class and PAGA Members for these items.

97. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class and PAGA Members for the reasonable and necessary expenses they incurred during the course of performing their duties.

///

///

///

///

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226 and 226.2

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

98. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

99. Pursuant to California Labor Code § 226(a), Plaintiff and the Class and PAGA Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

E. Net wages earned;

F. The inclusive dates of the period for which the employee is paid;

G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code

///

1 § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone
2 one or more of the following:

3 A. The amount of the gross wages or net wages paid to the employee during the
4 pay period or any of the other information required to be provided on the itemized wage statement
5 pursuant to California Labor Code § 226(a);

6 B. Which deductions the employer made from gross wages to determine the net
7 wages paid to the employee during the pay period;

8 C. The name and address of the employer and, if the employer is a farm labor
9 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
10 and address of the legal entity that secured the services of the employer during the pay period;

11 D. The name of the employee and only the last four digits of his or her social
12 security number or an employee identification number other than a social security number; and

13 E. The number of piece-rate units earned and the piece rate.

14 101. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
15 means a reasonable person would be able to readily ascertain the information without reference to
16 other documents or information.

17 102. Similarly, section 6(B) of the Wage Order states

18 Every employer who has control over wages, hours, or working
19 conditions shall semimonthly or at the time of each payment of
20 wages furnish each employee an itemized statement in writing
21 showing:

- 22 (1) all deductions;
- 23 (2) the inclusive dates of the period for which the employee is paid;
- 24 (3) the name of the employee or the employee’s social security number; and
- 25 (4) the name of the employer, provided all deductions made on written orders of
26 the employee may be aggregated and shown as one item. (See Labor Code
Section 226.)

27 103. This information shall be furnished either separately or as a detachable part of the
28 check, draft, or voucher paying the employee’s wages.

1 104. As alleged herein, at all relevant times during the applicable limitations period,
2 Defendants violated California Labor Code section 226 because they did not properly and
3 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
4 the corresponding number of hours worked at each rate by the employee and other requirements of
5 California Labor Code section 226. Defendants failed to state in the wage statements they issued to
6 Plaintiff and the other Class and PAGA Members all their hours worked and wages earned,
7 including, but not limited to, regular and overtime wages for work they performed, which did not
8 exactly match the pre-set calendar entries in each employee's respective Simple Practice account,
9 as described above. Defendants knowingly and intentionally did not issue either as a detachable
10 part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by
11 personal check or cash, statements to Plaintiff and the Class and PAGA Members that state all meal
12 period premium wages earned, and all rest break premium wages earned.

13 105. Defendants' failure to provide Plaintiff and the other Class and PAGA Members
14 with accurate wage statements was knowing and intentional. Defendants had the ability to
15 accurately track the actual working time of Plaintiff and the other Class and PAGA Members and
16 provide Plaintiff and the other Class and PAGA Members with accurate wage statements, but
17 intentionally provided wage statements that Defendants knew were not accurate.

18 106. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff and the other Class and PAGA Members have suffered injury. Their legal rights to receive
20 accurate wage statements were violated and they were misled about the amount of wages they had
21 actually earned and were owed. In addition, the absence of accurate information on their wage
22 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
23 discovery and mathematical computations to determine the amounts of wages owed, has caused
24 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
25 submission of inaccurate information about wages to state and federal government agencies.
26 Further, Plaintiff and the other Class Member were not able to ascertain from the wage statements
27 whether Defendants complied with their obligations under California Labor Code section 226(a).

28 ///

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

107. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

108. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203, and the Wage Order.

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

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

111. The Defendants failed to pay Plaintiff and all of the other Class and PAGA Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including unprovided minimum wages, regular wages, overtime premium wages, meal period premium wages, and unprovided rest break premium wages.

112. By failing to pay such earned wages to Plaintiff and the Class and PAGA Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

113. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class and PAGA Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

///

114. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

115. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

116. At all relevant times during the applicable limitations period, Plaintiff and the Class and PAGA Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

117. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

118. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class and PAGA Members have suffered injuries in fact and lost money or property. Plaintiff and the Class and PAGA Members were deprived of meal and rest period premium wages and reimbursement for mobile phones and their use, and comparable money and property.

119. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class and PAGA Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

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

///

EIGHTH CAUSE OF ACTION

Violations of Private Attorneys General Act (PAGA), Labor Code §§ 2698, *et seq.*

(By Plaintiff, on behalf of herself, the State of California, and the PAGA Members, against all Defendants)

121. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

122. Pursuant to California Labor Code section 2699.3 Plaintiff may and does commence a civil action for penalties on behalf of himself, the State of California, and Defendants' aggrieved employees.

123. As set forth in detail above, and incorporated herein by reference, Plaintiff seeks civil penalties, and all attendant attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699 *et seq.*, for Defendants' violations of the following sections of the Cal. Labor Code:

- §§ 218, 510, 558, 1194, 1194.2, 1194.3, 1197, 1197.1, *et seq.*: Failure to timely pay minimum wage/regular/overtime wages;
- §§ 226.7, 512: Failure to provide timely meal and rest periods;
- §§ 226, 226.3: Failure to provide accurate itemized wage statements;
- §§ 201, 202, 203, 256, 1197.1, 1197.2: failure to pay wages due to employee who has been discharged or quit;
- §§ 1174, 1174.5, 1199, Failure to keep required time-keeping records, accurately reflecting all time worked;
- § 2802: Failure to reimburse employees for necessary business expenses;

124. Pursuant to Labor Code § 2699 *et seq.*, Defendants are liable to Plaintiff, all PAGA members, and the State of California for civil penalties, attorneys' fees, and costs.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, the State of California, and PAGA Members, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;

- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including missed meal period, and missed rest period wages;
- E. Statutory penalties, including waiting time penalties;
- F. Restitution;
- G. Declaratory relief;
- H. Actual damages;
- I. Civil Penalties;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys' fees; and
- M. Such other relief as the Court deems just and proper.

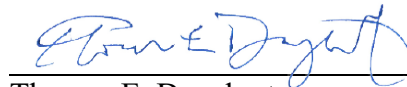
VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial all issues so triable.

KLINEDINST PC

DATED: September 26, 2024

By:



Thomas E. Daugherty
Attorneys for Plaintiff APRIL AVENDANO

22032578.1

Exhibit 1

December 30, 2022

VIA ON-LINE FILING

PAGA Administrator
<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL

Melissa Payne
Patti Maass (Agent for Service of Process)
Christ Evangelical Lutheran Church of La
Mesa, California
7929 La Mesa Blvd.
La Mesa, CA 91942

**Re: APRIL AVENDANO V. CHRIST EVANGELICAL LUTHERAN CHURCH
OF LA MESA, CALIFORNIA, *et al.*
PAGA Notice
LWDA Case No.:**

Dear PAGA Administrator:

Please take notice that this law firm represents April Avendano, in her employment related claims, and on behalf of the employment claims of all other aggrieved employees, against: Christ Evangelical Lutheran Church of La Mesa, California, Christ Lutheran Church Ministries, Christ Lutheran School, and Christ Lutheran Pre-School (hereinafter collectively, "Christ Lutheran"). Pursuant to the Private Attorney General Act of 2004, ("PAGA"), California Labor Code section 2698 et seq., this letter shall serve as written notice of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violations. Ms. Avendano intends to seek civil penalties, attorneys' fees, costs, and all other available relief for the violations of the California Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Orders under PAGA. This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

Ms. Avendano worked for Christ Lutheran from approximately August 2019 until October 2022. Initially, Ms. Avendano worked as a non-exempt Pre-school aide for Christ Lutheran from August 2019 to August 14, 2020 until she voluntarily resigned. Ms. Avendano was then re-hired as a non-exempt Preschool Teacher in October 2020 and remained in that position until she was terminated on October 27, 2022 due to her pregnancy in violation of the federal Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k).

As described in detail below, Ms. Avendano is an aggrieved former employee of Christ Lutheran, as a result of Christ Lutheran's Labor Code violations with respect to her employment. Accordingly, on behalf of herself, all other current and former aggrieved employees, and the State of California, she alleges that Christ Lutheran has violated the following section of the

PAGA Administrator

Re: April Avendano v. Christ Lutheran Church Ministries, et al.

December 30, 2022

Page 2

California Labor Code (all sections cited herein shall reference the California Labor Code unless otherwise noted):

§§ 226.7, 512: Failure to provide timely meal and rest periods;

§§ 218, 510, 558, 1194, 1194.2, 1194.3, 1197, 1197.1, et seq.: Failure to timely pay minimum wage/regular/overtime wages;

§§ 226, 226.3: Failure to provide accurate itemized wage statements;

§§ 201, 202, 203, 256, 1197.1, 1197.2: failure to pay wages due to employee who has been discharged or quit;

§ 558: Violations of IWC Wage Orders

§ 2802: Failure to reimburse employees for necessary business expenses.

VIOLATION OF CALIFORNIA LABOR CODE 226.7 and 512

California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order dictate that an employer must provide a 10-minute rest period for every four hours of work. If an employer fails to provide such a rest period, the Plaintiff is entitled to recover one hour of premium pay wages for each day a rest break was not provided. (Cal. Lab. Code § 226.7.).

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with an uninterrupted 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. (Cal. Lab. Code § 512.). No employer may require an employee to work during any mandatory meal or rest period. (Cal. Lab. Code § 226.7.)

Christ Lutheran, on a company-wide basis, consistently failed to provide Ms. Avendano, and the aggrieved employees, timely scheduled meal and rest breaks as required by the California Labor Code and the applicable Wages Orders. For example, Christ Lutheran's meal period policy provides that workers who work for than 5 hours in a given day, are provided with a 30-minute meal period, to be taken approximately in the middle of the work day. As a result, Ms. Avendano did not take a meal break until the end of the sixth hour worked, in violation of California law. Christ Lutheran's meal period policy contained in its employee handbook does not comply with California law and demonstrates the systemic nature of its meal period violations. Employees must begin their meal break no later than the end of the 5th hour of work, not approximately in the middle of the workday.

Christ Lutheran also systematically, and on a company-wide basis, did not schedule second rest period as required. Employees must be permitted to take a ten (10) minute rest break

for every four (4) hours of work, or a major fraction thereof. The required rest period times must be based on the total hours worked daily. Ms. Avendano regularly clocked eight (8) hours of work a day, however, she was only permitted to take one rest break in the morning, a meal break, but was prohibited from taking a second rest break as required by law. Christ Lutheran had a systematic practice of "automatically" clocking a second rest break in the afternoon, but not actually providing such a break to its employees.

Based on Christ Lutheran's practice of not providing timely meal and rest breaks, Ms. Avendano and the aggrieved employees are entitled to premium pay for meal and rest break violations under the California Labor Code, and accordingly, civil penalties under PAGA.

VIOLATION OF CALIFORNIA LABOR CODE 510 and 1198

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

Christ Lutheran willfully failed to pay all overtime wages owed to its non-exempt, aggrieved employees, including Ms. Avendano. For example, Ms. Avendano was regularly required to prepare her lessons and materials prior to the start of her scheduled shift. On average, she spent at least one hour working off-the-clock for which she was not compensated for prior to starting her scheduled shift at 7:45 a.m. During the relevant time period, aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because the program director did not allow this off-the-clock time to be recorded and therefore failed to compensate them for all overtime hours worked. As a result, Christ Lutheran failed to pay them the required minimum wage for all time worked off the clock. This results in a violation of and claims under Labor Code sections 1194, 1194.2, with attendant civil penalties under PAGA and liquidated damages and attorneys' fees.

FAILURE TO ADEQUATELY DOCUMENT WAGES EARNED, OFF-THE-CLOCK WORK, UNLAWFUL ROUNDING PRACTICES, FAILURE TO PAY MINIMUM WAGE, FAILURE TO PAY ALL EARNED WAGES, WAGE STATEMENT VIOLATIONS, WAITING TIME PENALTIES:

For its non-exempt employees, Christ Lutheran engaged in multiple overlapping and related practices with respect to tracking the employees' meal and rest breaks that resulted in the unlawful underpayment of earned wages to Christ Lutheran employees.

As discussed above, Christ Lutheran frequently did not allow the employees to take timely meal breaks. Ms. Avendano and other Christ Lutheran employees were not permitted to take their meal break before the end of the 5th hour worked. Christ Lutheran denied its employees, including Ms. Avendano, the ability to take timely paid rest breaks of at least ten minutes for every four hours of work, or major portion thereof. The employees were simply required to work without taking a duty-free break on a daily basis. These various meal and rest break violations were not compensated with an extra hour of premium pay for each day a violation occurred. This resulted in underpayment to wages.

Christ Lutheran also engaged in unlawful rounding practices related to employees' meal breaks. Christ Lutheran automatically clocked employees out for lunch and then clocked them back in exactly 30 minutes later, regardless of the actual time the employee took for lunch. This rounding practice creates a presumption of violations. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61.

Based on this practice of not compensating its employees for meal and rest period premiums and rounding time punches for meal periods, Christ Lutheran is also liable for waiting time penalties for failing to pay employees all wages due at the time of the termination of employment.

VIOLATION OF CALIFORNIA LABOR CODE §§ 1182.12, 1194, 1197, 1197.1, and 1198

California Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Orders as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 1 1070(2)(G) (defining "Hours Worked").

As described above, due to Christ Lutheran's company-wide practices of failure to record meal and rest break violations and compensate its non-exempt employees for all time worked resulted in minimum wage violations. The California Supreme Court recently held, "missed-break premium pay constitutes wages for purposes of Labor Code section 203, and so waiting time penalties are available under that statute if the premium pay is not timely paid." *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 117.

VIOLATION OF CALIFORNIA LABOR CODE §§ 226(a), 1174(d), and 1198

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Christ Lutheran has not provided the aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code

section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, Christ Lutheran has knowingly and intentionally provided aggrieved employees with uniform, incomplete and inaccurate wage statements. Christ Lutheran issued uniform wage statements to aggrieved employees that fail to correctly list: the gross wages earned; net wages earned; and all applicable hourly rates in effect during the pay period, including meal and rest period premiums. Specifically, Christ Lutheran violated sections 226(a)(1), 226(a)(5), and 226(a)(9). Because Christ Lutheran did not calculate the aggrieved employees' meal and rest period premiums, Christ Lutheran did not list the correct amount of gross wages earned by non-exempt, aggrieved employees in compliance with section 226(a)(1). For the same reason, Christ Lutheran failed to list the correct amount of net wages earned by non-exempt, non-party aggrieved employees in violation of section 226(a)(5). Christ Lutheran also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Christ Lutheran willfully failed to maintain accurate payroll records for non-exempt, aggrieved employees showing meal and rest period premiums, the applicable rate of pay, and the net and gross wages earned, and therefore the daily hours they worked and the wages paid thereto.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Christ Lutheran failed, on a company-wide basis, to keep records of meal period start and stop times for non-exempt, aggrieved employees in violation of section 1198. During the relevant time period, Christ Lutheran failed, on a company-wide basis, to keep accurate records of meal period start and stop times for non-exempt, aggrieved employees, in violation of section 1198. Also, in light of Christ Lutheran's failure to

provide non-exempt, aggrieved employees with a timely 30-minute meal periods to which they were entitled, Christ Lutheran kept no records of aggrieved employees actual meal start and end times or accurate records for the second rest period.

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

“[A]n employer's obligation under Labor Code section 226 to report wages earned includes an obligation to report premium pay for missed breaks. This means that, provided the conditions specified in the statute are otherwise met, failure to report premium pay for missed breaks can support monetary liability under section 226 for failure to supply an accurate itemized statement reflecting an employee's gross wages earned, net wages earned, and credited hours worked.”

Naranjo, supra, 13 Cal.5th at p. 121.

Thus, the non-exempt, aggrieved employees are entitled to recover PAGA penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

VIOLATION OF CALIFORNIA LABOR CODE 201, 202, 203, 256, 1197.1, 1197.2

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Christ Lutheran willfully failed to pay aggrieved employees who are no longer employed by Christ Lutheran all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Christ Lutheran's employ in violation of California Labor Code sections 201, 202, and 203.

Aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 203, 256, 1197.1, 1197.2, and/or 2699(f)-(g).

VIOLATION OF LABOR CODE § 2802: FAILING TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS EXPENSES

California Labor Code section 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct

consequence of the discharge of his or her duties..." (Cal. Lab. Code, § 2802.). The term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section. (*Id.*)

Ms. Avendano and other employees often worked at home prior to starting their scheduled shift. Consequently, they were required to purchase and prepare lesson materials at home, in order to perform their job duties. Christ Lutheran required Ms. Avendano and other employees to use their own personal paper, scissors, and other materials in order to prepare their lessons. Ms. Avendano and the other employees necessarily incurred costs construction paper, glue, and scissors, as a necessary business expense. Christ Lutheran failed to reimburse them for these necessarily incurred business expenses. Labor Code § 2802 requires that employers reimburse employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Accordingly, Christ Lutheran violated § 2802, and aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2802, and/or 2699(f)-(g).

VIOLATIONS OF CALIFORNIA LABOR CODE § 558

The IWC Wage Orders require employers to pay employees at least the minimum wage for all hours worked, overtime pay for all work in excess of eight (8) hours in any workday or 40 hours in any workweek. The IWC Wage Orders also require employers to provide employees with meal and rest breaks. The IWC Wage Orders provide in relevant part:

No employer shall employ any person for a work period of more than five (5) hours without a meal period. . . If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

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

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

PAGA Administrator

Re: April Avendano v. Christ Lutheran Church Ministries, et al.

December 30, 2022

Page 8

provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Christ Lutheran, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Avendano and other aggrieved employees' rights by violating various sections of the IWC Wage Orders by (as described in detail above) failing to pay minimum wage for all hours worked, failing to pay overtime for work in excess of eight (8) hours in any workday or 40 hours in any workweek, failing to provide timely, uninterrupted, and off-duty meal and rest breaks as required.

Accordingly, Ms. Avendano seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees.

Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Ms. Avendano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Christ Lutheran for violations of California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and other sections cited above.

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

Very truly yours,

KLINEDINST PC



THOMAS E. DAUGHERTY

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Melissa Payne
Patti Maass
Christ Evangelical Lutheran Church
of La Mesa, California
7929 La Mesa Blvd.
La Mesa, CA 91942



9590 9402 6861 1104 8540 04

2. Article Number (Transfer from service label)

7021 0950 0000 7202 7521

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

00)

CERTIFIED MAIL®



7021 0950 0000 7202 7521

7021 0950 0000 7202 7521

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

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

OFFICIAL USE

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

Postage	
\$	
Total Postage and Fees	
\$	

Postmark
Here

KMH 5635-1001

Sent To
Patti Moass/Melissa Payne
Street and Apt. No., or PO Box No.
7929 La Mesa Blvd
City, State, ZIP+4®
La Mesa, CA 91942

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

See Reverse for Instructions

7929 La Mesa Blvd.
La Mesa, CA 91942

Karla M. Hamilton

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, December 30, 2022 4:03 PM
To: Thomas E. Daugherty
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Warning - External Email

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-926918-22

Order Number: ORD-000205325

Total:\$75.00

Card Type: Visa

Date: 12/30/2022

Billing Information

Name: Thomas Daugherty

Email: tdaugherty@klinedinstlaw.com

Billing Address:

14849 Morningside Drive

Poway, California

92064

Karla M. Hamilton

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Monday, November 28, 2022 10:33 AM
To: Thomas E. Daugherty
Subject: Thank you for your Proposed Settlement Submission

Warning - External Email

11/28/2022 10:32:50 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CHRIST EVANGELICAL LUTHERAN CHURCH OF LA MESA, CALIFORNIA
dba CHRIST LUTHERAN CHURCH MINISTRIES

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

APRIL AVENDANO

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
9/26/2024 1:30:01 PM

Clerk of the Superior Court
By A. Villasenor, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

24CU013665C

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas E. Daugherty, Bar No. 269063 KLINEDINST PC
501 West Broadway, Suite 1100
San Diego, California 92101; (619) 400-8000/FAX (619) 238-8707

DATE:
(Fecha) September 30, 2024

Clerk, by A. Villasenor, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under:

☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas E. Daugherty, Bar No. 269063 KLINEDINST PC 501 West Broadway, Suite 1100 San Diego, California 92101 TELEPHONE NO.: (619) 400-8000 FAX NO.: (619) 238-8707 EMAIL ADDRESS: tdaugherty@klinedinstlaw.com ATTORNEY FOR (Name): Plaintiff APRIL AVENDANO		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 9/26/2024 1:30:01 PM Clerk of the Superior Court By A. Villasenor, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice		CASE NUMBER: 24CU013665C	
CASE NAME: Avendano v. Christ Evangelical Lutheran Church of La Mesa, California dba Christ Lutheran Church Ministries			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$35,000) ☐ Limited (Amount demanded is \$35,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
JUDGE:		DEPT.:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (*specify*): 8
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: Sept. 26, 2024

Thomas E. Daugherty

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.	
--	--

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): April Avendano	
DEFENDANT(S): Christ Evangelical Lutheran Church of La Mesa California	
SHORT TITLE: AVENDANO VS CHRIST EVANGELICAL LUTHERAN CHURCH OF LA MESA CALIFORNIA	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 24CU013665C

Judge: WENDY M. BEHAN

Department: C-66

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

Mediation (court-connected)

Non-binding private arbitration

Mediation (private)

Binding private arbitration

Voluntary settlement conference (private)

Non-binding judicial arbitration (discovery until 15 days before trial)

Neutral evaluation (private)

Non-binding judicial arbitration (discovery until 30 days before trial)

Other (specify e.g., private mini-trial, private judge, etc.):

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name)

Alternate neutral (for court Civil Mediation Program and arbitration only):

Date:

Date:

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 09/30/2024

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 24CU013665C

CASE TITLE: Avendano vs Christ Evangelical
Lutheran Church of La Mesa California

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W. Broadway
 MAILING ADDRESS: 330 W. Broadway
 CITY AND ZIP CODE: San Diego, 92101
 BRANCH NAME: Central
 TELEPHONE NUMBER: 619-450-7066

PLAINTIFF(S) / PETITIONER(S): April Avendano

DEFENDANT(S) / RESPONDENT(S): Christ Evangelical Lutheran Church of La Mesa California

AVENDANO VS CHRIST EVANGELICAL LUTHERAN CHURCH OF LA MESA CALIFORNIA

**NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT
CONFERENCE
(CIVIL)**

CASE NUMBER:
24CU013665C

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: WENDY M. BEHAN

Department: C-66

COMPLAINT/PETITION FILED: 09/26/2024

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT
Case Management Conference	03/07/2025	1:30 PM	C-66

Case Management Conferences (CMCs) may be conducted virtually or in person. Anyone wishing to appear remotely should visit the "Appearing for Hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.