

02/22/2021

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JACQUELINE LEIJA, on behalf of herself,
7 and all other aggrieved employees

Case Management Conference

06/22/2021 08:30 AM - Department 07

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF TULARE

11
12 JACQUELINE LEIJA, in a representative
13 capacity,

14 Plaintiff,

15 vs.

16 WESTMONT LIVING, INC., a California
corporation; FRESNO OPERATIONS, LP,
17 a California limited partnership; and DOES
1 through 10, inclusive,

18 Defendants.
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Case No. VCU285994

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

(1) **Civil Penalties Pursuant To The
Private Attorneys General Act Of
2004, California Labor Code § 2698,
Et Seq.**

1 Plaintiff Jacqueline Leija brings this civil action and, on information and belief,
2 alleges as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff Jacqueline Leija ("Plaintiff" or "Leija") is an individual and a resident
5 of California.

6 2. Defendant Westmont Living, Inc. is a California corporation and will be
7 referred to herein as the "Company" or "Westmont Living." The Company has several
8 different corporate divisions, sectors, and/or affiliated entities, including Defendant Fresno
9 Operations, LP. Westmont Living and Fresno Operations, LP will be collectively referred
10 to herein as "Defendants."

11 3. Westmont Living operates a network of residential care communities for
12 seniors at various locations throughout the State of California. These facilities are often
13 branded with the name of the city or geographic area in which they located.

14 4. Leija worked as a non-exempt hourly employee at a Westmont Living facility.
15 During her employment at Westmont Living, Leija experienced several wage-and-hour
16 violations. By way of this Complaint, Plaintiff seeks civil penalties in an amount that renders
17 this matter an "unlimited" civil case within the meaning of California law.

18 5. The true names and capacities of the Doe Defendants (Does 1 through 10,
19 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
20 they are in some way liable for the illegal conduct alleged herein. The Doe Defendants are
21 believed to be affiliated entities of, or executives within, the "Westmont Living" family of
22 businesses, joint employers of Leija, or otherwise liable for the conduct complained of
23 herein, whether because of alter-ego status, agency principles, aider and abettor (or co-
24 conspirator) status, statutorily-imposed responsibility, or otherwise.

25 6. The Court has personal jurisdiction over Westmont Living because the
26 Company does business in this State on an ongoing basis, and the Company otherwise has
27 minimum contacts with this State. The Court has personal jurisdiction over Plaintiff because
28 she is a resident of California and has sufficient minimum contacts with this State. Venue

1 is proper in Tulare County inasmuch as the Company employs or has employed workers
2 from Tulare County during the relevant time period, Plaintiff resides in Tulare County, and
3 the alleged unlawful conduct and/or its effects occurred, at least in part, in Tulare County.

4 **GENERAL ALLEGATIONS**

5 7. The Company subjected Leija and other employees to wage-and-hour
6 violations. These violations are discussed in the PAGA Notice attached hereto as **Exhibit**
7 **A**, which is incorporated into this pleading, in full, by this reference.

8 8. Plaintiff is an aggrieved employee within the meaning of the California Private
9 Attorneys General Act of 2004 ("PAGA"), and the other aggrieved employees on whose
10 behalf civil penalties are sought are described in **Exhibit A**.

11 **FIRST CAUSE OF ACTION**

12 For Civil Penalties Pursuant To PAGA

13 (Against All Defendants)

14 9. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 8
15 inclusive as though fully set forth herein.

16 10. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of herself and all
17 other aggrieved employees as identified in **Exhibit A** to this Complaint, brings this action
18 as a representative action under PAGA for civil penalties based on violations of the
19 California Labor Code and the applicable IWC Wage Order(s) as set forth in **Exhibit A** and
20 repeated herein.

21 11. Plaintiff has timely and adequately exhausted her administrative remedies.
22 Plaintiff submitted her PAGA Notice to the California Labor & Workforce Development
23 Agency on December 18, 2020, provided a copy of the same to Defendants via certified
24 mail, and waited the requisite 65-day time-period before filing this PAGA action in court.

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1 12. During the applicable limitations period, as alleged in **Exhibit A**, Defendants
2 are responsible for numerous violations of California's wage-and-hour laws with respect to
3 non-exempt employees, including the following:

4 (a) Economic items of non-exempt employees were not properly factored
5 into their regular rate of pay, resulting in overtime and double-time pay deficiencies. (Labor
6 Code, §§ 204, 510, 1198).

7 (b) Time entries of non-exempt employees were unlawfully rounded,
8 resulting in wage loss. (Labor Code, §§ 510, 1194, 1197, 1197.1, 1198, 1199.)

9 (c) Non-exempt employees have not been paid for off-the-clock work,
10 resulting in wage loss. (Labor Code, §§ 510, 1194, 1197, 1197.1, 1198, 1199.)

11 (d) Non-exempt employees have not been paid for all wages earned on
12 their regular paydays. (Labor Code, §§ 204 & 218.)

13 (e) Expenses incurred by non-exempt employees have not been properly
14 reimbursed. (Labor Code, § 2802.)

15 (f) Non-exempt employees have not received legally-compliant meal
16 periods, or the requisite meal period premiums. (Labor Code, §§ 226.7 & 512.)

17 (g) Non-exempt employees have not received legally-compliant rest
18 periods, or the requisite rest period premiums. (Labor Code, § 226.7.)

19 (h) The final pay of separated non-exempt employees has been untimely
20 and deficient. (Labor Code, §§ 201-203.)

21 (i) The wage statements received by non-exempt employees have been
22 inaccurate and have not contained all the itemized information required by law. (Labor
23 Code, § 226(a).)

24 (j) Accurate records of hours worked and wages paid have not been
25 created and maintained as required by law. (Labor Code, § 1174(d).)

26 13. Plaintiff has experienced one or more of the alleged violations identified
27 herein and in **Exhibit A**.

28 ///

1 14. Violations of the applicable IWC Wage Order(s) are actionable under PAGA
2 through Labor Code sections 558 and 1198, among others.

3 15. Labor Code section 2699(f)(2) provides that the civil penalties recoverable
4 under PAGA are “one hundred dollars (\$100) for each aggrieved employee per pay period
5 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
6 period for each subsequent violation,” except where the Labor Code specifically provides
7 for another civil penalty.

8 16. For all the above-specified Labor Code violations and those set forth in
9 **Exhibit A**, Plaintiff seeks all available civil penalties that California law allows, including
10 the default civil penalties provided by PAGA, and any civil penalties specifically provided
11 by statute for the alleged Labor Code violations (including, without limitation, Labor Code
12 §§ 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

13 17. In addition to civil penalties, Plaintiff seeks attorney's fees and costs, as
14 authorized under PAGA.

15 **PRAYER**

16 WHEREFORE, Plaintiff requests judgment as follows:

17 **On The First Cause Of Action**

- 18 1. For all forms of relief and civil penalties recoverable under PAGA;
19 2. For attorney's fees and costs pursuant PAGA, or pursuant to any applicable
20 legal doctrine, including the common fund doctrine, the substantial benefit theory, and/or
21 the catalyst theory;
22 3. For post-judgment interest on all amounts owing, commencing from the date
23 such amounts were due; and
24 4. For all such other relief as the Court deems just and proper.

25 Dated: February 22, 2021

SCHEPPACH BAUER PC

26 By: _____
27

28 JOHN M. SCHEPPACH
Attorneys for Plaintiff
JACQUELINE LEIJA

EXHIBIT A

PAGA NOTICE

December 18, 2020

VIA CERTIFIED MAIL TO:

Westmont Living, Inc.
Andrew Plant
Agent For Service Of Process
7660 Fay Avenue, Suite N
La Jolla, CA 92037

Fresno Operations, LP
Andrew Plant
Agent For Service Of Process
7660 Fay Ave, Suite N
La Jolla, CA 92037

VIA ONLINE SUBMISSION TO:

**The State Of California,
Labor & Workforce Development Agency**

Current Website Address:

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Re: *Jacqueline Leija, et al. v. Westmont Living, Inc., et al.*
PAGA Notice

Dear Employer And The LWDA:

Jacqueline Leija ("Leija") on behalf of herself and all other aggrieved employees, and through her undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Westmont Living, Inc. ("Westmont Living" or the "Company"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice.

I. BACKGROUND

Westmont Living operates a network of residential care communities for seniors at various locations throughout the State of California. These facilities are often branded with the name of the city or geographic area in which they are located (e.g., "Westmont Of La Mesa," "Westmont Of Morgan Hill," "Westmont Of Fresno," etc.) Leija worked at a Westmont Living facility in the Central Valley as a non-exempt hourly employee. During her employment at Westmont Living, Leija experienced a myriad of wage-and-hour violations.

PAGA Group

This PAGA Notice applies to Leija and all current and former non-exempt Westmont Living employees who, at any time during the applicable limitations period, worked at any Westmont Living location in California (collectively referred to as the "aggrieved employees").

II. ALLEGED LABOR CODE VIOLATIONS

A. Incorrect Calculation Of The Regular Rate

Unless a regular rate exclusion applies, employers must properly factor all economic items into the regular rate of pay for purposes of calculating the overtime and double-time wages owed to employees. (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554, 568.) Economic items will cause an employee's regular rate of pay to be increased for purposes of calculating their overtime and double-time wages.

Leija and other aggrieved employees received economic items besides their normal hourly pay, including, without limitation, shift premiums. The Company was required to, but failed to, properly include these items in the regular rate for purposes of calculating overtime and double-time wages. The Company either omitted the item from the regular rate, or otherwise erred in calculating the regular rate by utilizing the incorrect formula.

The Company's failure to properly include these economic items in the regular rate has caused the overtime and/or double-time wages of employees to be underpaid in violation of, and actionable under, Labor Code §§ 510, 1198 and 204. The underpayment of overtime wages has also violated § 3(A) of the applicable IWC Wage Order.

As a result of the inaccurate calculation of the regular rate, the Company failed to provide Leija and other aggrieved employees with wage statements that accurately reflected their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The inaccurate calculation of the regular rate as discussed above rendered these records inaccurate.

As a result of the Company's inaccurate calculation of the regular rate, the Company did not provide separated employees (Leija included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

B. Unlawful Time-Rounding

Westmont Living maintained a time and attendance policy. Westmont Living further maintained a time-rounding practice that rounded the time entries of Leija and other aggrieved employees. On information and belief, the time-rounding shaved off Leija's and other aggrieved employees' compensable work time, and the rounding was not neutral on its face and/or in practice. Accordingly, the Company's time-rounding practice was and is unlawful under California law.

The alleged unlawful time-rounding caused Leija and other aggrieved employees to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 1194, 1194.2, 1197, 1197.1 & 1199), to not be timely paid all their wages owed each pay period (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 510 & 1198).

As a result of the unlawful time-rounding, the Company failed to provide Leija and other aggrieved employees with wage statements that accurately reflected their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The unlawful rounding discussed above rendered these records inaccurate.

As a result of the Company's unlawful time-rounding, the Company did not provide separated employees (Leija included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

C. Off-The-Clock Work

At all material times, Leija and the other aggrieved employees performed compensable work that was not accounted for in their pay.

The timeclock for employees was not placed at the entry/exit door to the Company's facilities. Once employees arrived for their shift and walked into the facility, residents could and did intercept them or require their assistance before employees were able to clock-in at the timeclock. At the end of the day, employees would clock-out, but again residents could and did intercept them or require their assistance before they left the facility. Consequently, aggrieved employees regularly performed pre-shift and post-shift work that was not accounted for in their pay, and the Company was aware of this work and the positioning of the Company's timeclock system.

In addition, as a matter of Company policy, if an employee's meal period was interrupted by work or controlled by the Company, employees were nonetheless required to clock out or stay clocked out on the Company's time-keeping system. On longer shifts, the Company would alter the time records of employees to reflect that they took a second meal period, when, in fact, they did not. Consequently, employees had compensable work during "meal periods" that was not accounted for in their time records or pay.

The Company also engaged in work-related communications with employees off-the-clock including topics such as, but not limited to, work-meetings, shifts, and shift coverage.

Finally, if an employee could not make a shift, employees were expected to find replacements off-the-clock, essentially working as off-the-clock shift schedulers.

The Company's failure to compensate Leija and other aggrieved employees for their off-the-clock work caused them to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 & 1199), to not be paid their regular hourly rate for all hours worked (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 204, 510 & 1198). The Company's failure to pay Leija and the other aggrieved employees the overtime, double-time, and/or minimum wages they were due also violates regulatory law. (IWC Wage Orders, § 3 [overtime and double-time requirements], and § 4 [minimum wage requirements].)

As a result of off-the-clock work, the Company failed to provide Leija and other aggrieved employees with wage statements that accurately reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The off-the-clock work rendered these records inaccurate.

As a result of off-the-clock work, the Company did not provide separated employees (Leija included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

D. Unreimbursed Expenses

Labor Code section 2802 requires employers to reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer.

The Company required Leija and other aggrieved employees to utilize their personal cell-phones or other devices for work-related purposes, including, without limitation, to review and engage in work-related communications. The Company also required employees to download a Ceridian app on their personal cell-phones and/or devices and to utilize this app for work-related communications and schedule-related matters. In addition, the Company also required employees to contact employees to find shift coverage utilizing their personal cell-phones or other devices. The Company did not reimburse Leija and the aggrieved employees for the Company-required usage of their personal cell-phones or other devices. The Company's failure to properly pay the expenses of Leija and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c). (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

E. Meal Period Violations

At all material times, the Company maintained policies and/or practices that prevented aggrieved employees from receiving legally-compliant first and second meal periods. The Company's policies and/or practices have caused employees to not be provided with the legally-compliant meal periods to which they were and are entitled.

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an uncontrolled, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second uncontrolled, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Employers are forbidden from requiring employees to work during a meal period that is mandated by California statutory law or by an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a meal period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

According to the Westmont Living website and job postings, at Westmont Living "the comfort and care of our residents is our highest priority," and the Company is "committed to providing the highest level of service to our valued residents." The nature of the Company's business – operating senior living communities and attending to the needs of their residents – is an ongoing activity that requires constant oversight. The Company required employees to be persistently attentive to the needs of residents. At the same time, the Company lacked the requisite infrastructure (including adequate staffing levels) to provide employees with timely, uncontrolled, duty-free and uninterrupted meal periods. During meal periods, employees were required to keep their Company-issued pagers and walkie-talkies on them, and could not freely leave the Company's premises. On meal periods, employees were under the Company's control.

Leija and the aggrieved employees routinely worked the requisite hours to be entitled to a first meal period under California law. The Company was required to provide a first meal period to the aggrieved employees in accordance with law, and the Company failed to do so. Specifically, and without limitation, the Company failed to provide the aggrieved employees with first meal periods that were timely, duty and control-free, and/or a full 30 minutes. Likewise, and for the

same reasons, the Company has also routinely failed to provide the aggrieved with legally-compliant second meal periods on shifts they worked more than ten (10) hours. On long shifts, the Company would alter the time-records of employees to reflect that they took second meal periods, when, in fact, they were not provided with second meal periods.

No valid waiver exists to excuse the meal period violations. The Company did not properly pay aggrieved employees the required premium wages owed for the first and second meal period violations. The Company's non-provision of compliant meal periods, and the Company's non-payment of the required meal period premiums, violated and is actionable under Labor Code § 512(a), and Labor Code §§ 226.7(b) & (c).

Westmont Living also flagged and paid meal period premiums for certain meal period infractions, but Westmont Living failed to program their flagging system to capture all forms of meal period violations. When Westmont Living paid meal period premiums, Westmont Living failed to pay the meal period premiums at the proper rate. Westmont Living paid meal period premiums at the employee's base rate or some other rate that was not legally sufficient; among other things, the meal period premiums failed to account for economic items such as shift premiums. The Company's failure to pay meal period premiums at the correct rate violated and is actionable under Labor Code § 226.7(c).

Insofar as meal period premiums are wages subject to Labor Code section 226(a), the Company's failure to pay at all and list on its wage statements, and/or the Company's failure to properly pay and list on its wage statements, the meal period premiums to which Leija and the aggrieved employees were entitled caused the Company's wage statements to inaccurately list the gross and net wages earned, in violation of Labor Code section 226(a)(1) and (a)(5). Moreover, when meal periods were interrupted and/or controlled, yet the aggrieved employees remained clocked out, their corresponding wage statements for the pay period did not accurately reflect their total hours worked or their gross or net wages earned, in violation of Labor Code section 226(a)(2), (a)(1) and (a)(5). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

Insofar as meal period premiums are wages subject to Labor Code sections 201-203, the Company has also failed to include in the final pay of separated aggrieved employees (Leija included) all the meal period premiums to which they were entitled. These deficiencies in final pay were willful within the meaning of Labor Code section 203, and are actionable under Labor Code sections 201, 202, 203, 208, and 256.

F. Rest Period Violations

At all material times, the Company maintained policies and/or practices that prevented aggrieved employees from receiving legally-compliant first and second rest periods. The Company's policies and/or practices have caused employees to not be provided with the legally-compliant rest periods to which they were and are entitled.

Under California law, all non-exempt employees must be authorized and permitted to take a "net" 10-minute rest break for every four (4) hours worked, or major fraction thereof. (IWC

Wage Orders, § 12(A).) Non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)

In terms of rest break timing, the employer must authorize and permit the taking of rest breaks "in the middle of each work period." (IWC Wage Orders, § 12(A); see also *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1040 [analyzing the rest break timing rule].) In terms of rest break duration, California law requires employers to provide employees with a "net" rest time of 10 minutes. (IWC Wage Orders, § 12.) An employee's 10 minutes of rest begins the moment the employee can reach an appropriate area of rest and be free from employer control. (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the employee reaches an area away from the work station that is appropriate for rest"]; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273 ["California law requires employers to relieve their employee of all work-related duties and employer control during 10-minute rest periods"].)

Under California law, it is illegal for an employer to require an employee to work during a rest period that is mandated by California statutory law or an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a rest period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Leija and the other aggrieved employees worked the requisite hours to be entitled to first and second rest periods under California law. The Company was required to authorize and permit Leija and the other aggrieved employees to take rest periods in accordance with California law, and the Company failed to do so.

The nature of the Company's business – operating senior living communities and attending to the needs of their residents – is an ongoing activity that requires constant oversight. The Company required employees to be persistently attentive to the needs of residents. At the same time, the Company lacked the requisite infrastructure to provide employees with timely, uncontrolled, duty-free and uninterrupted rest periods. During rest periods, employees were required to stay on the premises, and were required to keep their Company-issued pagers and walkie-talkies on them. During rest periods, employees were under the Company's control.

No valid waiver exists to excuse the rest period violations. The Company did not properly pay Leija or the other aggrieved employees the required premium wages owed for the rest period violations. The Company did not have a system in place for flagging any rest period violations. The Company's non-provision of compliant rest periods, and the Company's non-payment of rest period premiums, violated and is actionable under Labor Code sections 226.7(b) and (c). The Company's failure to provide legally-compliant rest periods also violated regulatory law. (IWC Wage Orders, § 12 [rest period requirements].)

Insofar as rest period premiums are wages subject to Labor Code section 226(a), the Company's failure to pay and list on its wage statements the rest period premiums to which Leija and the aggrieved employees were entitled caused the Company's wage statements to inaccurately list the gross and net wages earned, in violation of Labor Code section 226(a)(1) and (a)(5). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

Insofar as rest period premiums are wages subject to Labor Code sections 201-203, the Company has also failed to include in the final pay of separated aggrieved employees (Leija included) all the rest period premiums to which they were entitled. These deficiencies in final pay were willful within the meaning of Labor Code section 203, and are actionable under Labor Code sections 201, 202, 203, 208, and 256.

G. Inaccurate Wage Statements

Labor Code section 226, subdivision (a), requires that employers (such as Westmont Living) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing such matters as the name of the employer, total hours worked, the gross wages earned, the net wages earned, and the applicable hourly rates and the hours worked at those rates during the pay period. CMC's wage statements listed "Community Medical Centers" as the employer.

In addition to the above-mentioned violations of Labor Code section 226(a), the Company's wage statements failed to accurately list the "applicable rate" for hours worked on shifts that entitled employees to elevated hourly pay (i.e., shifts on which employees received a "shift premium"). The actual hourly rate for such shifts was not itemized on the wage statements. For example, if an employee normally made \$14.00 per hour, and worked a shift that entitled the employee to \$14.50 per hour, the Company did not itemize the latter on its wage statements. Consequently, the Company violated Labor Code section 226(a)(9).

In addition to the above-mentioned violations of Labor Code section 226(a)(9), the Company did not list the correct name and address of the employer on its wage statements. As evidenced by the Notice to Employee form issued to Leija, her employer was Westmont Living, Inc. Moreover, the address of this entity was and is 7760 Fay Avenue, Suite N, La Jolla, CA 92037. Neither this name (Westmont Living, Inc.) nor this address appeared on Leija's wage statements or the wage statements of other aggrieved employees. Accordingly, the Company violated Labor Code section (a)(8).

Although unnecessary for PAGA purposes, the above-mentioned violations were knowingly and intentionally committed, and resulted in injury to the employees.

III. CIVIL PENALTIES SOUGHT

For all the above-specified Labor Code violations, Leija, on behalf of herself and all other aggrieved employees, seeks all available civil penalties against Westmont Living that the law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically

provided by statute for the alleged Labor Code violations (including Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

To the extent any other entity or responsible party under the control of Westmont Living (e.g., Fresno Operations, LP) caused or contributed to the Labor Code violations, civil penalties are also sought as to such entities or responsible parties. Leija, on behalf of herself and all other aggrieved employees, reserves the right to assert claims and theories for Labor Code violations and associated civil penalties that are uncovered in the discovery process but which are presently unknown.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Scheppach', written over a circular stamp or seal.

John M. Scheppach
Scheppach Bauer PC