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Jacqueline Leija, on behalf of herself,
and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

JACQUELINE LEIJA, in a representative
capacity,

Plaintiffs,

v.

WESTMONT LIVING, INC., a California
Corporation, FRESNO OPERATIONS, LP a
California limited partnership, and DOES 1
through 30, inclusive,

Defendants.

CASE NO.: VCU285994
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Bret Hillman, Dept. 7*

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF PAGA
CLAIMS**

Complaint Filed: February 22, 2021
First Amended Complaint Filed: Nov. 22, 2022
Trial Date: Not Set

This Stipulation is made by Plaintiff on behalf of herself and each of the other PAGA
Members, on the one hand, and Defendants, on the other hand, in this Action, and is subject to
the approval of the Court.

1 **1. DEFINED TERMS**

2 1.1. “Action” means the civil action brought under the Private Attorneys General Act
3 of 2004 (“PAGA”) being resolved by this Settlement, entitled *Jacqueline Leija v. Westmont*
4 *Living, Inc., et al.* (Tulare County Superior Court Case No. VCU285994).

5 1.2. “Agreement,” “Settlement,” “Settlement Agreement,” or “Stipulation” means this
6 Joint Stipulation and Settlement Agreement of PAGA Claims.

7 1.3. “Claims” and “Released Claims” means any and all claims for civil penalties
8 under PAGA during the PAGA Period that were asserted in the Complaint, or any other claims
9 for civil penalties under PAGA during the PAGA Period that could have been asserted in the
10 Complaint based on the facts alleged therein. This includes, but is not limited to, any and all
11 claims for civil penalties during the PAGA Period concerning: meal and rest breaks; unpaid
12 regular wages, minimum wages, overtime and double time wages, and sick leave pay; wage
13 statement violations; record keeping violations; expense reimbursement; and separation pay
14 violations. Specifically, and without limitation, the Claims include claims for civil penalties
15 under PAGA during the PAGA Period for violation of the California Labor Code, or any law or
16 regulation related to wage and hour law, asserted or that could have been asserted in the
17 Complaint based on the facts alleged, including without limitation California Labor Code
18 section 201, 202, 203, 204, 208, 210, 218, 226, 226.3, 233, 246, 246.5, 256, 226.7, 510, 512, 558,
19 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802. The Released Claims shall run
20 during the entire PAGA Period. The terms “Claims” and “Released Claims” do not include any
21 non-PAGA claims. As of the Effective Date and upon payment by Defendants of all funds due
22 under this Settlement, each PAGA Member shall be deemed to have fully, finally, and forever
23 released, relinquished, and discharged all Released Claims against the Released Parties. The
24 Parties agree and acknowledge that, to the maximum extent permitted by law, the Settlement
25 Approval Order entered pursuant to this Settlement will bind all those who would be bound by a
26 judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the
27 PAGA Members, with respect to the recovery of civil penalties asserted in the Claims against the
28 Released Parties. The scope of the release provided for in this Settlement is coextensive with the

1 preclusive effect of the Settlement Approval Order.

2 1.4. “Complaint” means the operative First Amended Complaint filed in the Action
3 on November 22, 2022.

4 1.5. “Costs Award” means the amount of litigation expenses Plaintiff’s Counsel has
5 incurred in prosecuting the Action and awarded by the Court. Plaintiff’s Counsel’s request for
6 costs shall not exceed \$5,000.00).

7 1.6. “Court” means the Superior Court for the State of California, for the County of
8 Tulare, which is the Court that the Parties will be submitting this Settlement to for purposes of
9 obtaining court approval.

10 1.7. “Database Report” means a confidential list of PAGA Members that Fresno
11 Operations will diligently and in good faith compile from its records and provide to the
12 Settlement Administrator only. Plaintiff’s Counsel will not receive a copy of the confidential
13 list. The Database Report shall be in computer-readable format, and shall include each PAGA
14 Member’s full name; employee ID while employed with Fresno Operations; dates of employment
15 during which he or she worked for Fresno Operations in California; last known home address
16 and last known telephone number to the extent available in the Human Resources employee
17 information database; and Social Security number to perform a skip trace in order to obtain the
18 best possible address for PAGA Members prior to mailing the PAGA Notice.

19 1.8. “Defendants” means Westmont Living, Inc. (“Westmont Living”) and Fresno
20 Operations, LP (“Fresno Operations”).

21 1.9. “Defendants’ Counsel” means Christopher C. Hoffman, Phillip G. Simpler,
22 Lauren Bushman, and Steven D. Eheart of Fisher & Phillips, LLP.

23 1.10. “Effective Date” means the date upon entry of an Order by the Court approving
24 this Agreement.

25 1.11. “Fees and Costs Award” means the aggregate total of the Fees Award and the
26 Costs Award to Plaintiff’s Counsel approved by the Court.

27 1.12. “Fees Award” means the fee amount authorized by the Court to be paid to
28 Plaintiff’s Counsel for the services they have rendered in prosecuting the Action, in an amount

not to exceed thirty-five percent (35%) of the Total Settlement Amount, *i.e.*, the Fees Award shall not exceed Eighteen Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$18,375.00).

1.13. “Settlement Approval” and/or “Settlement Approval Order” means the Court’s order granting approval of the PAGA Settlement, in the form substantially similar to that attached hereto as **Exhibit A**.

1.14. “Settlement Approval Hearing” means the hearing at which the Court considers whether to issue an order granting approval to the Settlement.

1.15. “Net Settlement Fund” means the Total Settlement Amount minus the sum of the (1) Fees and Cost Award and (2) Settlement Administration Costs.

1.16. “PAGA Members” means all current and former nonexempt employees of Fresno Operations who worked at Westmont Of Fresno during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA Members are “aggrieved employees” as defined pursuant to PAGA.

1.17. “PAGA Notice” means the Court-approved Notice of PAGA Settlement, substantially in the form attached hereto as **Exhibit B**.

1.18. “PAGA Payment” shall be the Net Settlement Fund which, pursuant to Labor Code section 2699(i), will be distributed as follows: 25% to PAGA Employees and 75% to the California Labor and Workforce Development Agency (“LWDA”).

1.19. “PAGA Period” means the period from February 16, 2022 until the date the Court signs an order approving this Settlement.

1.20. “Plaintiff” means Plaintiff Jacqueline Leija.

1.21. “Plaintiff’s Counsel” means John M. Scheppach of Scheppach Bauer PC.

1.22. “Parties” means Defendants and Plaintiff.

1.23. “Qualifying Pay Period” means a pay period during the PAGA Period where a PAGA Member worked at least one day during that period and was not on a leave of absence or vacation. The Qualifying Pay Period will be calculated by using Fresno Operations’ payroll data during the PAGA Period.

1 1.24. “Qualified Settlement Fund” or “QSF” means the account set up by the Settlement
2 Administrator and from which the Individual Settlement Awards to PAGA Members shall be
3 made. The QSF shall be an interest-bearing account within the meaning of Section 468B of the
4 Internal Revenue Code of 1986, as amended, and Treasury Regulations section 1.468B-1, et seq.,
5 at a federally-insured bank that is mutually acceptable to the Parties and the Settlement
6 Administrator. The Settlement Administrator shall serve as a Trustee of the QSF and shall act
7 as a fiduciary with handling of all tax-related issues, reporting, and payments. The Settlement
8 Administrator shall act in a manner necessary to qualify and maintain the QSF as a Qualified
9 Settlement Fund and the Parties shall cooperate to ensure such treatment and shall not take a
10 position in any filing or before any tax authority inconsistent with such treatment. The Parties
11 agree that the QSF shall be a non-reversionary fund and that under no circumstance will there be
12 any reversion to Defendants of any of the funds from the QSF or the Total Settlement Amount.

13 1.25. “Released Parties” means Defendants, and each of their former or present parents,
14 subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors, or
15 successors, and all agents, employees, officers, directors, members, managers, holding
16 companies, insurers, and attorneys thereof.

17 1.26. “Settlement Administrator” means Atticus Administration, LLC.

18 1.27. “Settlement Administration Costs” means the amount that will be paid to the
19 Settlement Administrator for actual and direct fees and expenses reasonably incurred by the
20 Settlement Administrator in administering the Settlement, as approved by the Court. Settlement
21 Administration Costs will include, but are not limited to, fees and costs payable to the Settlement
22 Administrator for printing, distributing (including with appropriate postage), and tracking
23 documents for this Settlement; searching to locate any PAGA Members; calculating estimated
24 amounts per PAGA Member; distributing the Individual Settlement Awards, Plaintiff’s
25 Counsel’s Fees and Cost Award, and payment to the LWDA; providing necessary certification
26 of completion of notice, reports and declarations; establishing and administering a QSF account;
27 required tax reporting and withholding on the Individual Settlement Awards; the issuing of 1099
28 forms; determining the validity of any disputes (and communicating the determination of those

disputes to the disputing PAGA Member, Plaintiff's Counsel, and Defendants' Counsel); calculating all amounts to be paid from the Total Settlement Amount; and such other responsibilities and duties as reasonably and customarily performed by third-party settlement administrators or as requested by the Parties. Settlement Administration Costs shall not exceed \$3,000.00.

1.28. "Settlement Award" means the total portion of the Net Settlement Fund payable to PAGA Members, or 25 % of the Net Settlement Fund.

1.29. "Total Settlement Amount" or "Common Fund" means the total amount that Defendants will be required by this Stipulation to pay to: PAGA Members; Plaintiff's Counsel; the Settlement Administrator; and the LWDA. The Total Settlement Amount is Fifty-Two Thousand Five Hundred Dollars and Zero Cents (\$52,500.00). The Total Settlement Amount is non-reversionary, meaning that, if the Settlement is approved and becomes effective, no part of this amount shall be returned to Defendants. This is a common fund Settlement. The Total Settlement Amount is subject to increase pursuant to paragraph 6.2 of this Agreement.

2. BACKGROUND AND PRELIMINARY REPRESENTATIONS

2.1 Conditioned on Approval. If the Court should for any reason fail to approve the Settlement, this Agreement shall be considered null and void and litigation shall proceed as if this Agreement had not been reached.

2.2 Investigation. The Parties have conducted significant investigation of the facts and law. Such discovery and investigation included interviews with Plaintiff and other percipient witnesses, as well as the review of documents and data necessary to calculate potential damages. Counsel for the Parties investigated the law as applied to the facts discovered regarding the alleged claims of the PAGA Members and potential defenses thereto, and the damages claimed by the PAGA Members. Additionally, the Parties agree that Plaintiff has received and reviewed confirmatory discovery pertaining to the PAGA Members sufficient to confirm the fairness of the settlement and fulfill any duties Plaintiff and Plaintiff's Counsel may have to the PAGA Members in settling a PAGA case. Such discovery included information concerning the scope of the PAGA Member group and an agreed upon sample of time and pay records (with employee

1 identifying information removed) covering the PAGA Period. Based on this review and all
2 investigation to date, Plaintiff and Plaintiff's Counsel are satisfied the Settlement is fair,
3 adequate, and reasonable and warrants presentation to the Court for approval.

4 2.3 Defendants' Reasons for Settlement. Defendants concluded that any further
5 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts
6 of time, energy, and resources of Defendants have been and, unless this Settlement is made, will
7 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants have also
8 taken into account the risks of further litigation in reaching their decision to enter into this
9 Settlement. Defendants have, therefore, agreed to settle in the manner and upon the terms set
10 forth in this Agreement to put to rest the Claims as set forth in the Action.

11 2.4 Defendants' Denials of Wrongdoing. Defendants have denied and continue to
12 deny each of the claims and contentions alleged by Plaintiff on behalf of the PAGA Members in
13 the Action. Defendants have repeatedly asserted, and continue to assert, defenses thereto, and
14 have expressly denied and continue to deny any wrongdoing or legal liability arising out of any
15 of the facts or conduct alleged in the Action. Defendants also have denied and continue to deny,
16 inter alia, the allegations that the PAGA Members have suffered damage; that Defendants
17 violated any laws; that Defendants engaged in any wrongful conduct as alleged in the Action;
18 that Westmont Living employed Plaintiff and/or the other PAGA Members; or that PAGA
19 Members were harmed by the conduct alleged in the Action. Neither this Agreement, nor any
20 document referred to or contemplated herein, nor any action taken to carry out this Agreement,
21 is, may be construed as, or may be used as an admission, concession or indication by or against
22 Defendants of any fault, wrongdoing or liability whatsoever.

23 2.5 Plaintiff's Claims. Plaintiff has claimed and continues to claim that the Released
24 Claims have merit and give rise to liability on the part of Defendants. This Agreement is a
25 compromise of disputed claims, and Plaintiff's agreement takes into account Defendants'
26 defenses to liability. Nothing contained in this Agreement and no documents referred to herein
27 and no action taken to carry out this Agreement may be construed or used as an admission by or
28 against the Plaintiff or Plaintiff's Counsel as to the merits or lack thereof of the claims asserted.

2.6 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all PAGA disputes and claims for civil penalties under PAGA against the Released Parties in the Action for the entirety of the PAGA Period, and that this Agreement shall constitute a full and complete settlement and release of all the Released Parties from all of the claims for civil penalties under PAGA asserted in this Action for the entirety of the PAGA Period.

3. PAGA SETTLEMENT AGREEMENT

3.1. Settlement Components. The Settlement shall have four components: (1) the PAGA Members' Settlement Awards; (2) Plaintiff's Counsel's Fees and Cost Award; (3) the Settlement Administration Costs; and (4) the payment to the LWDA. All of these components are included in the Total Settlement Amount.

3.2. Creation of the Common Fund. Within thirty (30) calendar days after the Effective Date, Defendants shall deliver the Total Settlement Amount to the Settlement Administrator to create the Settlement Fund. All payments that Defendants are required to make pursuant to the Agreement shall be made from the Common Fund by the Settlement Administrator. Defendants will retain exclusive authority over, and responsibility for, those funds until required to deliver them to the Settlement Administrator in accordance with this paragraph.

3.3. Payment to PAGA Members. After deducting the Fees and Costs Award and the Settlement Administration Costs, the Settlement Award, or 25% of the Net Settlement Fund, shall be paid and distributed by the Settlement Administrator to PAGA Members. Each PAGA Member shall receive a *pro rata* share of the amount of the Settlement Award ("Individual Settlement Award").

3.3.1. Calculation of the Individual Settlement Awards. The Individual Settlement Award for each PAGA Member shall be calculated by dividing the PAGA Member's number of pay periods worked during the PAGA Period by the total number of pay periods worked by all PAGA Members and multiplying that ratio by the Settlement Award. The Settlement Administrator shall have the authority and obligation to calculate the amounts of Individual Settlement Awards in accordance with the methodology set forth in this Agreement

1 and any Orders of the Court. Only Qualifying Pay Periods will be utilized for purposes of
2 calculating Individual Settlement Awards. The Parties agree that the formula for the Individual
3 Settlement Awards to PAGA Members provided herein is reasonable and that the payments
4 provided herein are designed to provide a fair settlement to such persons, in light of the
5 uncertainties of the damages and penalties alleged to be owed to the PAGA Members and the
6 calculation of such amounts.

7 3.4. Each PAGA Member will have one hundred eighty (180) calendar days from the
8 date of the mailing of the Individual Settlement Award check to cash the check. PAGA Members
9 remain bound by the Settlement and the Released Claims regardless of whether they cash the
10 check.

11 3.5. The checks will state they are void if not cashed within one hundred eighty (180)
12 calendar days of mailing. The checks to each PAGA Member will also contain the following
13 short release and waiver on the back:

14 By depositing this check, I acknowledge that I have released and discharged the
15 'Released Claims' against the 'Released Parties,' as described in detail in the Notice
16 of PAGA Settlement that I received.

17 3.6. The Parties recognize that the Individual Settlement Awards to be paid to PAGA
18 Members reflect a settlement of a dispute over civil penalties. The Individual Settlement Awards
19 shall be allocated one hundred percent (100%) to PAGA penalty payments. No withholding shall
20 be made on these payments, and they shall be reported on a 1099 Form and will be provided to
21 each PAGA Member.

22 3.7. Payment to LWDA. After deducting the Fees and Costs Award and the Settlement
23 Administration Costs, 75% of the Net Settlement Fund shall be paid and distributed by the
24 Settlement Administrator to the LWDA (hereinafter called the "LWDA Payment").

25 3.8. Plaintiff's Counsel's Fees and Costs Award. Defendants agree not to oppose or
26 impede any application or motion by Plaintiff's Counsel for attorneys' fees not to exceed thirty-
27 five percent (35%) of the Total Settlement Amount (*i.e.*, \$18,375.00) and litigation costs not to
28 exceed \$5,000.00. The Parties agree that a decision by the Court to award Plaintiff's Counsel

1 less than these amounts shall not be a basis for the Plaintiff or Plaintiff's Counsel to void this
2 Agreement. Plaintiff's Counsel shall be solely and legally responsible to pay their applicable
3 taxes on the payment made pursuant to this Paragraph. Plaintiff's Counsel further agrees that
4 Plaintiff's Counsel shall be solely responsible for any allocation of the Fees and Costs Award as
5 between or among attorneys who have claims for such fees. Forms 1099 shall be provided to
6 Plaintiff's Counsel for the payments made pursuant to this Paragraph. If the Fees and Costs
7 Award is less than the amount sought, the remainder will be retained in the Net Settlement Fund
8 for distribution as part of the PAGA Payment.

9 3.6 Settlement Administration Costs. The Settlement Administrator shall be paid for
10 the costs of administration of the settlement from the Total Settlement Amount. The costs of
11 administration for the disbursement of the Total Settlement Amount shall not exceed the amount
12 quoted (and ultimately billed), approximately \$3,000.00, by Atticus Administration, LLC. The
13 Settlement Administration Costs include all tasks required of the Settlement Administrator by
14 this Agreement, including performing a skip trace; basic searches on the National Change of
15 Address Database in order to obtain the best possible address for PAGA Members prior to
16 mailing the PAGA Notice to PAGA Members; the issuance of the PAGA Notice; the required
17 tax reporting on the settlement amounts; the issuance of checks; including the issuing of 1099
18 forms (if any); the handling of PAGA Member questions and disputes; and preparing and filing
19 any required reports or declarations with the Court.

20 3.8 Tax Liability. Defendants make no representations as to the tax treatment or legal
21 effect of the payments called for hereunder, and Plaintiff is not relying on any statement or
22 representation by Defendants in this regard. Plaintiff understands and agrees that PAGA
23 Members will be solely responsible for the payment of taxes and penalties predicated on the
24 Individual Settlement Payments described herein.

25 3.9 Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
26 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
27 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
28 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS

1 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
2 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
3 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
4 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
5 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
6 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
7 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
8 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
9 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED
10 UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
11 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
12 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
13 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
14 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
15 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
16 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
17 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
18 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
19 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
20 AGREEMENT.

21 **4. RELEASE BY THE PAGA MEMBERS**

22 4.1. Release as to All PAGA Members. As of the Effective Date and upon payment
23 by Defendants of all funds due under this Settlement, all PAGA Members, including Plaintiff,
24 release the Released Parties from the Released Claims.

25 **5. SETTLEMENT ADMINISTRATION**

26 5.1. The Parties agree to cooperate in the settlement administration process and to
27 make all reasonable efforts to control and minimize the costs and expenses incurred in
28 administration of the Settlement.

1 5.2. The Settlement Administrator shall be responsible for: printing and mailing the
2 Notices to the PAGA Members as directed by the Superior Court; issuing and mailing Settlement
3 Awards to PAGA Members; remitting all amounts due to the appropriate federal, state, and local
4 tax authorities, and other tasks as the Parties mutually agree or the Superior Court orders the
5 Settlement Administrator to perform. The Settlement Administrator shall keep the Parties'
6 Counsel timely apprised of the performance of all Settlement Administrator responsibilities. The
7 Settlement Administrator shall provide to the Parties' Counsel any updated reports regarding the
8 administration of the Settlement as needed or requested.

9 5.3. The Settlement Administrator, on Defendants' and Plaintiff's Counsel's
10 collective behalf, shall have the authority and obligation to calculate the amounts of the
11 Individual Settlement Awards and make payments, credits, and disbursements, including
12 payments and credits in the manner set forth herein, to PAGA Members calculated in accordance
13 with the methodology set out in this Agreement and orders of the Court.

14 5.4. No person shall have any claim against Defendants, Defendants' Counsel,
15 Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on any errors or omissions
16 in the distributions and payments that are required to be made in accordance with the terms of
17 this Agreement.

18 5.5. Any tax return filing required by this Agreement shall be made by the Settlement
19 Administrator. Any expenses incurred in connection with such filing shall be a cost of
20 administration of the Settlement.

21 5.6. Within thirty (30) calendar days of the Effective Date, Fresno Operations shall
22 provide the Settlement Administrator with the Database Report.

23 **6. PROCEDURE FOR FUNDING OF SETTLEMENT**

24 6.1. Defendants shall fund the Settlement via one lump sum payment equaling the
25 Total Settlement Amount ("TSA") (*i.e.*, the payment shall be \$52,500.00).

26 6.2. The TSA was calculated with, and is premised on, the understanding that there
27 are approximately 2979 pay periods during the PAGA Period through the date that the Parties
28 executed the Memorandum of Understanding (the "PAGA Metric"). If the final accounting of

1 the number of periods worked during the PAGA Period is more than ten percent (10%) higher
2 than the PAGA Metric, Defendants will increase the TSA by a proportional amount or, if
3 Defendants choose, the PAGA Period shall be deemed to end on the date that the total number
4 of periods in the PAGA Period exceeds the PAGA Metric by ten percent (10%). For example, if
5 the total number of periods in the PAGA Period is eleven percent (11%) higher than the PAGA
6 Metric at the time of settlement approval, then Defendants agree to increase the TSA by eleven
7 percent (11%), unless Defendants exercise the right to end the PAGA Period on the date that the
8 total periods increased by ten percent (10%). The Settlement Administrator will conduct the final
9 accounting and report the results to Defendants' Counsel and Plaintiff's Counsel within fourteen
10 (14) calendar days of receiving the Database Report. When transmitting the Database Report to
11 the Settlement Administrator, Defendants' Counsel will confidentially transmit a version of the
12 Database Report to Plaintiff's Counsel which shows only the Employee ID numbers, dates of
13 employment and calculated pay periods.

14 6.3. Within thirty (30) calendar days of the Effective Date, Defendants shall provide
15 the Settlement Administrator with the Total Settlement Amount.

16 **7. PROCEDURE FOR PAYMENT OF SETTLEMENT AWARDS**

17 7.1. Distributions of funds and Individual Settlement Payments to PAGA Members
18 shall occur no later than fifteen (15) calendar days after the Parties approve the Settlement
19 Administrator's final calculations, as follows: 100% of the Fees and Costs Award; 100% of the
20 Settlement Administration Costs; 100% of LWDA Payment; and the remainder of the funds to
21 be distributed pro rata in the amount of 100% to the Individual Settlement Payments.

22 7.2. Any amounts remaining from uncashed or returned Individual Settlement
23 Payment checks shall be distributed to the State Controller's Unclaimed Property Fund in the
24 name of the corresponding PAGA Member(s).

25 7.3. Should any question arise regarding the determination of eligibility for, or the
26 amounts of, any Individual Settlement Payments under the terms of this Agreement, Plaintiff's
27 Counsel and Defendants' Counsel shall meet and confer in an attempt to reach agreement.
28 Absent evidence rebutting Fresno Operations' records, Fresno Operations' records will be

1 presumed determinative. However, if there are no corresponding records, or the PAGA Member
2 produces evidence contrary to Fresno Operations' records, the Settlement Administrator will
3 evaluate the evidence and will make the final decision as to the eligibility for, or the amounts of,
4 any Individual Settlement Payments under the terms of this Agreement.

5 7.4. Certification by Settlement Administrator. Upon completion of administration of
6 the distributions, the Settlement Administrator shall provide written certification of such
7 completion to the Court and counsel for all Parties.

8 **8. SETTLEMENT APPROVAL HEARING**

9 8.1. A Settlement Approval Hearing shall be conducted to determine approval of the
10 Settlement along with the amount properly payable for (i) the Fees and Costs Award, (ii) the
11 PAGA Payment; and (iii) Settlement Administration Costs. After entry of an order approving
12 the Settlement, the Court shall have continuing jurisdiction solely for purposes of
13 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement
14 administration matters, and (iii) such other matters as may be appropriate under court rules or as
15 set forth in this Agreement.

16 **9. VOIDING THE SETTLEMENT**

17 9.1. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
18 the Order specified herein; (ii) the Court does not issue an order approving the Settlement, as
19 provided herein; or (iii) the Settlement does not become final for any other reason, this Settlement
20 Agreement shall be null and void and any order entered by the Court in furtherance of this
21 Settlement shall be treated as void from the beginning. In such a case, the Parties shall be
22 returned to their respective statuses as of the date and time immediately prior to the execution of
23 the MOU, and the Parties shall proceed in all respects as if this Settlement Agreement had not
24 been executed.

25 9.2. The Parties agree that there is no statutory right for any PAGA Member to opt out
26 or otherwise exclude himself or herself from the Settlement.

27 **10. PUBLICITY AND CONFIDENTIALITY**

28 10.1. In response to any inquiries Plaintiff and Plaintiff's Counsel will state that "the

case was resolved with Court approval.” Plaintiff’s Counsel shall not report the settlement or its content in any medium or in any publication, shall not post or report anything regarding the Claims or the PAGA Members on their website, and shall not contact any reporters or media regarding the Settlement, the Action, or their content. However, Plaintiff’s Counsel is authorized to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the approval of the Settlement. This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA. Plaintiff and Plaintiff’s counsel, or their representatives, are not permitted to disseminate or publish, distribute or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court. Nothing in this provision is intended to prohibit: (i) Plaintiff from discussing this settlement with her spouse, attorneys, tax advisors, or taxing authorities; (ii) Plaintiff’s Counsel from citing the settlement in this case as evidence supporting their competence as counsel in wage/hour and/or class action matters in public court filings; or (iii) Plaintiff’s Counsel from communicating with Plaintiff, the LWDA, or with the Court; (iv) Plaintiff’s Counsel from reporting on the settlement of the Action in other courts as may be required by the California Rules of Court or when responding to any inquiry from another court; (v) Plaintiff’s counsel from discussing the Settlement with PAGA Members who contact Plaintiff’s counsel with questions about the Settlement or the distribution of their Individual Settlement Payment; or (vi) Plaintiff’s counsel from discussing the settlement with the Settlement Administrator.

11. EXHIBIT(S) AND HEADINGS

11.1. The terms of this Agreement include the terms set forth in any attached Exhibit(s), which are incorporated by this reference as though fully set forth herein. Any Exhibit(s) to this Agreement are an integral part of the Settlement.

11.2. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

12. INTERIM STAY OF PROCEEDINGS

12.1. The Parties agree to hold all proceedings and deadlines in the Action, except such

proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Approval Hearing to be conducted by the Court. Said stay shall terminate if and when (1) the Court permanently denies approval of the Settlement or, (2) the Court issues an Order terminating the stay.

13. AMENDMENT OR MODIFICATION

13.1. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. Plaintiff's Counsel and Defendants' Counsel may agree to, and are hereby authorized to, amend or modify the contents of the proposed Settlement Approval Order (Exhibit A) or the proposed PAGA Notice (Exhibit B) to conform to any edits requested or recommended by the Court without further signatures.

14. ENTIRE AGREEMENT

14.1. This Agreement and any attached Exhibit(s) constitute the entire agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibit(s) other than the representations, warranties, and covenants contained and memorialized in such documents.

15. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT

15.1. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their Counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant that they are authorized to sign this Agreement on behalf of Defendants.

1 **16. BINDING ON SUCCESSORS AND ASSIGNS**

2 16.1. This Agreement shall be binding upon, and inure to the benefit of, the successors
3 or assigns of the Parties hereto, as previously defined.

4 **17. CALIFORNIA LAW GOVERNS**

5 17.1. All terms of this Agreement and the Exhibit(s) hereto shall be governed by and
6 interpreted according to the laws of the State of California.

7 **18. COUNTERPARTS**

8 18.1. This Agreement may be executed in one or more counterparts. All executed
9 counterparts and each of them shall be deemed to be one and the same instrument provided that
10 counsel for the Parties to this Agreement shall exchange among themselves original signed
11 counterparts.

12 **19. THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

13 19.1. The Parties believe this Settlement is a fair, adequate, and reasonable settlement
14 of this Action and have arrived at this Settlement after extensive arms-length negotiations and
15 taking into account all relevant factors, present and potential.

16 **20. JURISDICTION OF THE COURT**

17 20.1. The Court shall retain jurisdiction with respect to the interpretation,
18 implementation and enforcement of the terms of this Agreement (CCP § 664.6) and all orders
19 entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction
20 of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied
21 in this Agreement and all orders entered in connection therewith.

22 **21. COOPERATION AND DRAFTING**

23 21.1. Each of the Parties has cooperated in the drafting and preparation of this
24 Agreement. Hence, in any construction made to this Agreement, the same shall not be construed
25 against any of the Parties. The Parties agree to take all necessary measures to effectuate this
26 Agreement according to its terms and scope.

27 **22. INVALIDITY OF ANY PROVISION**

28 22.1. Before declaring any provision of this Agreement invalid, the Court shall first

attempt to construe the provisions valid to the fullest extent possibly consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

23. FAX/ELECTRONIC SIGNATURES

23.1. Signatures of this Agreement provided electronically (such as via DocuSign and/or Adobe Sign), by pdf, or by facsimile shall have the same force and effect as original “wet” signatures.

APPROVED:

01/31/2024
DATE: _____

Jacqueline Leija
Jacqueline Leija (Jan 31, 2024 17:12 PST)

Plaintiff
Jacqueline Leija

DATE: _____

Defendant
Westmont Living, Inc.

By: _____

Its: _____

DATE: _____

Defendant
Fresno Operations, LP

By: _____

Its: _____

attempt to construe the provisions valid to the fullest extent possibly consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

23. FAX/ELECTRONIC SIGNATURES

23.1. Signatures of this Agreement provided electronically (such as via DocuSign and/or Adobe Sign), by pdf, or by facsimile shall have the same force and effect as original “wet” signatures.

APPROVED:

DATE: _____

Plaintiff
Jacqueline Leija

DATE: Jan 31, 2024

Andrew S. Plant
Andrew S. Plant (Jan 31, 2024 15:21 PST)

Defendant
Westmont Living, Inc.

By: Andrew S. Plant

Its: Co-Manager of the GP

DATE: Jan 31, 2024

Andrew S. Plant
Andrew S. Plant (Jan 31, 2024 15:21 PST)

Defendant
Fresno Operations, LP

By: Andrew S. Plant

Its: Co-Manager of the GP

1 **APPROVED AS TO FORM:**

2
3 DATE: 1/31/2024

FISHER & PHILLIPS LLP

4
5 By: 
6 Christopher C. Hoffman
7 Phillip G. Simpler
8 Lauren Bushman
9 Steven D. Eheart
10 Attorneys for Westmont Living, Inc.
11 and Fresno Operations, LP

12 DATE: 1/31/2024

SCHEPPACH BAUER PC

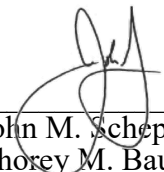
13
14 By: 
15 John M. Scheppach
16 Thorey M. Bauer
17 Attorneys for Plaintiff Jacqueline Leija
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 Christopher C. Hoffman (SBN 176334)
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2 Phillip G. Simpler (SBN 292486)
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3 Lauren Bushman (SBN 314865)
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4 Steven D. Eheart (SBN 332772)
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5 **FISHER & PHILLIPS LLP**
4747 Executive Drive, Suite 1000
6 San Diego, California 92121
Telephone: (858) 597-9600
7 Facsimile: (858) 597-9601

8 Attorneys for Defendants
Westmont Living, Inc. and Fresno Operations, LP

9 John M. Scheppach (SBN 240633)
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10 Thorey M. Bauer (SBN 234813)
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11 **SCHEPPACH BAUER PC**
23181 Verdugo Drive, Suite 105-A
12 Laguna Hills, California 92653
Telephone: (949) 209-8880
13 Facsimile: (949) 358-7884

14 Attorneys for Plaintiff
15 Jacqueline Leija, on behalf of herself,
and all other aggrieved employees
16

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF TULARE

19 JACQUELINE LEIJA, in a representative
capacity,

20 Plaintiffs,

21 v.

22 WESTMONT LIVING, INC., a California
23 Corporation, FRESNO OPERATIONS, LP a
California limited partnership, and DOES 1
24 through 30, inclusive,

25 Defendants.
26
27
28

CASE NO.: VCU285994
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Bret Hillman, Dept. 7*

[PROPOSED] ORDER APPROVING PAGA
SETTLEMENT, AND ENTERING
JUDGMENT THEREON

Hearing:
Date: February 27, 2024
Time: 8:30 a.m.
Dept: 07

Complaint Filed: February 22, 2021
First Amended Complaint Filed: Nov. 22, 2022
Trial Date: Not Set

ORDER APPROVING PAGA SETTLEMENT AND
ENTERING JUDGMENT THEREON

This matter came on for hearing on February 27, 2024, at 8:30 a.m. in Department 07 of the above-captioned court on the unopposed Motion for Approval of a PAGA Settlement.

Having considered the Joint Stipulation and Settlement Agreement of PAGA Claims (the “Settlement Agreement” or “Settlement”) and the PAGA Notice appended thereto; having considered the briefing and submissions filed with the Court; and good cause appearing therefor; the Court

HEREBY ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. The Court has jurisdiction over Plaintiff Jacqueline Leija (“Plaintiff”) and Defendants Westmont Living, Inc. and Fresno Operations, LP (collectively, “Defendants”) and the subject matter of the action, which involves the Private Attorneys General Act of 2004 (“PAGA”).

2. The Court hereby GRANTS approval of the Settlement upon the terms and conditions set forth in the Settlement Agreement. The Court finds that the Settlement terms are fair to all concerned. This signed Order constitutes the “Settlement Approval Order” discussed herein and in the Settlement.

3. The following definitions, as provided in the Settlement, shall apply herein:

A. **“Complaint”** means the First Amended Complaint, filed on November 22, 2022, in this Action.

B. **“Defendants”** means Westmont Living, Inc. (“Westmont Living”) and Fresno Operations, LP (“Fresno Operations”).

C. **“PAGA Period”** means the period from February 16, 2022 until the date the Court signs this Order.

D. **“Plaintiff’s Counsel”** means John M. Scheppach of Scheppach Bauer PC.

E. **“Claims”** and **“Released Claims”** means any and all claims for civil penalties under PAGA during the PAGA Period that were asserted in the Complaint, or any

1 other claims for civil penalties under PAGA during the PAGA Period that could have been
2 asserted in the Complaint based on the facts alleged therein. This includes, but is not limited
3 to, any and all claims for civil penalties during the PAGA Period concerning: meal and rest
4 breaks; unpaid regular wages, minimum wages, overtime and double time wages, and sick
5 leave pay; wage statement violations; record keeping violations; expense reimbursement;
6 and separation pay violations. Specifically, and without limitation, the Claims include
7 claims for civil penalties under PAGA during the PAGA Period for violation of the
8 California Labor Code, or any law or regulation related to wage and hour law, asserted or
9 that could have been asserted in the Complaint based on the facts alleged, including without
10 limitation California Labor Code section 201, 202, 203, 204, 208, 210, 218, 226, 226.3, 233,
11 246, 246.5, 256, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
12 1199, and 2802. The Released Claims shall run during the entire PAGA Period. The terms
13 “Claims” and “Released Claims” do not include any non-PAGA claims. As of the Effective
14 Date and upon payment by Defendants of all funds due under this Settlement, each PAGA
15 Member shall be deemed to have fully, finally, and forever released, relinquished, and
16 discharged all Released Claims against the Released Parties. The Parties agree and
17 acknowledge that, to the maximum extent permitted by law, the Settlement Approval Order
18 entered pursuant to this Settlement will bind all those who would be bound by a judgment if
19 the action had been brought by the LWDA, including Plaintiff, the LWDA, and the PAGA
20 Members, with respect to the recovery of civil penalties asserted in the Claims against the
21 Released Parties. The scope of the “Claims” or “Released Claims” is coextensive with the
22 preclusive effect of the Settlement Approval Order.

23 F. **“Released Parties”** means Defendants, and each of their former or
24 present parents, subsidiaries, affiliates, investors, partners, owners, related organizations,
25 predecessors, or successors, and all agents, employees, officers, directors, members,
26 managers, holding companies, insurers, and attorneys thereof.

27 G. **“Settlement Administrator”** means Atticus Administration, LLC.

28 H. **“PAGA Members”** means all current and former nonexempt

1 employees of Fresno Operations who worked at Westmont Of Fresno during the PAGA
2 Period.

3 4. The Court approves Atticus Administration, LLC to serve as the Settlement
4 administrator.

5 5. The Court approves the Common Fund established to fund the Settlement.

6 6. The Court approves the payment for Settlement Administration Costs incurred
7 by Atticus Administration, LLC in the amount of \$3,000.00 to be paid from the Common
8 Fund as provided in the Settlement Agreement.

9 7. The Court approves the payment of attorneys' fees to Plaintiff's Counsel in
10 the amount of \$18,375.00, and awards an additional _____ for costs and expenses to be
11 paid from the Common Fund as provided in the Settlement Agreement.

12 8. Pursuant to PAGA, the Net Settlement Fund shall be distributed 75% to the
13 California Labor and Workforce Development Agency and the remaining 25% shall be
14 distributed to the PAGA Members in accordance with the terms of the Settlement.

15 9. The Court hereby directs Defendants to disseminate the Database Report to
16 the Settlement Administrator and fund the Settlement in accordance with the terms of, and
17 by the deadlines supplied in, the Settlement.

18 10. The Court hereby directs the Settlement Administrator to make all
19 disbursements in accordance with the terms of, and by the deadlines supplied in, the
20 Settlement Agreement.

21 11. As set forth in the Settlement Agreement, the Settlement Administrator will
22 prepare and mail settlement checks for each PAGA Member in the amount of his or her
23 Individual Settlement Award. The checks will indicate on their face that they are void if not
24 negotiated within one hundred and eighty (180) days of their issuance. In the event a
25 settlement check is returned to the Settlement Administrator with a forwarding address, the
26 settlement check will be forwarded to the forwarding address. In the event a settlement
27 check is returned to the Settlement Administrator without a forwarding address or is
28 otherwise undeliverable, the Settlement Administrator will use reasonable efforts to search

1 for a better address and re-mail the returned check, if possible. If the search does not provide
2 a better address, or the settlement check is ultimately returned without a forwarding address,
3 neither Defendants, nor Plaintiff's Counsel, nor the Settlement Administrator shall be
4 required to take further action to achieve delivery of the check to the PAGA Member. If,
5 within that 180-day period, the PAGA Member contacts the Settlement Administrator, or if
6 Plaintiff's Counsel does so on his or her behalf, the settlement check will be reissued and
7 mailed to the address the PAGA Member (or Plaintiff's Counsel) provides. Any such
8 reissued settlement checks will indicate on their face that they are void if not negotiated
9 within one hundred and eighty (180) days of their issuance.

10 12. Any monies not able to be delivered to a PAGA Member and any settlement
11 checks not cashed within one hundred and eighty (180) days of issuance will escheat to the
12 California State Controller, Unclaimed Property Division, in the name of the corresponding
13 PAGA Member(s).

14 13. Upon the filing of this Order Approving the PAGA Settlement and payment
15 by Defendants of all funds due under this Settlement, all PAGA Members, including
16 Plaintiff, will be deemed to have released the Released Parties from the Released Claims.

17 14. Neither this Order nor the Settlement shall constitute an admission by
18 Defendants of any liability or wrongdoing whatsoever, nor is this Order a finding of the
19 validity or invalidity of any claims in the action.

20 15. Each Party will bear its own attorneys' fees and costs, except as provided for
21 in the Settlement and this Order.

22 ///

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16. The Settlement is hereby approved. Without affecting the finality of this Order, the Court reserves exclusive and continuing jurisdiction over the action for purposes of supervising the implementation, enforcement (CCP § 664.6), construction, administration and effectuation of the Settlement.

IT IS SO ORDERED, AND JUDGMENT IS HEREBY ENTERED.

Dated: _____

Judge of the Superior Court of California

EXHIBIT B

NOTICE OF PAGA SETTLEMENT

Leija v. Westmont Living, Inc., et al.
Tulare County Superior Court, Case Number VCU285994

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are a member of a Court-approved settlement. You received this notice because a lawsuit filed in Tulare County Superior Court entitled *Leija v. Westmont Living, Inc. et al.*, Case No. VCU285994 (“Action”), has settled. The lawsuit was brought under the Private Attorney General Act of 2004 (“PAGA”) on behalf of the State of California against Westmont Living, Inc., and Fresno Operations, LP (collectively, “Defendants”). The settlement of the Action (“Settlement”) covers all current and former non-exempt employees of Fresno Operations, LP who worked at Westmont Of Fresno (“PAGA Members”) from February 16, 2022 through and including [REDACTED] (“PAGA Period”). Based on Defendants’ records, you are such an employee and are entitled to a share of the Settlement.

The Action sought civil penalties on behalf of the State of California and the PAGA Members for alleged California Labor Code violations that occurred during the PAGA Period. The Agreement releases all PAGA claims in the Complaint, or that could have been asserted based on the facts alleged in the Complaint, during the PAGA Period. The Complaint in the Action alleges violations of Labor Code section 201, 202, 203, 204, 208, 210, 218, 226, 226.3, 233, 246, 246.5, 256, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, and applicable Industrial Welfare Commission Wage Orders, all pursuant to PAGA.

The release provided by the Settlement is limited to claims and remedies available under PAGA and does not release any non-PAGA claims. It also does not release claims outside of the PAGA Period. Defendants deny all claims, allegations and liabilities arising out of the Action. Further, Defendants assert that they fully complied with all applicable laws at all times during the PAGA Period. Nevertheless, to avoid further time and expense defending the Action, Defendants have settled the case, and the Court has approved the Settlement and release of claims. By settling the Action, Defendants are not admitting any liability or wrongdoing.

Enclosed with this Notice is a check representing your share of the Settlement. The Net Settlement Amount of \$XXX,XXX was allocated pursuant to PAGA as follows: 75% to the Labor & Workforce Development Agency (\$XXX,XXX.XX), and 25% to be distributed among the PAGA Members (\$XX,XXX.XX). You are being issued a Form 1099 for your share of the Settlement, which has been calculated based on the number of payroll periods you worked during the PAGA Period in relation to the total pay periods worked by all PAGA Members during the PAGA Period. Your settlement check will remain valid for 180 days. Your decision to cash the enclosed check will have no bearing on your employment at Westmont Of Fresno. Nothing within this Notice shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed is the appropriate tax form(s) pertaining to your payment.

Do not call or write the Court to ask questions about the Settlement. If you have any questions regarding the Settlement, your Settlement payment, changes of name, changes of address, etc., please contact the Settlement Administrator, Atticus Administration, LLC, at the address or telephone number below.

[Settlement Administrator Name]

[Settlement Administrator Phone Number]

[Settlement Administrator Address]

Sincerely,

[Settlement Administrator]