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FILED

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KATE BIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: C. JACALA, DEPUTY CLERK

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF CONTRA COSTA**

14 QUAI'LYN HARRIS, individually, and on
15 behalf of other members of the general public
16 similarly situated;

17 Plaintiff,

18 vs.

19 WESTMONT LIVING, INC., a California
20 corporation; and DOES 1 through 100,
21 inclusive,

22 Defendants.

Case No.: MSC21-01453

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR**

- (1) Violation of Cal. Bus. & Prof. Code
§§ 17200, et seq. for
 - (a) Unpaid wages
 - (b) Rest break violations
 - (c) Meal period violations
 - (d) Unreimbursed Expenses
 - (e) Failure to pay all wages owed
upon separation
 - (f) Inaccurate wage statements
 - (g) Failure to keep complete or
accurate payroll records
- (2) Civil Penalties Pursuant To The
Private Attorneys' General Act of
2004 ("PAGA")

COMES NOW, Plaintiff QUAI'LYN HARRIS ("Plaintiff"), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, County of Contra Costa.

PARTIES

5. Plaintiff QUAI'LYN HARRIS is an individual residing in the State of California.

6. Defendant WESTMONT LIVING, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, an employer whose employees are engaged at a residential facility for seniors in California known as Westmont Of Brentwood.

7. At all relevant times, Defendant WESTMONT LIVING, INC. and was the "employer" of Plaintiff within the meaning of all applicable California state laws and statutes.

8. At all times herein relevant, Defendants WESTMONT LIVING, INC. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of

1 the other, and at all times relevant hereto were acting within the course and scope of their
2 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
3 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were
4 duly committed with the ratification, knowledge, permission, encouragement, authorization and
5 consent of each defendant designated herein.

6 9. The true names and capacities, whether corporate, associate, individual or
7 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said
8 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
9 information and belief alleges, that each of the defendants designated as a DOE is legally
10 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
11 the injuries to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will
12 seek leave of court to amend this Complaint to show the true names and capacities when the
13 same have been ascertained.

14 10. Defendants WESTMONT LIVING, INC. ("Westmont Living") and DOES 1
15 through 100 will hereinafter collectively be referred to as "Defendants."

16 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
17 affected the working conditions, wages, working hours, and conditions of employment of
18 Plaintiff and the other class members so as to make each of said defendants employers and
19 employers liable under the statutory provisions set forth herein.

20 12. Plaintiff originally commenced this wage-and-hour class action against Westmont
21 Living in Contra Costa County Superior Court in July 2021, assigned case no. MSC21-01453
22 ("*Harris Class Action*").

23 13. Separately, on behalf of the government, in July 2021, Plaintiff commenced a wage-
24 and-hour civil penalty enforcement action against Westmont Living under the Private Attorneys
25 General Act of 2004 ("PAGA") in Riverside County Superior Court, assigned case no.
26 CVRI2102975 ("*Harris PAGA Action*").

27 14. The purpose and effect of this amended complaint is to merge the *Harris PAGA*
28 Action into this *Harris Class Action*, such that all claims and allegations in the two actions are

1 combined together under one comprehensive pleading. The first cause of action herein contains
2 the class action, and the second cause of action herein contains the non-class PAGA action.

3 **CLASS ACTION ALLEGATIONS**

4 15. Plaintiff brings this action on her own behalf and on behalf of all other members
5 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
6 Procedure section 382.

7 16. The proposed class is defined as follows:

8 All current and former non-exempt employees of Westmont Living who worked
9 at the Westmont of Brentwood facility as a non-exempt employee at any time
10 from January 10, 2017 to August 29, 2023 ("Class Period").

11 17. Plaintiff reserves the right to establish additional subclasses as appropriate.

12 18. The class is ascertainable and there is a well-defined community of interest in the
13 litigation:

14 a. Numerosity: The class members are so numerous that joinder of all class
15 members is impracticable. The membership of the entire class is unknown
16 to Plaintiff at this time; however, the class is estimated to be greater than
17 fifty (50) individuals and the identity of such membership is readily
18 ascertainable by inspection of Defendants' employment records.

19 b. Typicality: Plaintiff's claims are typical of all other class members' as
20 demonstrated herein. Plaintiff will fairly and adequately protect the
21 interests of the other class members with whom he has a well-defined
22 community of interest.

23 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
24 class member, with whom he has a well-defined community of interest
25 and typicality of claims, as demonstrated herein. Plaintiff has no interest
26 that is antagonistic to the other class members. Plaintiff's attorneys, the
27 proposed class counsel, are versed in the rules governing class action
28 discovery, certification, and settlement. Plaintiff has incurred, and during

1 the pendency of this action will continue to incur, costs and attorneys'
2 fees, that have been, are, and will be necessarily expended for the
3 prosecution of this action for the substantial benefit of each class member.

4 d. Superiority: A class action is superior to other available methods for the
5 fair and efficient adjudication of this litigation because individual joinder
6 of all class members is impractical.

7 e. Public Policy Considerations: Certification of this lawsuit as a class action
8 will advance public policy objectives. Employers of this great state violate
9 employment and labor laws every day. Current employees are often afraid
10 to assert their rights out of fear of direct or indirect retaliation. However,
11 class actions provide the class members who are not named in the
12 complaint anonymity that allows for the vindication of their rights.

13 19. There are common questions of law and fact as to the class members that
14 predominate over questions affecting only individual members. The following common
15 questions of law or fact, among others, exist as to the members of the class:

- 16 a. Whether Defendants' required employees to work off-the-clock without
17 compensation;
- 18 b. Whether Defendants' failed to include compensatory items in, or
19 otherwise properly calculate, the regular rate of pay for purposes of
20 overtime, sick leave, and meal/rest period purposes;
- 21 c. Whether Defendants' failure to pay wages, without abatement or
22 reduction, in accordance with the California Labor Code, was willful;
- 23 d. Whether Defendants' had a corporate policy and practice of failing to pay
24 their hourly-paid or non-exempt employees within the State of California
25 for all hours worked and missed (short, late, interrupted, and/or missed
26 altogether) meal periods and rest breaks in violation of California law;
- 27 e. Whether Defendants required Plaintiff and the other class members to
28 work over eight (8) hours per day and/or over forty (40) hours per week

1 and failed to pay the legally required overtime compensation to Plaintiff
2 and the other class members;

3 f. Whether Defendants deprived Plaintiff and the other class members of
4 meal and/or rest periods or required Plaintiff and the other class members
5 to work during meal and/or rest periods without compensation;

6 g. Whether Defendants failed to pay minimum wages to Plaintiff and the
7 other class members for all hours worked;

8 h. Whether Defendants failed to pay all wages due to Plaintiff and the other
9 class members within the required time upon their discharge or
10 resignation;

11 i. Whether Defendants failed to timely pay all wages due to Plaintiff and the
12 other class members during their employment;

13 j. Whether Defendants complied with wage reporting as required by the
14 California Labor Code, including, *inter alia*, section 226;

15 k. Whether Defendants kept complete and accurate payroll records as
16 required by the California Labor Code, including, *inter alia*, section
17 1174(d);

18 l. Whether Defendants failed to reimburse Plaintiff and the other class
19 members for necessary business-related expenses and costs;

20 m. Whether Defendants' conduct was willful or reckless;

21 n. Whether Defendants engaged in unfair business practices in violation of
22 California Business & Professions Code section 17200, et seq.;

23 o. The appropriate amount of restitution resulting from Defendants'
24 violation of California law.

25 **GENERAL ALLEGATIONS**

26 20. At all relevant times set forth herein, Defendants employed Plaintiff and other
27 persons as hourly-paid or non-exempt employees within the State of California, including the
28 County of Contra Costa.

1 21. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
2 exempt employee from approximately September 2017 to approximately May 2020, in the State
3 of California.

4 22. Defendants hired Plaintiff and the other class members and classified them as
5 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and
6 missed meal periods and/or rest breaks.

7 23. Defendants had the authority to hire and terminate Plaintiff and the other class
8 members, to set work rules and conditions governing Plaintiff's and the other class members'
9 employment, and to supervise their daily employment activities.

10 24. Defendants exercised sufficient authority over the terms and conditions of
11 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
12 and the other class members.

13 25. Defendants directly hired and paid wages and benefits to Plaintiff and the other
14 class members.

15 26. Defendants continue to employ hourly-paid or non-exempt employees within the
16 State of California.

17 27. Plaintiff and the other class members worked over eight (8) hours in a day,
18 and/or forty (40) hours in a week during their employment with Defendants.

19 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
21 employees within the State of California. This pattern and practice involved, *inter alia*, failing
22 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest
23 breaks in violation of California law.

24 29. Westmont Living has committed several wage-and-hour violations with respect
25 to the Class, including:

26 (a) Unpaid wages;

27 (b) Rest break violations;

28 (c) Meal period violations;

- (d) Unreimbursed expenses;
- (c) Failure to pay all wages owed upon separation;
- (f) Inaccurate wage statements; and
- (g) Failure to keep complete or accurate payroll records.

30. Unpaid Wages. During the Class Period, employees experienced several forms of off-the-clock work. First, employees had meal periods interrupted, but remained clocked-out, resulting in off-the-clock work. Second, employees who could not work their scheduled shifts were required, off-the-clock, to find shift replacements and communicate that replacement to superiors, effectively requiring employees to serve as off-the-clock shift-schedulers. Third, at the beginning of shifts, employees queued and waited for the clock-in process. During the Class Period, regular rate errors also caused employees to experience wage loss. Westmont Living provided bonuses to employees, including sign-on and referral bonuses, as well as free meals, but did not factor these items into the regular rate for overtime (Labor Code, § 510), sick leave (Labor Code, § 246(1)), and meal/rest period premium purposes (Labor Code, § 226.7) .

31. Rest Break Violations. During the Class Period, employees were not afforded legally-compliant rest periods. Among other things, Westmont Living had an illegal on-premises rest break requirement. Furthermore, Westmont Living runs a busy, full-service “24/7” establishment without adequate rest break (or meal period) infrastructure. There has been no electronic notification system for rest breaks, no bell that sounds, and no formalized system for taking rest breaks. The lack of break infrastructure has caused employees to routinely experience rest break violations, including short, missed, and late rest breaks.

32. Meal Period Violations. During the Class Period, employees were not afforded legally-compliant meal periods. Westmont Living runs a busy, full-service establishment without adequate meal period infrastructure. There has been no electronic notification system for meal periods, no bell that sounds, nor any regularly-scheduled relief workers. Compounding the matter, Westmont Living has been thinly-staffed. As a result, employees routinely experienced short, missed and late meal periods. Given the nature of Westmont Living’s continuous resident-oriented operations, on those occasions where employees were afforded a

1 meal period, employees were routinely interrupted with work before their 30-minute meal period
2 elapsed. Indeed, among other things, care-providing employees (called "Caregivers" by
3 Westmont Living) must carry Company-issued communication devices with them on their meal
4 periods and respond to inquiries they receive. To avoid being punished, and given the limited
5 number of time-clocks, employees had to return from meal periods early, before their 30-minute
6 meal period elapsed, in order to ensure that they were able to timely clock back in.

7 33. Unreimbursed Expenses. During the Class Period, employees were not
8 reimbursed for the expenses they incurred. Westmont Living regularly communicated with
9 employees on their personal-cell phones for work-related purposes (e.g., inquiring about shifts
10 and work tasks). Westmont Living also had employees download a payroll app on their personal
11 devices. Employees have not received reimbursement for the Westmont Living-required usage
12 of their personal cell phones.

13 34. Failure To Pay All Wages Owed Upon Separation. During the Class Period,
14 separated employees did not receive all the wages due to them in their final paycheck or direct
15 deposits, including as a result of the off-the-clock work and unpaid/underpaid rest break
16 premiums, meal period premiums, overtime pay, and sick leave pay.

17 35. Inaccurate Wage Statements. During the Class Period, employees did not receive
18 accurate itemized wage statements. The wage statements were inaccurate as a result of the off-
19 the-clock work and unpaid/underpaid rest break premiums, meal period premiums, overtime pay,
20 and sick leave pay. Furthermore, Westmont Living's wage statements failed to itemize the total
21 hours worked, and failed to correctly show the overtime rates.

22 36. Failure To Keep Or Maintain Accurate Payroll Records. During the Class Period,
23 Westmont Living did not keep or maintain accurate payroll records as required by Labor Code
24 section 1174(d). Among other things, as a result of the off-the-clock work, the records of the
25 employees' hours worked and associated wages were inaccurate.

26 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive
28 certain wages for overtime compensation and that they were not receiving accurate overtime

1 compensation for all overtime hours worked.

2 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 failed to provide Plaintiff and the other class members all required rest and meal periods during
4 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
5 thus they are entitled to any and all applicable penalties.

6 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members were entitled to receive
8 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
9 member's regular rate of pay when a meal period was missed, and they did not receive all meal
10 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
11 regular rate of pay when a meal period was missed.

12 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to receive
14 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
15 member's regular rate of pay when a rest period was missed, and they did not receive all rest
16 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
17 regular rate of pay when a rest period was missed.

18 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 at least minimum wages for compensation and that they were not receiving at least minimum
21 wages for all hours worked.

22 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other class members were entitled to receive
24 all wages owed to them upon discharge or resignation, including overtime and minimum wages
25 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
26 them at the time of their discharge or resignation.

27 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 knew or should have known that Plaintiff and the other class members were entitled to receive

1 all wages owed to them during their employment. Plaintiff and the other class members did not
2 receive payment of all wages, including overtime and minimum wages and meal and rest period
3 premiums, within any time permissible under California Labor Code section 204.

4 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff and the other class members were entitled to receive
6 complete and accurate wage statements in accordance with California law, but, in fact, they did
7 not receive complete and accurate wage statements from Defendants. The deficiencies included,
8 inter alia, the failure to include the total number of hours worked by Plaintiff and the other class
9 members.

10 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Defendants had to keep complete and accurate payroll records
12 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
13 keep complete and accurate payroll records.

14 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and the other class members were entitled to
16 reimbursement for necessary business-related expenses.

17 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that they had a duty to compensate Plaintiff and the other class
19 members pursuant to California law, and that Defendants had the financial ability to pay such
20 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
21 to Plaintiff and the other class members that they were properly denied wages, all in order to
22 increase Defendants' profits.

23 48. During the relevant time period, Defendants failed to pay overtime wages to
24 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
25 members were required to work more than eight (8) hours per day and/or forty (40) hours per
26 week without overtime compensation for all overtime hours worked.

27 49. During the relevant time period, Defendants failed to provide all requisite
28 uninterrupted meal and rest periods to Plaintiff and the other class members.

1 50. During the relevant time period, Defendants failed to pay Plaintiff and the other
2 class members at least minimum wages for all hours worked.

3 51. During the relevant time period, Defendants failed to pay Plaintiff and the other
4 class members all wages owed to them upon discharge or resignation.

5 52. During the relevant time period, Defendants failed to pay Plaintiff and the other
6 class members all wages within any time permissible under California law, including, inter alia,
7 California Labor Code section 204.

8 53. During the relevant time period, Defendants failed to provide complete or
9 accurate wage statements to Plaintiff and the other class members.

10 54. During the relevant time period, Defendants failed to keep complete or accurate
11 payroll records for Plaintiff and the other class members.

12 55. During the relevant time period, Defendants failed to reimburse Plaintiff and the
13 other class members for all necessary business-related expenses and costs.

14 56. During the relevant time period, Defendants failed to properly compensate
15 Plaintiff and the other class members pursuant to California law in order to increase Defendants'
16 profits.

17 57. California Labor Code section 218 states that nothing in Article 1 of the Labor
18 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due
19 to him [or her] under this article."

20 **FIRST CAUSE OF ACTION**

21 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

22 **(Against WESTMONT LIVING, INC. and DOES 1 through 100)**

23 58. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 57, and each and every part thereof with the same force and effect as though fully set
25 forth herein.

26 59. Defendants' conduct, as alleged in this Complaint, has been, and continues to be,
27 unfair, unlawful and harmful to Plaintiff and the other class members, and Defendants'
28 competitors. Accordingly, Plaintiff and the other class members seek to enforce important rights

1 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

2 60. A violation of California Business & Professions Code section 17200, et seq. may
3 be predicated on the violation of any state or federal law. In this instant case, Defendants'
4 policies and practices of requiring employees, including Plaintiff and the other class members,
5 to work overtime without paying them proper compensation violate California Labor Code
6 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
7 including Plaintiff and the other class members, to work through their meal and rest periods
8 without paying them proper compensation violate California Labor Code sections 226.7 and
9 512(a). Defendants' policies and practices of failing to pay minimum wages violate California
10 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
11 failing to timely pay wages to Plaintiff and the other class members violate California Labor
12 Code sections 201, 202, and 204. Defendants also violated California Labor Code sections
13 226(a), 1174(d), 2800, and 2802.

14 61. Defendants' activities as alleged herein are violations of California law, and
15 constitute unlawful business acts and practices in violation of California Business & Professions
16 Code section 17200, et seq., including: (a) unpaid wages; (b) rest break violations; (c) meal
17 period violations; (d) unreimbursed expenses; (e) Failure to pay all wages owed upon separation;
18 (f) inaccurate wage statements; and (g) failure to keep complete or accurate payroll records.

19 **(a) Unpaid Wages**

20 62. Defendants' failure to pay minimum wages in violation of the Wage Orders and
21 California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful
22 and/or unfair activity prohibited by California Business & Professions Code section 17200, et
23 seq.

24 63. Defendants' failure to pay overtime in violation of the Wage Orders and
25 California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or
26 unfair activity prohibited by California Business & Professions Code section 17200, et seq.

27 64. Defendants' failure to timely pay wages during employment in violation of
28 California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity

1 prohibited by California Business & Professions Code section 17200, et seq.

2 **(b) Rest Break Violations**

3 65. Defendants' failure to provide legally required rest periods in violation of the
4 Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful
5 and/or unfair activity prohibited by California Business & Professions Code section 17200, et
6 seq.

7 **(c) Meal Period Violations**

8 66. Defendants' failure to provide legally required meal periods in violation of the
9 Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes
10 unlawful and/or unfair activity prohibited by California Business & Professions Code section
11 17200, et seq.

12 **(d) Unreimbursed Expenses**

13 67. Defendants' failure to reimburse all necessary business-related expenses and
14 costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes
15 unlawful and/or unfair activity prohibited by California Business & Professions Code section
16 17200, et seq.

17 **(e) Failure To Pay All Wages Owed Upon Termination**

18 68. Defendants' failure to timely pay wages upon termination in violation of
19 California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair
20 activity prohibited by California Business & Professions Code section 17200, et seq.

21 **(f) Inaccurate Wage Statements**

22 69. Defendants' failure to provide compliant wage statements in violation of
23 California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair
24 activity prohibited by California Business & Professions Code section 17200, et seq.

25 **(g) Failure to Keep Complete or Accurate Payroll Records**

26 70. Defendants' failure to keep complete or accurate payroll records in violation of
27 California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair
28 activity prohibited by California Business & Professions Code section 17200, et seq.

71. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

72. Plaintiff and the other class members have been personally injured and continue to be injured by Defendants' unlawful business acts and practices as alleged herein, including, but not necessarily limited to, the loss of money and/or property.

73. Pursuant to California Business & Professions Code section 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages and other monies wrongfully withheld and retained by Defendants pursuant to California Labor Code sections 510 and 1198.

74. Pursuant to California Business & Professions Code section 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences from four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

75. Plaintiff and other class members are also entitled to the statutory penalties or damages provided by Labor Code section 203 and Labor Code section 226.

SECOND CAUSE OF ACTION

(Representative Action Under PAGA)

(Against WESTMONT LIVING, INC. and DOES 1 through 100)

76. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 75 inclusive as though fully set forth herein.

77. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of herself and all other aggrieved employees, brings this action as a non-class representative action under PAGA for civil penalties based on violations of the California Labor Code and the applicable IWC Wage Order(s). Plaintiff is an “aggrieved employee” within the meaning of PAGA.

78. Plaintiff has timely and adequately exhausted her administrative remedies under PAGA. Plaintiff submitted her PAGA Notice on or about April 29, 2021, (incorporated herein by reference and attached hereto as **Exhibit A**), provided a copy of the same to Westmont Living

1 via certified mail, and waited the requisite 65-day time-period before filing a PAGA action in
2 court.

3 79. Pursuant to Labor Code section 2699.5, Plaintiff asserts this representative action
4 on behalf of herself and all other aggrieved employees who worked at Westmont Of Brentwood
5 during the applicable limitations period. The aggrieved employees covered by this PAGA action
6 include all current and former non-exempt employees of Westmont Living who worked at the
7 Westmont of Brentwood facility as a non-exempt employee at any time from November 3, 2019
8 to August 29, 2023. With respect to all the aggrieved employees (herself included), Plaintiff
9 seeks civil penalties for the following violations (as alleged above and in Exhibit A), including,
10 without limitation for:

- 11 a. Unpaid wages;
- 12 b. Rest break violations;
- 13 c. Meal period violations;
- 14 d. Unreimbursed expenses;
- 15 e. Failure to pay all wages owed upon separation;
- 16 f. Inaccurate wage statements;
- 17 g. Failure to keep and maintain accurate records;

18 80. Labor Code section 2699(f)(2), in turn, provides that the default civil penalties
19 recoverable under PAGA for such violations are “one hundred dollars (\$100) for each aggrieved
20 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
21 employee per pay period for each subsequent violation,” except where the Labor Code specifically
22 provides for another penalty. In addition to the default civil penalties PAGA provides, Plaintiff
23 seeks, through PAGA, any other civil penalties available under the Labor Code (including, without
24 limitation, Labor sections 226.3, 558, and 1174.5) for the above-alleged violations of the Labor
25 Code and/or applicable IWC Wage Order(s).

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
28 severally, as follows:

1 As to the First Cause of Action

2 1. That the Court declare, adjudge and decree that Defendants violated California
3 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
4 other class members all wages due to them, by failing to provide Plaintiff and the other class
5 members all overtime compensation due to them, failing to provide all meal and rest periods to
6 Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the
7 other class members, failing to pay Plaintiff's and the other class members' wages timely as
8 required by California Labor Code section 201, 202 and 204 and by violating California Labor
9 Code sections 226(a), 1174(d), 2800, and 2802.

10 2. For restitution of unpaid wages to Plaintiff and all the other class members and
11 all pre-judgment interest from the day such amounts were due and payable;

12 3. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully acquired by
14 Defendants as a result of violation of California Business and Professions Code sections 17200,
15 et seq.;

16 4. For statutory penalties pursuant to Labor Code sections 203 and 226;

17 5. For injunctive relief to ensure compliance with this section, pursuant to California
18 Business and Professions Code sections 17200, et seq.; and

19 6. For certification of the action as a class action, and for entry of judgment in favor
20 of the Class.

21 As To The Second Cause Of Action

22 7. For all forms of relief and civil penalties recoverable under PAGA;

23 8. For judgment in favor of the aggrieved employees;

24 On All Claims And Causes Of Action

25 9. For attorneys' fees and costs pursuant to Civil Code § 1021.5, all provisions of
26 the Labor Code that authorize attorneys' fees and costs (including, e.g., Labor Code §§ 226, 203,
27 1194(a), 1194.3, 2802, 3287, 3289, and PAGA), the "common fund" theory, the "substantial
28 benefit" theory, the "catalyst" theory, and/or any other applicable statutory provision, regulatory

1 provision, theory or doctrine;

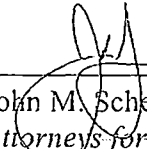
2 10. For prejudgment and postjudgment interest on all amounts owing, commencing
3 from the date such amounts were due; and

4 11. For such other and further relief as the court may deem just and proper.

5 12. For a jury trial on all claims and issues so triable.

6 Dated: May 17, 2024

SCHEPPACH BAUER PC

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8 By: 

9 John M. Scheppach

10 ~~Attorneys for Plaintiff~~

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