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

MARLENE DEL CARMEN LEONOR
DIAZ, on behalf of the State of California,

Plaintiff,

vs.

SILVERADO SENIOR LIVING
MANAGEMENT, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 30-2023-01333990-CU-OE-CXC

*[Assigned for all purposes to the Honorable Randall
Sherman, Dept. CX105]*

**STIPULATION OF REPRESENTATIVE
ACTION SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")**

Complaint Filed: June 29, 2023
Trial Date: Not Set

1 **STIPULATION FOR REPRESENTATIVE ACTION SETTLEMENT**

2 Plaintiff Marlene Del Carmen Leonor Diaz and Silverado Senior Living Management, Inc., agree
3 to settle this representative pursuant to the Private Attorneys General Act (“PAGA”) action subject to the
4 terms and conditions below.

5 **INTRODUCTION**

6 1. On April 11, 2023, Plaintiff Marlene Del Carmen Leonor Diaz sent a letter, by certified
7 mail, return receipt requested, to the LWDA and Defendant setting forth the facts and theories of the
8 violations alleged against Defendant on behalf of Defendant’s hourly, non-exempt employees as
9 prescribed by Labor Code § 2698 *et seq.*

10 2. On June 29, 2023, Plaintiff Marlene Del Carmen Leonor Diaz filed Private Attorney
11 General Act (“PAGA”) Complaint in the Orange County Superior Court alleging: (1) meal period
12 violations pursuant to Labor Code Sections 226.7 and 512; (2) rest period violations pursuant to Labor
13 Code Sections 226.7 and 512; (3) unpaid overtime wages pursuant to Labor Code Sections 510, 1194, and
14 1198; (4) unpaid minimum wages pursuant to Labor Code Sections 1194 and 1197; (5) failure to timely
15 pay wages during employment pursuant to Labor Code Section 204; (6) waiting time penalties pursuant
16 to Labor Code Sections 201, 202 and 203; (7) failure to maintain required records pursuant to Labor Code
17 Sections 226(a) and 1174(d); (8) wage statement violations pursuant to Labor Code Sections 226(a); (9)
18 failure to reimburse business expenses pursuant to Labor Code Section 2802; and (10) suitable seating
19 violations pursuant to IWC Wage Orders 1-2001, Section 14 (“Action”).

20 3. On June 18, 2024, the Parties reached a resolution of the claims alleged by Plaintiff in her
21 Action, with the specific terms and conditions set forth in this Agreement, subject to the approval of the
22 Court.

23 4. On October 4, 2024, Plaintiff amended her LWDA notice pursuant to Labor Code § 2699.3.
24 Plaintiff’s amended LWDA notice included additional alleged violations pursuant to California Labor
25 Code §§218, 221, 226.8, 227, 227.3, 245.5, 246, 248.5, 248.6, 1182.12, 1194.2, 1198.5, 1199 and 2800,
26 and IWC Wage Orders 1-2001, 4-2001, and 5-2001, 223, 248.6, 1182.12, 1194.2 and penalties pursuant
27 to 210, 225.5, 226.3, 226.8, 248.5, 558, 1174.5, 1197.1, 1199, 2699, and IWC Wage Orders, 1-2001, 4-
28 2001, and 5-2001, §§3, 4, 7, 11, 12, 14, and 20 only.

5. On October 28, 2024, in order to effectuate the terms of the Agreement, the Parties stipulated to the filing of a First Amended PAGA Complaint, which was submitted to the Court on the same date.

6. As further described below, upon full execution of this Agreement, upon Court approval of the PAGA settlement and entry of judgment, this resolution shall be binding on a PAGA Members as defined herein.

DEFINITIONS

7. “Action” means *Marlene Del Carmen Leonor Diaz v. Silverado Senior Living Management, Inc.*, filed on June 29, 2023, in the Orange County Superior Court, Case No. 30-2023-01333990-CU-OE-CXC.

8. “Administrator” means Phoenix Settlement Administrators the neutral entity the Parties have agreed to appoint to administer the Settlement.

9. "Agreement" means this Joint Stipulation of PAGA Action Settlement.

10. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

11. "PAGA Member Data" means PAGA Member identifying information in Defendant's possession including the PAGA Member's name, last-known mailing address, Social Security number and number of PAGA Pay Periods.

12. “PAGA Member Address Search” means the Administrator’s investigation and search for current PAGA Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces and direct contact by the Administrator with PAGA Members.

13. “Approval Order and Judgment” means the proposed Court Order and Judgment Granting Approval of the PAGA Settlement.

14. “Court” means the Superior Court of California, County of Orange.

15. “Defense Counsel” means Christian Keeney and Kelli Dreger of Jackson Lewis P.C.

1 16. “Effective Date” means the date by when all of the following have occurred: (a) the
2 Settlement Agreement has been executed by all Parties, Plaintiff’s counsel and Defense Counsel; (b) the
3 Court enters a Judgment and Order Approving the PAGA Settlement; and (c) sixty-five (65) calendar days
4 have passed since the Court has entered an Order and Judgment approving the Settlement Agreement.

5 17. “Gross Settlement Amount” means Eight Hundred and Seventy-Five Thousand Dollars and
6 Zero Cents (\$875,000.00) which is the total amount Defendant agrees to pay under the Settlement. The
7 Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment,
8 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff’s Service
9 Payments, and the Administration Expenses Payment.

10 18. “Individual PAGA Payment” means the PAGA Member’s pro rata share of 25% of the
11 PAGA Penalties calculated according to the number of Pay Periods the PAGA Member worked during
12 the PAGA Period.

13 19. “Judgment” means the judgment entered by the Court based upon the Final Approval.

14 20. “LWDA” means the California Labor and Workforce Development Agency, the agency
15 entitled, under Labor Code section 2699, subdivision (i).

16 21. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under
17 Labor Code section 2699, subdivision (i).

18 22. “Net Settlement Amount” means the Gross Settlement Amount, less the following
19 payments in the amounts approved by the Court: LWDA PAGA Payment, PAGA Counsel Fees Payment,
20 PAGA Counsel Litigation Expenses Payment, Plaintiff’s Service Payment, and the Administration
21 Expenses Payment. The remaining Net Settlement Amount is to be paid to PAGA Members as Individual
22 PAGA Payments.

23 23. “Operative Complaint” means the First Amended Representative Action Complaint for
24 Violation of Labor Code Section 2698 et. seq. (“PAGA”) on file in this action.

25 24. “PAGA Counsel” means the Law Office of Scott Ernest Wheeler, Scott Ernest Wheeler
26 and Justin A. Wheeler.

27 25. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean
28 the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses,

1 respectively, incurred to prosecute the Action.

2 26. "PAGA Member(s)" means all current and former hourly, non-exempt employees who
3 worked for Defendant in the State of California at any time during the PAGA Period.

4 27. "PAGA Pay Periods" means the number of pay periods during which a PAGA Member
5 worked for Defendant for at least one day during the PAGA Period.

6 28. "PAGA Period" means the period from April 11, 2022 to August 31, 2024.

7 29. "PAGA" means the Private Attorneys General Act (Lab. Code, § 2698. et seq.).

8 30. "PAGA Notices" means Plaintiff Marlene Del Carmen Leonor Diaz's April 11, 2023 and
9 October 4, 2024, letters to Defendant and the LWDA providing notice pursuant to Labor Code section
10 2699.3, subdivision

11 31. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
12 Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to LWDA in settlement
13 of PAGA claims.

14 32. "Parties" means Plaintiff and Defendant, collectively, and "Party" will mean either Plaintiff
15 or Defendant, individually.

16 33. "Plaintiff" means Marlene Del Carmen Leonor Diaz, the named plaintiff in the Action.

17 34. "Plaintiff's Service Payment" means the Five Thousand Dollars (\$5,000), to be paid from
18 the Gross Settlement Amount, as an enhancement for Plaintiff's service as the PAGA representative and
19 in exchange for a general release, as set forth below, in addition to any payment they may otherwise
20 receive as an Aggrieved Employee.

21 35. "Released PAGA Claims" means the release of all claims for civil penalties only predicated
22 on the facts alleged in Plaintiff's Operative Complaint and PAGA Notices to the LWDA dated April 11,
23 2023 and October 4, 2024, from April 11, 2022 to August 31, 2024, as defined at paragraph 48.

24 36. "Released Parties" means Defendant, its past and present officers, directors, shareholders,
25 managers, members, employees, agents, principals, spouses, heirs, representatives, accountants, insurers,
26 auditors, consultants, and attorneys.

27 37. "Settlement" means the disposition of the Action effected by this Agreement and the
28 Judgment.

RECITALS

38. Procedural Settlement History. On June 18, 2024, the Parties participated in a private mediation with an experienced mediator, Kelly Knight, Esq., after they engaged in informal discovery, including Defendant providing to Plaintiff information regarding the PAGA Members (*e.g.*, the number of potentially PAGA Members, total pay periods, average hourly rate, etc.), payroll and time records for Plaintiff, and Defendant's policies and procedures affecting the PAGA Members. As a result, the Parties reached an agreement on all material terms to resolve this Action in its entirety.

39. Benefits of Settlement to PAGA Members. Plaintiff and PAGA Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and PAGA Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the PAGA Members. Plaintiff and PAGA Counsel have also taken into account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiff and PAGA Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the PAGA Members.

40. Defendant's Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time and resources of Defendant have been and, unless this Settlement is approved, will continue to be devoted to the defense of the claims asserted by Plaintiff and the PAGA Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action. Defendant has claimed and continues to claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted. The monies being paid as part

of the settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement.

41. PAGA Members' Claims. The PAGA Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the PAGA Members or PAGA Counsel as to the merits or lack thereof of the claims asserted.

TERMS OF AGREEMENT

MONETARY TERMS

42. Gross Settlement Amount. Defendant promises to pay Eight Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$875,000.00) and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the Effective Date. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring PAGA Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

43. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- a. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33%, equal to \$291,666 and PAGA Counsel Litigation Expenses Payment of not more than \$19,000. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's counsel arising from any claim to any portion of any PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA

Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

b. To the Administrator: An Administration Expenses Payment not to exceed \$12,250 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$12,250, the Administrator will retain the remainder in the Net Settlement Amount.

c. To the LWDA and PAGA Members: PAGA Penalties in the amount of \$547,084 to be paid from the Gross Settlement Amount, with 75% (\$410,313) allocated to the LWDA PAGA Payment and 25% (\$136,771) allocated to the Individual PAGA Payments.

i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Members 25% share of PAGA Penalties (\$136,771) by the total number of PAGA Period pay periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. PAGA Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

ii. If the Court approves an LWDA PAGA Payment of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

iii. Tax Treatment of Individual PAGA Payments. All Individual PAGA Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on an IRS Form 1099 (to the extent required by law) by the Administrator and shall not be subject to local, state or federal tax withholdings.

SETTLEMENT FUNDING AND PAYMENTS.

44. PAGA Member Pay Periods. Based on a review of its electronic time and pay data up through March 14, 2024, and an aggrieved employee list as of December 20, 2023, with estimations extrapolated

1 through the date of the mediation on June 18, 2024, Defendant estimates there were 2,177 PAGA Members
2 who worked a total of 63,149 PAGA pay periods.

3 a. Escalator Clause. At the time of mediation, Defendant represented that there are an
4 estimated 63,149 pay periods worked in California during the PAGA Period (“Affected Pay Periods”). If
5 the actual number of Affected Pay Periods is ten percent (10%) or more above 63,149 as represented by
6 Defendant (i.e., if there 6,315 or more Affected Pay Periods), Defendant will pay an additional sum
7 necessary to increase the Gross Settlement Amount on a proportional basis (i.e., if there was a 15%
8 increase in Affected Pay Periods, Defendant would increase the Gross Settlement Amount by 5%);
9 Defendant shall also be responsible for any settlement administration costs of this additional payment,
10 which will not be taken out of the additional payment but will be separately by paid for by Defendant.

11 45. PAGA Member Data. Within 30 days of the Effective Date, Defendant will deliver the PAGA
12 Member Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect PAGA Members’
13 privacy rights, the Administrator must maintain the PAGA Member Data in confidence, use the PAGA
14 Member Data only for purposes of this Settlement and for no other purpose and restrict access to the PAGA
15 Member Data to Administrator employees who need access to the PAGA Member Data to effect and perform
16 under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers
17 that the PAGA Member Data omitted employee identifying information and to provide corrected or updated
18 PAGA Member Data as soon as reasonably feasible. Without any extension of the deadline by which
19 Defendant must send the PAGA Member Data to the Administrator, the Parties and their counsel will
20 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing
21 or omitted PAGA Member Data.

22 A. Posting on Website. The Settlement Administrator shall post the Operative
23 Complaint, Notice Packet to the PAGA Members and Final Order and Judgment on its website for One-
24 Hundred and Twenty (120) days.

25 46. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
26 Amount by transmitting by wire the funds to the Administrator no later than 30 days after the Effective Date.

27 47. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross
28 Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA

1 PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA
2 Counsel Litigation Expenses Payment, and the Plaintiff's Service Payment. Disbursement of the PAGA
3 Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
4 of Individual PAGA Payments.

5 a. The Administrator will issue checks for the Individual PAGA Payments and send them to
6 the PAGA Members via First Class U.S. Mail, postage prepaid. The face of each check
7 shall prominently state the date (not less than 180 days after the date of mailing) when the
8 check will be voided. The Administrator shall also provide the PAGA Members along
9 with the Individual PAGA Payment an explanatory "Award Letter" which is attached
10 hereto as Exhibit A . The Administrator will cancel all checks not cashed by the void
11 date. Before mailing any checks, the Settlement Administrator must update the recipients'
12 mailing addresses using the National Change of Address Database.

13 b. The Administrator must conduct an PAGA Member Address Search for all PAGA
14 Member whose checks are returned undelivered without USPS forwarding address.
15 Within 7 days of receiving a returned check, the Administrator must re-mail checks to the
16 USPS forwarding address provided or to an address ascertained through the PAGA
17 Member Address Search. The Administrator need not take further steps to deliver checks
18 to PAGA Members whose re-mailed checks are returned as undelivered. The
19 Administrator shall promptly send a replacement check to any PAGA Member whose
20 original check was lost or misplaced, requested by the PAGA Member prior to the void
21 date.

22 c. For any PAGA Member whose Individual PAGA Payment check is uncashed and
23 cancelled after the void date, the Administrator shall transmit the funds represented by
24 such checks pursuant to Code of Civil Procedure, Section 384, to Legal Aid at Work, a
25 non-profit organization which operates a Workers' Rights Clinic in Santa Ana, California
26 in order to assist individuals with wage and hour issues in addition to maintaining a state-
27 wide Workplace Sexual Harassment Helpline.

d. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the PAGA Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

RELEASES OF CLAIMS

48. Release of PAGA Claims. Upon the Effective Date, each of the PAGA Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all claims for PAGA penalties that were alleged, or reasonably could have been alleged, arising during the PAGA Period, based on facts stated in the Operative Complaint, the LWDA Notices, and/or ascertained in the course of the Action, which include: 1) Failure to Provide Required Meal Periods, in violation of Labor Code §§ 226.7, 512; IWC Wage Order Nos. 1-2001, 4-2001, and 5-2001, § 11; 2) Failure to Provide Required Rest Periods, Labor Code §§ 226.7, 512; IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, § 12; 3) Failure to Pay Overtime Wages, Labor Code §§ 510, 1194, 1198; IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, § 3; 4) Failure to Minimum Wages, Labor Code §§ 223, 1182.12, 1194, 1194.2, 1197, IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, § 4; 5) Failure to Timely Pay Wages During Employment, Labor Code § 204; 6) Failure to Pay All Wages Due to Discharged and Quitting Employees, Labor Code §§ 201, 202 and 203; 7) Failure to Maintain Required Records, Labor Code §§ 226(a), 248.6, 1174(d); IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, § 7; 8) Failure to Furnish Accurate Itemized Wage Statements, Labor Code § 226(a); 248.6, IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, § 7; 9) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties, Labor Code §§2800 and 2802; 10) Failure to Provide Suitable Seating, IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 14; 11) Unlawful Withholding of Wages, Vacation Pay and Failure to Pay at Separation, Labor Code §§221, 227, and 227.3; 12) Failure to Provide Sick Leave, Labor Code §§245.5, 246 and 248.5; 13) Failure to Provide COVID-19 Supplemental Paid Sick Leave, Labor Code §248.6; 14) Failure to Provide Employment Records, Labor Code §1198.5 and IWC Wage Order No. 5-2001, § 7; and 15) Willful Misclassification of Aggrieved Employees as Independent Contractors, Labor Code §226.8, and Labor Code §§210, 218, 225.5, 226.3, 226.8, 248.5, 558, 1174.5, 1197.1, 1199, 2699, and IWC Wage Orders, 1-2001, 4-2001, and 5-2001, §20, for the period of time from April 11, 2022 to August 31, 2024.

1 49. Release as to Plaintiff. As of the Effective Date, Plaintiff releases the Released Parties from
2 all claims and causes of action, including but not limited to the Released Claims, and stipulates and agrees
3 that, upon the Effective Date, Plaintiff will be deemed to have, and by operation of the final judgment will
4 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
5 benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state
6 law, which Section provides:

7 **A general release does not extend to claims that the creditor or releasing**
8 **party does not know or suspect to exist in his or her favor at the time of**
9 **executing the release and that, if known by him or her, would have**
 materially affected his or her settlement with the debtor or released party.

10 Plaintiff may hereafter discover facts in addition to or different from those she now knows or believes to
11 be true, but upon the Effective Date, will be deemed to have, and by operation of the final judgment will
12 have, fully, finally, and forever settled and released any and all claims and causes of action against the
13 Released Parties, whether known or unknown, suspected or unsuspected, contingent or non-contingent,
14 which now exist, or heretofore have existed, upon any theory of law or equity, including but not limited
15 to conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule,
16 without regard to the subsequent discovery or existence of such different or additional facts.

17 50. Release by PAGA Counsel. PAGA Counsel release on behalf of their present and former
18 attorneys, employees, agents, successors and assigns the Released Parties from all claims for Plaintiff's
19 attorneys' fees and costs incurred in connection with the Action and the PAGA Period facts stated in the
20 operative Complaint and the PAGA Notice.

21 51. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the
22 payments called for hereunder, and the PAGA Members are not relying on any statement or representation
23 by the Parties in this regard. The PAGA Members understand and agree that they will be responsible for the
24 payment of any employee taxes and penalties assessed on the payments described herein and will hold the
25 Parties free and harmless from and against any claims, liabilities, costs and expenses, including attorney's
26 fees, resulting in any way from personal tax treatment of the payments made pursuant to this Agreement,
27 including the treatment of such payments as not subject to withholding or deduction for payroll and
28 employment taxes.

1 52. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the
2 “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other
3 party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or
4 disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
5 will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within
6 the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
7 acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
8 advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement
9 based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is
10 not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to
11 avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or advisor to any
12 other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
13 strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging
14 party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
15 Agreement.

16 **MOTION APPROVAL OF PAGA SETTLEMENT**

17 53. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
18 documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subdivision
19 (f)(2)) including (i) a draft proposed Order and Judgment Granting Approval of PAGA Settlement; (ii) a
20 signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement
21 and attesting to: its willingness to serve; competency; operative procedures for protecting the security of
22 Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other
23 misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or
24 the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense
25 Counsel; (iii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of
26 all necessary PAGA documents (initial and amended notice of violations (Labor Code section 2699.3, subd.
27 (a)) operative Complaint (Lab. Code, §2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2));
28 and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the

1 Administrator. At the time Plaintiff's counsel notifies counsel for Defendant of their intent to file Plaintiff's
2 Motion for Approval of the PAGA Settlement, Defendant shall provide Plaintiff and PAGA Counsel the
3 status of pending matters or actions asserting claims that will be either extinguished or adversely impacted
4 by the Settlement. In their Declarations, PAGA Counsel shall aver if they are aware of any other pending
5 matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6 54. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly
7 responsible for expeditiously finalizing and filing the motion for approval of this Settlement no later than
8 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for
9 the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for
10 delivering the Court's Approval of the Settlement to the Administrator.

11 55. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or
12 motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel
13 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
14 telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for
15 approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA
16 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in
17 person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's
18 concerns.

19 **SETTLEMENT ADMINISTRATION**

20 56. Selection of Administrator. The Parties have jointly selected Phoenix Settlement
21 Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix
22 Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties
23 specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their
24 counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator
25 other than a professional relationship arising out of prior experiences administering settlements. Employer
26 Identification Number. The Administrator shall have and use its own Employer Identification Number for the
27 purposes of providing reports to state and federal tax authorities.
28

1 57. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the
2 requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

3 58. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
4 performed or observed by the Administrator contained in this Agreement or otherwise.

5 59. Continuing Jurisdiction Of The Court. The Parties agree that, after entry of Judgment, the
6 Court will retain jurisdiction over the Parties, Action and the Settlement solely for purposes of (i)
7 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii)
8 addressing such post-Judgment matters as are permitted by law.

9 60. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
10 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel
11 Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the
12 Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to
13 vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not
14 include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the
15 Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as
16 the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the
17 amount of the Net Settlement Amount.

18 **ADDITIONAL PROVISIONS**

19 61. No Admission of Liability or Representative Manageability for Other Purposes. This
20 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement
21 is intended or should be construed as an admission by Defendant that any of the allegations in the
22 Operative Complaint or PAGA Notice have merit or that Defendant has any liability for any claims
23 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant defenses in
24 the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement
25 only. If for any reason the Court does not approve this Settlement, Defendant reserves all available
26 defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant defenses. The
27 Settlement, this Agreement and Parties’ willingness to settle the Action will have no bearing on, and will
28

not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement)

62. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party

63. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, 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 reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

64. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

65. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.

66. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

67. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

68. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

69. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

70. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

71. Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

72. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Evidence Code section 1152, and all copies and summaries of Defendant employee timekeeping and pay data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

73. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

74. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

1 75. Notice. All notices, demands, or other communications between the Parties in connection
2 with this Agreement will be in writing and deemed to have been duly given as of the third business day
3 after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

4 To Plaintiff:

5 Law Office of Scott Ernest Wheeler
6 Scott Ernest Wheeler
7 Justin A. Wheeler
8 250 West First Street, Suite 216
9 Claremont, California 91711
10 Telephone: (909) 621-4988
11 Facsimile: (909) 621-4622
12 sew@scottwheelerlawoffice.com
13 jaw@scottwheelerlawoffice.com

14 To Defendant:

15 Christian Keeney
16 Kelli Dreger
17 Jackson Lewis P.C.
18 200 Spectrum Center Drive, Suite 500
19 Irvine, CA 92618
20 Tel: (949) 885-1360
21 Fax: (949) 885-1380
22 christian.keeney@jacksonlewis.com
23 kelli.dreger@jacksonlewis.com

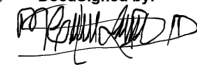
24 76. Execution in Counterparts. This Agreement may be executed in one or more counterparts
25 by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be
26 accepted as an original. All executed counterparts and each of them will be deemed to be one and the same
27 instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed
28 counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

29 77. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
30 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that
31 upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend
32 the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this
33 settlement process.

34 78. Upon entry of judgment, the Court shall have continuing jurisdiction over the Settlement

pursuant to Code of Civil Procedure §664.6 and California Rules of Court, Rule 3.769.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

DocuSigned by:

C71D898B9CE2400...

For Plaintiff Marlene Del Carmen Diaz

For Silverado Senior Living Management, Inc.

10/29/2024

(date)

(date)

APPROVED AS TO FORM:

Dated: October __, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By:

Scott Ernest Wheeler
Justin A. Wheeler

*Attorneys for Plaintiff and all other
Aggrieved Employees*

Dated: October __, 2024

JACKSON LEWIS P.C.

By:

Christian J. Keeney
Kelli M. Dreger

*Attorneys for Defendant Silverado Senior Living
Management, Inc.*

pursuant to Code of Civil Procedure §664.6 and California Rules of Court, Rule 3.769.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

For Plaintiff Marlene Del Carmen Diaz

For Silverado Senior Living Management, Inc.

(date)

(date)

APPROVED AS TO FORM:

Dated: October 29, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By:



Scott Ernest Wheeler
Justin A. Wheeler

*Attorneys for Plaintiff and all other
Aggrieved Employees*

Dated: October ___, 2024

JACKSON LEWIS P.C.

By: _____

Christian J. Keeney
Kelli M. Dreger

*Attorneys for Defendant Silverado Senior Living
Management, Inc.*

pursuant to Code of Civil Procedure §664.6 and California Rules of Court, Rule 3.769.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

For Plaintiff Marlene Del Carmen Diaz



For Silverado Senior Living Management, Inc.

(date)

11/11/24
(date)

APPROVED AS TO FORM:

Dated: October ____, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By:

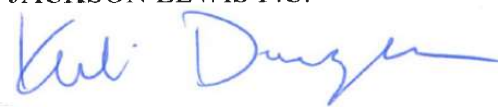
Scott Ernest Wheeler
Justin A. Wheeler

*Attorneys for Plaintiff and all other
Aggrieved Employees*

Dated: October 12, 2024

JACKSON LEWIS P.C.

By:



Christian J. Keeney
Kelli M. Dreger

*Attorneys for Defendant Silverado Senior Living
Management, Inc.*

EXHIBIT A

EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: *Marlene Del Carmen Leonor Diaz v. Silverado Senior Living Management, Inc.*, Orange County Superior Court Case No. 30-2023-01333990-CU-OE-CXC

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Marlene Del Carmen Leonor Diaz v. Silverado Senior Living Management, Inc.*, Orange County Superior Court Case No. 30-2023-01333990-CU-OE-CXC (the “Action”).

The check cashing period is One-Hundred and Eighty (180) days. Any uncashed checks will revert to the State of California Controller’s Office – Unclaimed Funds Division.

Marlene Del Carmen Leonor Diaz (“Named Plaintiff”) filed the Action against Silverado Senior Living Management, Inc. (“Defendant”) pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). Named Plaintiff brought the Action on behalf of the State of California and all current and former California non-exempt, hourly employees who worked at least one pay period for Defendant in California at any time during the period of April 11, 2022 to August 31, 2024. You have been identified as one of the individuals on whose behalf the case was brought.

The Named Plaintiff in the Action claimed that Defendant owed penalties under PAGA for alleged violations of the California Labor Code. More specifically, the Named Plaintiff alleged that Defendant: (1) failed to provide meal periods; (2) failed to provide rest periods, (3) failed to pay overtime wages, (4) failed to pay minimum wages, (5) failed to timely pay wages during employment; (6) failed to pay all wages due to discharged and quitting employees, (7) failed to maintain required records, (8) failed to furnish accurate itemized wage statements, (9) failed to reimburse for necessary expenditures incurred in the discharge of duties, failed to provide and maintain records relating to sick leave, (10) failure to provide suitable seating, (11) unlawful withholding of wages, (12) failure to provide sick leave, vacation pay, and failure to pay at separation, (13) failed to provide supplemental COVID-19 sick leave, (14) failure to provide employment records, and (15) willful misclassification of aggrieved employees as independent contractors.

You are not releasing any individual Labor Code violations as a result of this settlement.

The Court has not ruled on the merits of the lawsuit, but it has approved the settlement amount the parties agreed to. The settlement provides for a cash payment by Defendant in the amount of \$875,000 (“Gross Settlement Amount”). After deducting the attorneys’ fees (\$291,666), actual litigation costs (\$XXXX), the service award to Plaintiff (\$5,000) and the Settlement Administrator’s costs (\$12,250.00) from the Gross Settlement Amount, the remaining balance represents the PAGA Penalties Fund.

The Court has approved a PAGA Penalties Fund in the amount of (\$TBD). By statute, seventy-five percent (75%) of the PAGA Penalties Fund (\$TBD) goes to the State of California’s Labor and Workforce Development Agency. The remaining twenty-five percent (25%) (\$TBD) will be paid to the individuals who were allegedly affected by the Labor Code violations at issue in the case. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

You are not a party to this lawsuit, but you and the government will be bound by the judgment in this matter as to civil penalties. As such, you will be giving up or “releasing” Defendant from all PAGA claims predicated on the alleged violation of Labor Code, as follows: 1) Failure to Provide Required Meal Periods, in violation of Labor Code Sections 226.7, 512; IWC Wage Order Nos. 1-2001, 4-2001, and 5-2001, Section 11; 2) Failure to Provide Required Rest Periods, Labor Code Sections 226.7, 512; IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 12; 3) Failure to Pay Overtime Wages, Labor Code Sections 510, 1194, 1198; IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 3; 4) Failure to Minimum Wages, Labor Code Sections 223, 1182.12, 1194, 1194.2, 1197, IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 4; 5) Failure to Timely Pay Wages During Employment, Labor Code Section 204; 6) Failure to Pay All Wages Due to Discharged and Quitting Employees, Labor Code Sections 201, 202 and 203; 7) Failure to Maintain Required Records, Labor Code Sections 226(a), 248.6, 1174(d); IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 7; 8) Failure to Furnish Accurate Itemized Wage Statements, Labor Code Sections 226(a); 248.6, IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 7; 9) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties, Labor Code Sections 2800 and 2802; 10) Failure to Provide Suitable Seating, IWC Wage Order Nos. 1-2001, 4-2001, 5-2001, Section 14; 11) Unlawful Withholding of Wages, Vacation Pay and Failure to Pay at Separation, Labor Code Sections 221, 227, and 227.3; 12) Failure to Provide Sick Leave, Labor Code Sections 245.5, 246 and 248.5; 13) Failure to Provide COVID-19 Supplemental Paid Sick Leave, Labor Code Sections 248.6; 14) Failure to Provide Employment Records, Labor Code Section 1198.5 and IWC Wage Order No. 5-2001, Section 7; and 15) Willful Misclassification of Aggrieved Employees as Independent Contractors, Labor Code Section 226.8, and Labor Code Sections 210, 218, 225.5, 226.3, 226.8, 248.5, 558, 1174.5, 1197.1, 1199, 2699, and IWC Wage Orders, 1-2001, 4-2001, and 5-2001, Section 20, for the period of time from April 11, 2022 to August 31, 2024.

Defendant maintains that it complied with the requirements of the California Labor Code and denies that it owes any penalties. In agreeing to this settlement, Defendant does not admit that it is liable in any way to current or former employees.

If you are a current employee, you will not be retaliated against by Defendant for cashing your check.

Should you have any questions regarding the settlement, the contact information for the attorneys representing the Named Plaintiff is:

THE WHEELER LAW FIRM, APC
Scott Ernest Wheeler
Justin A. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

Important documents relating to this action including the Operative Complaint, LWDA Award Notice, Settlement Agreement, and Final Order and Judgment Approval the PAGA Settlement are posted at the Settlement Administrator's website: (INSERT WEBSITE ADDRESS). The documents will remain posted for at least One-Hundred and Twenty days (120) from the date of the Final Order and Judgment.

Sincerely,

[NAME AND TITLE OF SIGNATORY]