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*Attorneys for Plaintiff and on behalf of all
other aggrieved employees,*

Assigned for All Purposes
Judge Randall Sherman
Dept. CX105

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

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

Plaintiff,

v.

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

Defendants.

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

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

1. Plaintiff Marlene Del Carmen Leonor Diaz (“Plaintiff”) brings this representative action on behalf of the State of California, pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), against Silverado Senior Living Management, Inc. (“Silverado” or “Defendant”), and Does 1 through 10, inclusive. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

INTRODUCTION

2. Defendant has implemented common policies and practices that have resulted in systematic violations of California’s Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this representative action to recover civil penalties for the California Labor and Workforce Development Agency (“LWDA”), herself, and all other aggrieved employees—i.e., non-exempt employees who worked for Defendant in California during the statute of limitations period—predicated on Defendant’s failure to provide legally compliant meal periods and rest breaks and failure to provide compensation for missed and otherwise unlawful meal periods and rest breaks, unpaid regular, overtime, and minimum wage compensation, failure to timely pay wages, failure to pay all wages owed and due to discharged or quitting non-exempt employees, failure to maintain required records, failure to provide accurate itemized wage statements, failure to provide suitable seating, and failure to reimburse for employment-related expenses.

JURISDICTION AND VENUE

3. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of the State of California and Defendants regularly conduct business in the State of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

4. Venue is proper in this judicial district and the County of Orange because Defendant's headquarters and principal place of business is in the County of Orange, aggrieved employees performed work for Defendant in the County of Orange, and unlawful actions and omissions, as alleged herein, occurred in the County of Orange.

5. The State of California, Orange County, has jurisdiction in this matter because the

1 individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional
2 threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court
3 diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely
4 on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure
5 and Rules of Court. Thus, the State of California, Orange County Superior Court maintains the
6 appropriate jurisdiction to hear this matter.

7 **THE PARTIES**

8 6. Plaintiff is a resident of the State of California and was a non-exempt employee of
9 Defendant who worked as a Cook for Defendant from approximately November of 2022 through
10 February 3, 2023.

11 7. On information and belief, and at all times material herein, there has been common
12 ownership or financial control between Defendant. They were the alter egos, divisions, affiliates,
13 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
14 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of
15 each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each was
16 the alter ego of the other.

17 8. Moreover, at all material times herein, there has been extensive interrelation of
18 operations, common management, centralized control of labor relations, human resources, staffing
19 issues, payroll, etc., with respect to Plaintiff and other aggrieved employees. In short, Defendant jointly
20 employed or exercised control over the wages, hours, and working conditions of Plaintiff and other
21 aggrieved employees, and all Defendants' are jointly and severally liable for the wage-and-hour
22 violations, experienced by Plaintiff and other aggrieved employees, and which constitute the factual
23 predicate of this lawsuit.

24 9. The true names and capacities of Does 1 through 10, inclusive, are unknown to Plaintiff
25 at this time, and Plaintiff therefore sues such Defendants under fictitious names. Plaintiff is informed
26 and believes, and thereon alleges, that each Defendant designated as a Doe is in some manner highly
27 responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
28 injuries and damages, as alleged herein, were proximately caused by the conduct of such Doe

Defendants. Plaintiff will seek leave of Court to amend this Complaint to allege the true names and capacities of such Doe Defendants when ascertained.

REPRESENTATIVE ACTION ALLEGATIONS

10. On April 11, 2023, Plaintiff gave written notice by certified mail, pursuant to California Labor Code § 2699.3, to the LWDA and Defendants, of the specific provisions of the California Labor Code and applicable IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar days of the postmark date of Plaintiff's notice letter, dated April 11, 2023, the LWDA did not inform Plaintiff that it intends to investigate the alleged violations. Nor did Defendant respond to any of the allegations contained in Plaintiff's notice letter. Therefore, Plaintiff has complied with all requirements set forth in California Labor Code § 2699.3 to commence a representative action under the PAGA.

11. Plaintiff was a non-exempt employee of Defendant during the time period beginning one year and 65 days prior to the filing of this Complaint to the present—i.e., the statute of limitations period. Plaintiff also personally experienced violations of the California Labor Code during her employment with Defendant, as alleged herein.

FACTUAL ALLEGATIONS

Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 11]

12. During the statute of limitations period, as part of Defendant's unlawful policies and practices to minimize labor costs and maximize profits, Defendant has required, permitted or otherwise suffered Plaintiff and other aggrieved employees to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise failed to provide the required meal periods to Plaintiff and other aggrieved employees as required under California Labor Code §§ 226.7, 512, and IWC Wage Order No. 5-2001, § 11.

13. Defendant has implemented several common policies and practices that have caused Plaintiff and other aggrieved employees to systematically miss and otherwise take non-compliant meal periods.

14. Defendant has implemented a common policy of allotting a grossly insufficient staffing

ratio, which causes aggrieved employees like Plaintiff to miss or otherwise take non-compliant meal periods. For example, Plaintiff and other aggrieved employees had so much work to complete within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Moreover, as with rest periods, Plaintiff and the other aggrieved employees were so busy with work, they were often unable to take their rest periods.

15. When Plaintiff and other aggrieved employees were able to take meal periods, they were systematically interrupted. In particular, Defendant required Plaintiff and other aggrieved employees to carry cell phones on their person at all times, and consequently, their meal periods were regularly interrupted and/or cut short because they would be forced to communicate on these devices during meal periods.

16. Despite work conditions that systematically result in missed and non-compliant meal periods, and in order to keep labor costs down, Defendants have implemented a policy and practice of failing to pay meal period premium payments when owed and due. Thus, Defendants have also violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order by failing to compensate Plaintiff and other aggrieved employees who were not authorized and permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for each workday that such a meal period was not authorized or permitted.

Failure to Provide Required Rest Breaks

[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]

17. During the statute of limitations period, as part of Defendants' unlawful policies and practices to minimize labor costs and maximize profits, Defendant has failed to authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 5-2001, § 12.

18. The same common policies and practices that deprive Plaintiff and other aggrieved employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to take their rest breaks. Namely, Defendant's skeletal staffing policy forces Plaintiff and other aggrieved employees to skip their rest breaks otherwise take non-compliant rest breaks. And when Plaintiff and

1 other aggrieved employees were able to take rest breaks, they were interrupted. Additionally,
2 Defendant fails to adequately inform aggrieved employees of their rights to take rest breaks, by among
3 other methods, failing to provide proper training and failing to implement adequate schedules regarding
4 rest breaks.

5 19. Defendant further violates California Labor Code § 226.7 and IWC Wage Order No. 5-
6 2001, § 12, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
7 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
8 proper regular rate of pay for each workday that a rest break was not provided.

9 **Failure to Pay Overtime Wages**

10 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

11 20. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001, §
12 3, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which
13 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
14 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
15 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any
16 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
17 in any workweek.

18 21. During the statute of limitations period, Defendant failed to compensate Plaintiff and
19 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
20 of the California Labor Code and IWC Wage Order by requiring, permitting or suffering Plaintiff and
21 other aggrieved employees to work off-the-clock, including *inter alia*, during meal periods and rest
22 breaks, but not compensating them for this time, inaccurately recording time in which Plaintiff and
23 other aggrieved employees worked, and other methods to be discovered. Defendant also failed to
24 properly calculate Plaintiff's and other aggrieved employees' regular rates of pay for the purposes of
25 determining their overtime rates by, *inter alia*, failing to include the value of meal period and rest break
26 premium payments owed and due, non-discretionary bonuses, and other forms of remuneration
27 required to be included in the calculation of the regular rate, thereby failing to properly pay employees
28 one and one-half times their regular rates at which they were employed for hours worked over forty in

1 a week and/or over 8 hours per day.

2 22. Defendant has knowingly and willfully refused to perform their obligations to
3 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
4 violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 1-2001, § 3.

5 **Failure to Minimum Wages**

6 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

7 23. Pursuant to California Labor Code §§ 1194, 1197, and § 4 of the applicable IWC Wage
8 Order, payment to an employee of less than the applicable minimum wage for all hours worked in a
9 payroll period is unlawful.

10 24. During the statute of limitations period, as part of Defendant's unlawful policies and
11 practices to minimize labor costs and maximize profits, Defendant required Plaintiff and other
12 aggrieved employees to work off-the-clock, including *inter alia*, during meal periods and rest breaks,
13 but did not compensate them for this time. In addition, Defendant unlawfully and inaccurately recorded
14 time that Plaintiff and other aggrieved employees worked, or failed to record this time altogether.

15 **Failure to Timely Pay Wages During Employment**

16 **[Cal. Lab. Code § 204]**

17 25. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
18 15th days of any calendar month, Defendant is required to pay their nonexempt employees between the
19 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
20 also provides that for all labor performed between the 16th and 26th days of any calendar month,
21 Defendant is required to pay their non-exempt employees between the 1st and 10th day of the following
22 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
23 excess of the normal work period shall be paid no later than the payday of the next regular payroll
24 period.

25 26. During the statute of limitations period, Defendant has knowingly and willfully failed
26 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
27 regular payroll period as required by California Labor Code § 204.

1 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

2 **[Cal. Lab. Code §§ 201-203]**

3 27. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
4 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
5 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
6 discharge are due and payable immediately.

7 28. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all
8 accrued wages due to an employee no later than 72 hours after the employee quits his or her
9 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
10 which case the employee is entitled to his or her wages at the time of quitting.

11 29. California Labor Code § 203 provides that if an employer willfully fails to pay, in
12 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged
13 or who quits, the employer is liable for waiting time penalties in the form of continued compensation
14 to the employee at the same rate for up to 30 workdays.

15 30. During the statute of limitations period, Defendant has willfully failed to pay accrued
16 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
17 California Labor Code §§ 201 and 202. Because Defendant has failed and continue to fail to properly
18 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime wages,
19 and compensation for non-compliant meal periods and rest breaks, Defendant has also willfully failed
20 and continue to fail to pay accrued wages and other compensation to Plaintiff and other aggrieved
21 employees in accordance with California Labor Code §§ 201 and 202.

22 **Failure to Maintain Required Records**

23 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7]**

24 31. During the statute of limitations period, as part of Defendant's unlawful payroll policies
25 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
26 Defendant knowingly and intentionally failed to maintain records as required under California Labor
27 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 5-2001, § 7, including but not limited to, the
28 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;

1 meal periods; time records showing when each employee begins and ends each work period; and
2 accurate itemized statements. Moreover, Defendant does not provide non-exempt employees with
3 proper meal periods and rest breaks but omits from the wage statements such compensation and/or
4 remuneration owed and due. Additionally, Defendant requires non-exempt employees to work off-the-
5 clock but fail to record this time or compensate them for this time, which invariably results in inaccurate
6 time and payroll records.

7 **Failure to Furnish Accurate Itemized Wage Statements**

8 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 5-2001, § 7]**

9 32. During the statute of limitations period, Defendants have routinely failed to provide
10 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
11 Defendant's pay stubs violate California Labor Code § 226 in that Defendant has not provided Plaintiff
12 and other aggrieved employees with proper meal periods and rest breaks but failed to include in their
13 wage statements one (1) additional hour of compensation at their regular rates of pay for each missed
14 or non-compliant meal or rest period. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93,
15 972 ("failure to report premium pay for missed breaks can support monetary liability under section 226
16 for failure to supply an accurate itemized statement reflecting an employee's gross wages earned, net
17 wages earned, and credited hours worked.").

18 33. In addition, Defendant does not properly pay Plaintiff and other aggrieved employees
19 regular, and minimum wages owed and due to them, resulting in accurate wage statements. Defendant
20 also suffers and permits Plaintiff and other aggrieved employees to work off-the-clock without
21 compensation, yet such compensation and/or remuneration is not listed on the wage statements.

22 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

23 **[Cal. Lab. Code § 2802]**

24 34. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
26 his or her duties, or of his or her obedience to the directions of the employer.

27 35. During the statute of limitations period, Defendant required Plaintiff and other
28 aggrieved employees to use their own personal devices, including cellular phones, to perform work-

1 related duties. In addition, many aggrieved employees, including Plaintiff, traveled to client sites in
2 their own personal vehicles, but Defendant paid an unknown travel stipend as reimbursement for
3 gas/mileage. This resulted in gross underpayment of Plaintiff's and other aggrieved employees' actual
4 gas/mileage expenditures.

5 **Failure to Provide Suitable Seating**

6 **[IWC Wage Order No. 1-2001, Section 14]**

7 36. IWC Wage Order No. 1-2001, § 14 provides:

8 “(A) All working employees shall be provided with suitable seats when
9 the nature of the work reasonably permits the use of seats.

10 (B) When employees are not engaged in the active duties of their employment
11 and the nature of the work requires standing, an adequate number of suitable
12 seats shall be placed in reasonable proximity to the work area and employees
shall be permitted to use such seats when it does not interfere with the
performance of their duties.”

13 37. Defendant's fail to provide suitable seating by not providing any seats or stools for
14 Plaintiff and other aggrieved employees within close proximity of their work areas. The nature of the
15 work reasonably permits the use of seats by Plaintiff and the other aggrieved employees. To the
16 extent that the use of seats could interfere with their work duties, at all times herein it is and has been
17 reasonable for Defendant to place seats in reasonable proximity to the work areas to be used by
18 Plaintiff and other aggrieved employees when doing so would not interfere with their job duties.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

21 **[Cal. Lab. Code § 2698, *et seq.*]**

22 ***(Against all Defendants)***

23 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 37.

25 39. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
26 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
27 former non-exempt employees of Defendant pursuant to the procedures specified in California Labor
28

1 Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged California
2 Labor Code violations was committed against Plaintiff during the statute of limitations period.

3 40. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties
4 under the PAGA, for Defendant's violations of the provisions of the California Labor Code and IWC
5 Wage Order alleged herein.

6 41. All civil penalties sought and recovered under this action will be allocated as follows:
7 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
8 aggrieved employees.

9 42. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
10 Labor Code § 2699(g)(1).

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, on behalf of herself and the State of California, prays for relief against
13 Defendants as follows:

- 14 1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
15 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §
16 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
17 providing for attorneys' fees and costs; and
18 3. For such further relief that the Court may deem just and proper.
19

20 DATED: June 27, 2023

LAW OFFICE OF SCOTT E. WHEELER

21 

22 By: _____

23 Scott E. Wheeler
24 Justin A. Wheeler

25 *Attorneys for Plaintiff*
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