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CALIFORNIA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

MONTOYA FONTENOT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

LGI REALTY—CALIFORNIA, INC., a California
corporation,

Defendant.

Case No. 24CV012817

**CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

1 This Class and Representative Action Settlement Agreement (“Settlement Agreement” or
2 “Agreement”) is made and entered into between, on the one hand, Plaintiff Montoya Fontenot
3 (“Plaintiff” or “Class Representative”), individually and on behalf of the Settlement Class (as defined
4 below), by and through The Law Office of Scott Stillman and The Jhaveri-Weeks Firm, P.C.
5 (collectively, “Class Counsel”), and, on the other hand, Defendant LGI-Realty—California, Inc.
6 (“Defendant” or “LGI”) subject to the approval of the Court, as provided below. This Settlement
7 Agreement is intended by Plaintiff and Defendant to fully, finally, and forever resolve, discharge, and
8 settle the Action (as defined below) and Released Claims (as defined below), upon and subject to the
9 terms and conditions hereof, as follows:

10 **1. Definitions.**

11 As used herein, for the purposes of this Settlement Agreement only, the following terms will be
12 defined as set forth below:

13 1.1 “Action” refers to the civil action entitled: *Montoya Fontenot v. LGI Realty—*
14 *California, Inc.*, Case No. 24CV012817, in the Superior Court of California, Sacramento County.

15 1.2 “Class” or “Class Member(s)” refers to all persons who have been employed by
16 Defendant as New Home Consultants in California and who were paid on a commissioned basis during
17 the Class Period. This does not include the four employees who joined shortly before the end of the
18 Class Period who were paid on an hourly (training) basis during the Class Period.

19 1.3 “Class Counsel” refers to the attorneys of record for the Class Representative, *i.e.*, The
20 Law Office of Scott Stillman and The Jhaveri-Weeks Firm, P.C.

21 1.4 “Class Notice” refers to the form of direct-mail notice substantially in the form attached
22 as “Exhibit A,” as may be modified by the Court.

23 1.5 “Class Period” means the period from March 21, 2020 through May 3, 2024.

24 1.6 “Complaint” refers to the Second Amended Complaint to be filed in this Action as
25 discussed below.

26 1.7 “Court” refers to the Superior Court of California for Sacramento County.

27 1.8 “Defense Counsel” means Scott Brutocao and Laura Fauber of Cornell Smith Mierl
28 Brutocao Burton, LLP.

1 1.9 “Final Approval Hearing” refers to the hearing at which the Court will make a final
2 determination whether the terms of the Settlement are fair, reasonable, and adequate for the Class and
3 meet all applicable requirements for approval.

4 1.10 “Final Approval Order and Judgment” refers to the final order by the Court approving
5 the Settlement following the Final Approval Hearing and entering final judgment.

6 1.11 “Effective Date” refers to the date the Final Approval Order and Judgment is signed if
7 no objections to the Settlement are filed. If objections are filed and overruled, then the Effective Date
8 is 65 days following the date the Final Approval Order and Judgment is signed. If an appeal is taken
9 from the Final Approval Order and Judgment, then the Effective Date will be ten (10) business days
10 after the appeal is withdrawn or after an appellate decision affirming the final approval decision
11 becomes final.

12 1.12 “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum
13 settlement payment of One Million Five Hundred Thousand Dollars (\$1,500,000). The GSA includes
14 Class Counsel’s attorneys’ fees, Class Counsel’s litigation costs, any Service Award to the Class
15 Representative, Settlement Administration Costs, the PAGA Penalties payment to the LWDA, and the
16 Net Settlement Amount from which payments to the Settlement Class will be made. This settlement is
17 non-claims made and is non-reversionary except that if Class Members opt out, the GSA shall be
18 reduced by the portion of the settlement attributable to the opt-outs, as set forth below. The GSA does
19 not include employer-side payroll taxes on the amounts paid to Settlement Class Members as wages,
20 which Defendant shall be responsible for paying separately to the Settlement Administrator.

21 1.13 “Net Settlement Amount” (also referred to herein as “NSA”) is the GSA minus Court-
22 approved attorneys’ fees and litigation costs, Settlement Administration Costs, Service Award to Class
23 Representatives, and the LWDA’s share of the amount of the GSA allocated to PAGA Penalties. The
24 NSA is the maximum amount that will be available for distribution to Settlement Class Members.

25 1.14 “PAGA Penalties” refers to the Fifteen Thousand Dollars (\$15,000.00) allocated to
26 Plaintiff’s PAGA claims which shall be paid as follows: 65% of the PAGA Penalties shall be paid to
27 the LWDA as its share of the civil penalties for PAGA claims; and 35% shall be distributed to the
28 Class Members who worked during the PAGA Period as their share of the settlement of civil penalties

1 for PAGA claims. Such penalties will be disbursed to all Class Members even if they opt out of the
2 class settlement.

3 1.15 “PAGA Period” means the period from June 26, 2023, through May 3, 2024.

4 1.16 “Parties” are Plaintiff and Defendant.

5 1.17 “Released Claims” are those claims defined in Section 16.

6 1.18 “Released Parties” include Defendant and all of its parents, subsidiaries, predecessors,
7 successors, affiliates, assigns, and related entities, and its and their respective officers, directors,
8 shareholders, members, employees, administrators, fiduciaries, trustees, agents (including any
9 investment bankers, accountants, insurers, reinsurers, attorneys and any past present or future officers,
10 directors, and employees), and benefits plans.

11 1.19 “Request for Exclusion” refers to a request to be excluded from the Settlement, which
12 must be made in writing in conformity with the requirements set forth in the Class Notice, as well as
13 the Court’s order granting preliminary approval, and mailed to the Administrator and postmarked on or
14 before the Response Deadline.

15 1.20 “Response Deadline” is sixty (60) calendar days after the date that the Class Notice is
16 mailed (or remailed, if the Notice is originally returned as un-deliverable) to Class Members, and is the
17 deadline by which Class Members’ Requests for Exclusion, disputes regarding Settlement Payments,
18 and/or objections must be postmarked in order to be timely. In the event that two or more of the
19 anticipated 47 Class Members opt out of the Settlement, or in the event that Class Member(s) opting
20 out of the Settlement, in the aggregate, have earned more than three percent (3%) of the total wages
21 earned by all Class Members during the Class Period, Defendant shall have the right to void the
22 Settlement. Neither Party nor their counsel shall encourage any Class Member to opt out of the
23 Settlement.

24 1.21 “Service Award” refers to a monetary award to Plaintiff, in an amount not to exceed
25 Ten Thousand Dollars (\$10,000), or other amount as approved by the Court, for her services as a Class
26 Representative as described in Section 7, below, to be paid for from the Gross Settlement Amount,
27 subject to approval by the Court as described below.

28 1.22 “Settlement” shall mean the agreement to settle this action on the terms defined herein.

1 1.23 “Settlement Administrator” refers to a third-party settlement administrator to be mutually
2 selected by the Parties, subject to approval by the Court, to perform the notice, claims administration,
3 and distribution functions further described in this Settlement Agreement.

4 1.24 “Settlement Administration Costs” refers to the cost of paying the Settlement
5 Administrator. This cost will be paid out of the GSA, in an amount estimated to be not more than
6 Fifteen Thousand Dollars (\$15,000).

7 1.25 “Settlement Class” or “Settlement Class Member” refers to Class Members who do not
8 request exclusion from the Settlement.

9 1.26 “Settlement Payment” refers to the amount paid to each Settlement Class Member.

10 **2. Procedural History and Recitals.**

11 On June 26, 2024, Plaintiff filed this lawsuit in Sacramento County Superior Court for
12 Defendant’s alleged: (1) failure to authorize and permit paid rest breaks and pay premium pay in
13 violation of Labor Code §§ 226.7, 1194, 1194.2 and IWC Wage Order No. 4-2001 §§ 4, 12; (2) failure
14 to provide off-duty meal breaks and pay premium pay in violation of Labor Code §§ 226.7, 512 and
15 IWC Wage Order No. 4-2001 § 11; (3) failure to pay at least minimum wage for all hours worked in
16 violation of Labor Code § 1194, 1194.2, 1197, 1197.1 and IWC Wage Order No. 4-2001 § 4; (4)
17 failure to pay overtime in violation of Labor Code §§ 510, 1194, 1198 and IWC Wage Order No. 4-
18 2001 § 3; (5) failure to issue accurate itemized wage statements in violation of Labor Code § 226(a),
19 (e); (6) failure to reimburse business expenses in violation of California Labor Code § 2802; and (7)
20 unfair, unlawful, or fraudulent business practices in violation of California Business & Professions
21 Code §§ 17200 *et seq.* On November 19, 2024, Plaintiff filed a First Amended Complaint adding a
22 claim under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*

23 2.1 On October 8, 2024, the Parties participated in a mediation session with Arthur
24 Eidelhoch, an experienced mediator. Mr. Eidelhoch made a mediator’s proposal, which the Parties
25 ultimately accepted in the form of a Memorandum of Understanding signed on March 3, 2025 after a
26 prolonged period of additional negotiation. The Parties jointly represent that this is a fair, reasonable,
27 and adequate settlement and have arrived at this settlement through arms-length negotiations,
28 considering all relevant factors, present and potential.

1 2.2 Plaintiff will take all steps necessary to file the Second Amended Complaint (“SAC”) in
2 the form attached as Exhibit B within ten (10) days after execution of this Agreement. The SAC adds
3 a claim for waiting time penalties under Labor Code § 203.

4 2.3 This Agreement is entered into solely for the purpose of compromising highly disputed
5 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of
6 liability or wrongdoing. Additionally, Defendant reserves the right to contest any issues relating to
7 class certification and liability if the Settlement is not approved. Defendant denies that it has engaged
8 in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone
9 under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the
10 Action. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and
11 finally settle the Released Claims.

12 NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of
13 the release of all Released Claims, Plaintiff, on behalf of herself and the Class, Class Counsel, and
14 Defendant agree to the terms and provisions of this Settlement Agreement, subject to the approval of
15 the Court.

16 **3. Limitation on Effect of Settlement.**

17 The Parties agree that certification of a class is appropriate for settlement purposes only. In the
18 event that the Settlement is not finally approved, or the Settlement is otherwise terminated, any class
19 and representative action that was certified pursuant to this settlement process shall be vacated and
20 shall be of no force or effect whatsoever and shall not be admissible nor construed as an admission or
21 concession of any kind by the Parties, in whole or part, and Defendant expressly reserves all rights to
22 challenge certification of a class on all available grounds.

23 **4. Establishment of the GSA.**

24 Within fifteen (15) business days after the Effective Date, Defendant shall transmit the GSA
25 (reflecting any reduction due to opt-outs as described in Section 5.1.3 below) to the Settlement
26 Administrator, in addition to an amount equal to employer-side payroll taxes due on the wage
27 component of the NSA. This Settlement is non-reversionary and under no circumstances will any part
28 of the GSA revert to Defendant.

5. Calculation of the NSA and Distribution of Settlement Proceeds.

1 5.1.1 The NSA shall be allocated among the Settlement Class Members on a proportional
2 basis based on the amount paid to each Class Member during the Class Period.

3 5.1.2 One-third (33.33%) of each Settlement Payment will be allocated as wages and reported
4 on an IRS Form W-2; and two-thirds (66.67%) of each Settlement Payment will be allocated as
5 penalties and interest and reported on an IRS Form 1099. Any Class Members who exclude
6 themselves from the Settlement will still receive their share of PAGA Penalties, which will be reported
7 on an IRS Form 1099.

8 5.1.3 If a Class Member timely and validly submits a Request for Exclusion, as set forth
9 herein, the GSA shall be reduced by his or her proportional share. For the avoidance of doubt, if the
10 wages paid to the Class Members who opt out equal 2% of the total wages paid by Defendant to all of
11 the Class Members during the Class Period, the GSA will be reduced by 2%.

12 5.2 Payments to Class Members pursuant to this Settlement Agreement will not be
13 construed as compensation for purposes of determining eligibility for or benefit calculations of any
14 health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment
15 compensation, including, without limitation, all plans subject to Employee Retirement Income Security
16 Act ("ERISA"). The Parties agree these payments do not represent any modification of any
17 employee's previously-credited hours of service or other eligibility criteria under any employee
18 pension benefit plan, employee welfare benefit plan, or other program or policy.

18 **6. Attorneys' Fees and Costs.**

19 Class Counsel shall request attorneys' fees up to one-third of the GSA (*i.e.*, \$500,000) for
20 attorneys' fees; and up to \$20,000 for reimbursement of litigation costs. Defendant agrees not to
21 oppose Class Counsel's request for attorneys' fees and costs in these amounts. If the GSA increases
22 pursuant to the escalator clause pursuant to Section 19 below, Class Counsel's attorneys' fees shall be
23 the amount of one-third of the increased GSA. The terms of this Settlement Agreement will not be
24 abrogated and will continue in full force even if the Court awards a lower amount of attorneys' fees or
25 costs than requested by Class Counsel. However, Class Counsel retains the right to appeal any such
26 reductions, but such an appeal will delay Defendant's obligations to make all payments set forth in this
27 Settlement Agreement. Any unapproved amounts of attorneys' fees and litigation costs will be added
28 to the NSA and will be distributed to the Settlement Class Members.

1 **7. Service Award.**

2 Class Counsel shall request a Service Award of Ten Thousand Dollars (\$10,000) for Plaintiff
3 for her services as a Class Representative. If the Court awards a lesser award, any unapproved amount
4 of the requested award will be added to the NSA and distributed to the Settlement Class Members.

5 **8. PAGA Penalties.**

6 Subject to Court approval, \$15,000 shall be attributed to Plaintiff's claims under PAGA. The
7 Settlement Administrator shall apportion and distribute the \$15,000 payment as follows: (a) \$9,750
8 shall be paid to the LWDA as its 65% share of the settlement of civil penalties for PAGA claims; and
9 (b) \$5,250 shall be distributed to the Settlement Class Members who worked during the PAGA Period
10 as their 35% share of the settlement of civil penalties for PAGA claims. PAGA Penalties will be
11 distributed to all Class Members who worked during the PAGA Period pro-rata based on the wages
12 earned by each Class Member during the PAGA Period, even if they opt out of the class action
13 settlement. For the avoidance of doubt, if a Class Member earns 2% of the total wages paid by
14 Defendant to all of the Class Members during the PAGA Period, that Class Member would receive 2%
of the \$5,250, or \$105.

15 **9. Costs of Settlement Administration.**

16 The Parties will mutually agree to the selection of a settlement administrator ("Settlement
17 Administrator") to undertake the administration of the Settlement in this Action. The administration
18 duties include, without limitation, the following: establishing and maintaining a qualified settlement
19 account for the NSA, obtaining tax identification number(s) applicable to the Settlement, calculating
20 the Class Member Payments, performing an initial National Change of Address (NCOA) search upon
21 receipt of the Class Member mailing addresses, mailing the Class Notices, performing one skip trace
22 on Class Notices which are returned as undeliverable, reviewing and processing Requests for
23 Exclusion, disputes, and objections, setting up a toll-free number, mailing the Class Members
24 Payments and tax forms to the Settlement Class Members, and setting up a static website regarding the
25 Settlement, which shall contain the operative complaint, preliminary approval motion, preliminary
26 approval order, and settlement agreement, the contact information for the Settlement Administrator,
27 and only such other content as agreed by the Parties. The Settlement Administrator will report
28 payment of the individual Class Member Payments to all required taxing and other authorities, take

1 appropriate withholdings, forward payments for withholdings and issue Internal Revenue Service
2 Forms W-2 and 1099. The Parties estimate that the costs and expenses of administration of the
3 Settlement will not exceed \$15,000, but if the expenses exceed that amount, such excess amounts shall
4 be deducted from the GSA. Any amounts allocated but not paid to the Settlement Administrator will
5 be added to the NSA and distributed to the Class.

6 **10. Notice Administration.**

7 10.1.1 Within fifteen (15) business days of the order granting preliminary approval of the
8 Settlement (“Preliminary Approval Order”) Defendant shall provide the Settlement Administrator with
9 the following information, which may be in the form of a Microsoft Excel spreadsheet (“Class Data
10 List”):

- 11 (a) the names, last known addresses, last known telephone numbers, and Social Security
12 numbers of each Class Member;
- 13 (b) the total amount paid to each Class Member during the Class Period; and
- 14 (c) the percentage of the total wages paid by Defendant to each Class Member during both
15 the Class Period and the PAGA Period.

16 10.1.2 Upon its receipt of the Class Data List, the Settlement Administrator shall access the
17 National Change of Address (“NCOA”) Database, and update the addresses contained therein.

18 10.1.3 Within ten (10) business days of receipt of the Class Data List, the Settlement
19 Administrator shall provide the Class Notice by bulk first class mail, forwarding requested, to the
20 Class Members at the addresses identified through the process described above.

21 10.1.4 As to any Class Notices that are returned as undeliverable, or where the NCOA
22 Database indicates that the last known address of any Class Member is invalid or otherwise
23 undeliverable, the Settlement Administrator will perform a skip trace procedure and re-mail all
24 returned, undelivered mail within five (5) calendar days of the date on which the Settlement
25 Administrator is informed that a Class Notice is undeliverable or otherwise invalid.

26 10.1.5 The Settlement Administrator and all those working through, in concert with, or on
27 behalf of the Settlement Administrator, shall be obligated to take all reasonable steps to maintain the
28 confidentiality of Class Member information and to carry out the other duties enumerated in the
Settlement Agreement, including calculating each Class Member’s potential share of the Settlement.

1 To protect Class Members' privacy rights, the Administrator must maintain the Class Data List in
2 confidence, use the Class Data List only for purposes of this Settlement and for no other purpose, and
3 restrict access to the Class Data List to Administrator employees who need access to the Class Data
4 List to effect and perform under this Agreement. For the avoidance of doubt, Class Counsel shall not
5 be provided with the Class Data List.

6 10.1.6 The Settlement Administrator shall provide Defense Counsel and Class Counsel with
7 weekly summary reports, including the total number of Class Notices that were returned as
8 undeliverable and the total number of objections, disputes, and/or Requests for Exclusion. The
9 Settlement Administrator shall maintain records of its work, which will be available for inspection
10 upon request by Defense Counsel or Class Counsel; provided, however, that Class Counsel shall not
11 be provided with the Class Data List.

12 10.1.7 The Class Notice will be a pre-printed form, in substantially the form attached hereto as
13 Exhibit A, to be approved by the Court. In addition to other information contained on the Class
14 Notice, the Class Notice will include an explanation of the pro rata distribution formula used to
15 determine the share of the Net Settlement Amount that the recipient may be entitled to receive under
16 the Settlement.

17 **11. Requests for Exclusion.**

18 11.1 Any Class Member may elect to opt out of the Settlement by submitting a written
19 Request for Exclusion to the Settlement Administrator, postmarked no later than the Response
20 Deadline. The Request for Exclusion must contain the following: full name, signature, address, and
21 last four digits of his or her Social Security number; case name and number; and a clear statement that
22 he or she seeks to be excluded from the Settlement. The Settlement Administrator shall immediately
23 send all Requests for Exclusion to Defense Counsel and Class Counsel. A Class Member who fails to
24 comply with the opt-out procedure set forth herein on or before the Response Deadline will not be
25 excluded and will instead be bound by all provisions of the Settlement Agreement and all orders issued
26 pursuant thereto.

27 11.2 Any Class Member who elects to opt out of the Class in the manner and within the time
28 limits specified above (1) will not have any rights under the Settlement Agreement; (2) will not be
entitled to receive any compensation under the Settlement Agreement (other than PAGA Penalties); (3)

1 will not have standing to submit any objection to the Settlement Agreement; and (4) will not be bound
2 by the Settlement Agreement (although the LWDA's claim for PAGA Penalties pertaining to that
3 Class Member will still be released, as stated in Section 16.1.a).

4 11.3 Except for persons who elect to opt out of the Settlement in the manner and within the
5 time limits specified above, in the Preliminary Approval Order, and in the Class Notice, all Class
6 Members will be deemed to be within the Class for all purposes under this Settlement Agreement, will
7 be bound by the terms and conditions of this Settlement Agreement (including the release provisions in
8 Section 16 and its subparts), including all orders issued pursuant thereto, and will be deemed to have
9 waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of this
10 Settlement Agreement and any of its terms.

11 **12. Objections.**

12 Any Class Member who does not request exclusion from the Settlement may object to the
13 Settlement by sending the Settlement Administrator, not later than the Response Deadline, a written
14 statement objecting to the Settlement. The written objection must contain: full name, address, last four
15 digits of his or her Social Security number, the case name and number, and a clear statement of the
16 basis for his or her objection. The Settlement Administrator shall immediately send all objections to
17 Defense Counsel and Class Counsel.

18 Counsel for the Parties shall file any responses to any objections at the time the Motion for
19 Final Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their
20 objections or opt out requests in a writing to the Settlement Administrator, which may then be filed
21 with the Court.

22 **13. Resolution of Disputes.**

23 If any Class Member timely disputes the calculation of the Settlement allocation listed on his or
24 her Class Notice, the dispute will be submitted to the Settlement Administrator, who will examine the
25 records and either verify the calculation or provide a corrected calculation. Disputes must be in
26 writing and submitted to the Settlement Administrator, postmarked on or before the Response
27 Deadline. The dispute must contain: Class Member's full name, address, signature, and last four digits
28 of his or her Social Security number; case name and number; and any facts supporting the Class

1 Member's dispute, along with any supporting materials confirming that the calculation on the Notice is
2 incorrect. The Settlement Administrator's determination of disputes will be final and non-appealable.

3 **14. Payment Procedure.**

4 14.1 Payments to Settlement Class Members, Class Counsel, Class Representatives, Taxing
5 Authorities, and the LWDA: Within ten (10) court days of receipt of the GSA, the Settlement
6 Administrator will distribute, subject to approval by the Court: (a) Settlement Payments to Class
7 Members (and PAGA payments to any Class Members who exclude themselves from the Settlement);
8 (b) attorneys' fees and costs to Class Counsel; (c) Settlement Administration Costs to the Settlement
9 Administrator; (d) Service Award to the Class Representative; (e) applicable tax withholdings and
10 employer's portion of payroll tax to the appropriate taxing authorities; and (f) the LWDA's share of the
11 PAGA Penalties.

12 14.2 Uncashed Checks: Settlement checks that are not cashed within one-hundred and
13 eighty days from the date of issuance by the Settlement Administrator will be voided and the funds
14 will be tendered to Bay Area Legal Aid as the *cy pres* in accordance with California Code of Civil
15 Procedure § 384. The Settlement and the release of Released Claims will remain binding upon all
16 Class Members whether or not they cashed their Settlement checks.

17 **15. Taxes.**

18 15.1 Employer's Portion of Payroll Taxes: Defendant shall pay to the Settlement
19 Administrator the employer's portion of payroll taxes with respect to the wage portion of Class
20 Member Payments separately and in addition to the GSA.

21 15.2 Tax Treatment of Service Award: Plaintiff will receive an IRS Form 1099 for her
22 individual Service Award and will be responsible for payment of any taxes owing on said amount.

23 15.3 Tax Treatment of Attorneys' Fees and Costs Award: Class Counsel represents to
24 Defendant that no separate agreements regarding attorneys' fees exist between Class Counsel and any
25 Class Member, including Plaintiff, and no amounts of attorneys' fees will be paid pursuant to any
26 separate contingency fee or retainer agreement with a Class Member or Plaintiff. As such, pursuant to
27 IRS Private Letter Ruling PLR 200625031 (2006), Class Counsel will receive an IRS Form 1099 for
28 any amount awarded to Class Counsel in the form of attorneys' fees or costs and will be responsible
for payment of any taxes owing on said amount. Class Counsel assumes full responsibility and

1 liability for taxes owed on the Attorneys' Fees and Costs Award and holds Defendant harmless, and
2 indemnifies Defendant, from any dispute or controversy regarding any division or sharing of the
3 Attorneys' Fees and Costs Award.

4 15.4 No Tax Advice: The Parties are not giving any tax advice in connection with the
5 Settlement or any payments to be made pursuant to this Settlement including, but not limited to, within
6 the meaning of United States Treasury Circular 230 (31 CFR part 10, as amended). The Parties do not
7 assume any liability for taxes, fees, costs, or assessments resulting from any Settlement Class
8 Members' failure to timely pay his or her share of taxes, interest, fees, or penalties owed.

9 **16. Release.**

10 16.1 Settlement Class Released Claims: Effective on the date when Defendant fully funds the
11 GSA and funds all employer payroll taxes owed under this Agreement, Plaintiff, Class Members, and
12 Class Counsel shall be deemed to have released all Released Parties from any and all "Settlement Class
13 Members' Released Claims." For the purposes of this Agreement, the Settlement Class Members'
14 Released Claims are defined as: Any and all claims, debts, liabilities, demands, obligations,
15 guarantees, costs, expenses, attorney's fees, damages, actions or causes of action which are alleged, or
16 could have been alleged based on the facts asserted in the Complaint, and arising during the Class
17 Period, including without limitation, claims for restitution and other equitable relief, claims for unpaid
18 wages, meal period penalties, rest break penalties, waiting time penalties, unfair business practices,
19 failure to provide accurate wage statements, failure to reimburse business expenses, failure to pay
20 waiting time penalties, declaratory relief, injunctive relief, claims for penalties of any nature
21 whatsoever arising out of the Released Claims, or any other benefit claimed on account of allegations
22 and claims asserted in the Complaint and thus could have been asserted. This release shall apply to
23 claims arising at any point during the Class Period. For the avoidance of doubt, the release shall
24 exclude claims for vested benefits, wrongful termination, unemployment insurance, disability,
workers' compensation, and claims outside of the Class Period.

25 16.1.a Release of Claims of the LWDA: Effective on the date when Defendant fully funds the
26 GSA and funds all employer payroll taxes owed under this Agreement, the LWDA shall be deemed to
27 have released Defendant for any claim for civil penalties brought under the Private Attorneys General
28 Act of 2004 (Labor Code Section 2698 *et seq.*) that were alleged in Plaintiff's PAGA Notice or could

1 have been alleged based on the facts therein with respect to all Class Members (including those who
2 opt out of the class settlement) during the PAGA Period. This includes claims for PAGA Penalties for
3 the alleged violations of Labor Code §§ 226(a), 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,
4 2802, and IWC Wage Order No. 4-2001 §§ 3, 4, 11, 12.

5 16.2 Plaintiff's General Release: Except as stated below, Plaintiff releases, acquits,
6 discharges, and covenants not to sue any of the Released Parties for any claim, whether known or
7 unknown, which Plaintiff has ever had, or hereafter may claim to have, arising on or before the date
8 Plaintiff signs this Agreement, including without limitation to, any claims relating to or arising out of
9 any aspect of her relationship with Defendant, or the termination of that relationship, any claims for
10 unpaid compensation, wages, reimbursement for business expenses, penalties, or waiting time
11 penalties under the California Labor Code, the California Business and Professions Code, or any state,
12 county, or city law or ordinance regarding wages or compensation; any claims for employee benefits,
13 including without limitation, any claims under the Employee Retirement Income Security Act of 1974;
14 any claims of employment discrimination on any basis, including without limitation, any claims under
15 Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the
16 Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave
17 Act of 1993, the California Government Code, or any other state, county or city law or ordinance
18 regarding employment discrimination. Plaintiff acknowledges and agrees that the foregoing general
19 release is given in exchange for the consideration provided to Plaintiff under this Agreement by
20 Defendant. However, this release shall not apply to claims for workers' compensation benefits,
21 unemployment insurance benefits, pension or retirement benefits, or any other claim or right that as a
22 matter of law cannot be waived or released, and shall not apply to any claims arising from or related to
23 Plaintiff's ownership of a home purchased from LGI.

24 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
25 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's
26 release shall be and remain effective in all respects, notwithstanding such different or additional facts
27 or Plaintiff's discovery of them.

28 Plaintiff expressly waives any rights or benefits available to her under the provisions of Section
1542 of the California Civil Code, which provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR
2 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
3 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
4 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
5 OR RELEASING PARTY.

6 Plaintiff understands fully the statutory language of Civil Code section 1542 and, with this
7 understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether
8 known or unknown, which Plaintiff has ever had, or hereafter may claim to have (except those
9 expressly excluded above), arising on or before the date of Plaintiff's signatures to this Agreement, and
10 specifically waives all rights she may have under California Civil Code section 1542.

11 **17. Application for Preliminary Approval Order.**

12 17.1 After the Parties' execution of this Settlement Agreement, the Parties agree to jointly
13 prepare, and Plaintiff shall file, a motion for preliminary approval ("Motion for Preliminary
14 Approval") that complies with this Settlement Agreement and the Court's current checklist for
15 preliminary approvals. The Motion for Preliminary Approval will request that the Preliminary
Approval Order contain the following provisions:

16 17.1.1 preliminarily approving the Settlement Agreement;

17 17.1.2 preliminarily approving and certifying the Class for settlement purposes only;

18 17.1.3 approving the form of the Class Notice, and finding that the proposed method of
19 disseminating the Class Notice meets the requirements of due process and is the best notice practicable
20 under the circumstances;

21 17.1.4 establishing the procedures and the deadline by which Class Members may assert
22 objections to the Settlement, seek exclusion from the Settlement, and/or dispute their Settlement
23 Payments;

24 17.1.5 establishing a deadline for the Parties to submit papers/briefing in response to any
25 objections and in support of final approval of the Settlement Agreement; and

26 17.1.6 setting a date for the Final Approval Hearing.

27 17.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
28 all documents necessary for obtaining the Preliminary Approval Order, including: (i) a draft of the

1 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
2 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
3 Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and
4 Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its “not to
5 exceed” bid for administering the Settlement and attesting to its willingness to serve; competency;
6 operative procedures for protecting the security of Class Data List; amounts of insurance coverage for
7 any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
8 conflicts of interest with Class Members and the proposed *cy pres* recipient; and the nature and extent
9 of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (iv) a signed declaration
10 from each Class Counsel firm attesting to its competency to represent the Class Members; transmission
11 to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3,
12 subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699,
13 subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class
14 Members, the Administrator and/or the *cy pres* recipient. In their Declarations, Class Counsel shall
15 aver that they are not aware of any other pending matter or action asserting claims that will be
16 extinguished or adversely affected by the Settlement;

17 17.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
18 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after
19 the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
20 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval.
21 Class Counsel is responsible for delivering the Preliminary Approval Order to the Administrator;

22 17.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
23 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense
24 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
25 telephone, and in good faith, to resolve the disagreement. If the Court does not grant the Preliminary
26 Approval Order or conditions the Preliminary Approval Order on any material change to this
27 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the
28 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
otherwise satisfy the Court’s concerns; provided, however, that Defendant does not agree to any such

1 modifications that increase the Gross Settlement Amount or impose additional burdens to which
2 Defendant did not agree.

3 **18. Final Approval Order and Judgment.**

4 18.1 If the Settlement is preliminarily approved by the Court, the Parties shall thereafter
5 request that the Court enter an order granting final approval of the Settlement and judgment based
6 thereon ("Final Approval Order and Judgment"), which includes the following provisions:

7 18.1.1 confirming certification of the Class for settlement purposes only;

8 18.1.2 finding that the dissemination of the Class Notice in the form and manner ordered by
9 the Court was accomplished as directed and met the requirements of due process;

10 18.1.3 finally approving the Settlement Agreement as fair, reasonable, and adequate and
11 directing consummation of the Settlement in accordance with its terms and provisions;

12 18.1.4 directing the Parties to implement the terms of the Settlement Agreement;

13 18.1.5 releasing and discharging Defendant and Released Parties from any and all liability with
14 respect to the Released Claims;

15 18.1.6 awarding reasonable attorneys' fees and litigation costs to Class Counsel as determined
16 by the Court;

17 18.1.7 awarding a Service Award to the Class Representative as determined by the Court;

18 18.1.8 awarding Settlement Administration Costs to the Settlement Administrator as
19 determined by the Court;

20 18.1.9 approving the PAGA settlement and allocation of PAGA Penalties to the LWDA;

21 18.1.10 entering final judgment on the operative Complaint; and

22 18.1.11 preserving continuing and exclusive jurisdiction over all matters related to the
23 administration and consummation of the terms of this Settlement and enforcement of the Judgment,
24 and directing the Parties to report to the Court regarding funds to be distributed to the *cy pres* recipient,
25 pursuant to California Code of Civil Procedure § 384(b).

26 **19. Escalator Clause.**

27 The Class consists of approximately 47 individuals. If the total number of Class Members
28 exceeds 47 by more than 7% (*i.e.*, is 50 or more people), then the Gross Settlement Amount shall

1 increase proportionately for each additional Class Member above 7% (i.e., for the 50th person and each
2 additional person, the GSA will increase by 1/47).

3 **20. No Admissions.**

4 The Parties understand and agree that this Settlement Agreement is the result of a good faith
5 compromise settlement of disputed claims, and no part of this Settlement Agreement, or the
6 negotiations leading thereto, or any document filed in support thereof, whether or not the Settlement is
7 finally approved and/or consummated, may be offered or should be construed as an admission of any
8 wrongdoing by Defendant or the Releasees.

9 **21. Avoidance of Undue Publicity.**

10 Plaintiff and Plaintiff's Counsel shall make no public statement or release, and agree not to post
11 the settlement terms, amount, or that they obtained a settlement from Defendant on their website. This
12 provision shall not apply to the filing of any documents with the Court or the LWDA which are
13 necessary to effectuate the Settlement. Following the filing of Plaintiff's motion for preliminary
14 approval of the Settlement, Class Counsel is free to discuss the Settlement with any Class Members.
15 Nothing herein will restrict Class Counsel from including publicly available information regarding this
16 Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

17 **22. Construction.**

18 This Settlement Agreement was entered into after substantial good faith, arm's-length
19 negotiations between the Parties. This Settlement Agreement has been entered into without any
20 coercion and under no duress. The Parties acknowledge and agree that all Parties had an equal hand in
21 drafting this Settlement Agreement so that it will not be deemed to have been prepared or drafted by
22 one party or another.

23 **23. Due Authority of Attorneys.**

24 Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties
25 hereto warrants and represents that he or she has been duly authorized and empowered to execute this
26 Settlement Agreement on behalf of each such respective Party and to bind them to the terms hereof.
27 The Parties also warrant that this Agreement is entered into knowingly and willingly and there is no
28 fraud, duress, or undue influence.

24. Entire Agreement.

1 This Settlement Agreement (including Exhibits hereto) sets forth the entire agreement of the
2 Parties with respect to its subject matter and supersedes any and all other prior agreements and all
3 negotiations leading up to the execution of this Settlement Agreement, whether oral or written,
4 regarding the subjects covered herein, with the exception of any separation-related agreements between
5 Plaintiff and Defendant, if any, which shall remain in full force and effect. The Parties acknowledge
6 that no representations, inducements, warranties, promises, or statements relating to the subjects
7 covered herein, oral or otherwise, have been made by any of the Parties that are not embodied or
8 incorporated by reference herein. Except as otherwise set forth in this Agreement, any notice, order,
9 judgment, or other exhibit that requires approval of the Court must be approved without material
10 alteration that substantially changes or increases the cost of compliance with this Settlement
11 Agreement in order for this Settlement Agreement to become effective. Before invoking this provision
12 to challenge the effectiveness of this Settlement Agreement, the invoking party shall consult with, and
13 if necessary mediate in good faith with, the other party in an effort to resolve any such challenge.

14 **25. Modification or Amendment.**

15 This Settlement Agreement may not be modified or amended except in a writing signed by all
16 signatories hereto or their attorneys or their successors in interest.

17 **26. Successors.**

18 This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto
19 and their respective heirs, executors, administrators, successors, subsidiaries, affiliates, parent
20 companies, and assigns, and upon any corporation, partnership or other entity into or with which any
21 Party hereto may merge, combine, or consolidate.

22 **27. Counterparts.**

23 This Agreement may be executed in one or more counterparts by facsimile or electronic
24 signature which for purposes of this Agreement shall be accepted as an original. All executed
25 counterparts and each of them will be deemed to be one and the same instrument. Any executed
26 counterpart shall be admissible in evidence to prove the existence and contents of this Agreement.
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29. Governing Law.

This Settlement Agreement will be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California. The parties intend for this Agreement to be admissible and binding under California Code of Civil Procedure section 664.6.

This Settlement Agreement will be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California. The parties intend for this Agreement to be admissible and binding under California Code of Civil Procedure section 664.6.

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and will not be given weight in its construction.

Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than the contemplated Class Notice to the Class Members, must be in writing and mailed as follows:

32.2 To Defense Counsel, to the attention of: Scott Brutocao and Laura Fauber (contact information in Caption page, above).

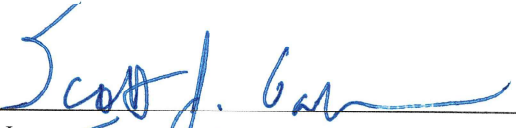
Plaintiff and Class Representative

By:  Montoya Fontenot (Apr 20, 2025 21:16 PDT)

Defendant LGI Realty—California, Inc

Dated: April 28, 2025

By:


Name: Scott J. Garber
Title: Authorized Signatory

APPROVED AS TO FORM:

Counsel for Plaintiffs and Proposed Class Counsel

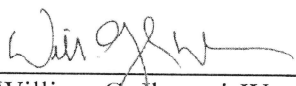
Dated: 17-Apr-2025

By:


Scott Stillman
Law Office of Scott Stillman

Dated: April 17, 2025

By:


William C. Jhaveri-Weeks
The Jhaveri-Weeks Firm, P.C.

Counsel for Defendant

Dated: April 24, 2025

By:


Scott Brutocao
Laura Fauber
Cornell Smith Mierl Brutocao Burton, LLP

EXHIBIT A

Fontenot v. LGI Realty—California, Inc.
Case No. 24CV012817
Superior Court of California, Sacramento County

If you worked for LGI Realty—California, Inc. as a New Home Consultant paid on a commission basis in California between March 21, 2020 and May 3, 2024, you are entitled to receive money from a class action settlement.

The California Superior Court, Sacramento County, authorized this Class Notice.
This is not a solicitation from a lawyer.

PLEASE READ THIS CLASS NOTICE CAREFULLY. THIS PROPOSED SETTLEMENT AFFECTS YOUR LEGAL RIGHTS.

- The parties in the above-entitled action have reached an agreement to resolve a class-action lawsuit, *Fontenot v. LGI Realty-California, Inc.* (the “Lawsuit”), which alleges that LGI Realty-California, Inc. (“Defendant”): (1) failed to provide Class Members with paid rest breaks, (2) failed to provide Class Members with off-duty meal breaks, (3) failed to pay Class Members at least minimum wage for all hours worked, (4) failed to pay overtime wages, (5) failed to issue accurate itemized wage statements, (6) failed to reimburse Class Members for necessary business expenses, and (7) failed to pay Class Members all wages owed upon discharge from employment. This agreement is referred to herein as the “Settlement.”
- The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant denies those claims and contends that it complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, [add name], about why you object to the Settlement, and they will forward your concerns to counsel who will provide them to the Court. If the Court approves the Settlement despite your objection(s), you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for DATE AND TIME in Department 23 of Sacramento County Superior Court.

- The Settlement fund will be used to settle claims of all Class Members. “Class Members” refers to all New Home Consultants paid on a commission basis in California during the period from March 21, 2020 through May 3, 2024 (“Class Period”). The amount of Class Members’ individual settlements will be calculated pro rata in proportion to the amount each Class Member was paid during the Class

Period. The Settlement fund will also be used to settle claims brought on behalf of the State of California under the Private Attorneys General Act (“PAGA”) with respect to all Class Members who worked during the period from June 26, 2023 through May 3, 2024 (“PAGA Period”).

- The Court has preliminarily approved this Settlement. A Final Approval hearing addressing the fairness, adequacy, and reasonableness of the Settlement is scheduled to be held on **FINAL APPROVAL HEARING DATE** to determine whether the Settlement should receive the Court’s final approval. That date is subject to possible change by the Court without further notice (see below for where to find more information).
- Lawyers for the Class Members will be asking the Court to award one-third (\$500,000) of the Gross Settlement Amount (\$1,500,000) as attorneys’ fees for investigating the facts, litigating the case, and negotiating the Settlement, as well as reasonable costs not to exceed \$20,000 incurred during the Lawsuit. They also will ask the Court to approve an incentive payment of \$10,000 to the named Plaintiff (*i.e.*, Class Representative) who assisted in litigating this case for the benefit of all Class Members.
- Any questions? Read on or visit www. .com.

BASIC INFORMATION

1. Why did I get this Class Notice package?

Defendant’s records show that you worked for Defendant in California as a New Home Consultant paid on a commission basis at some point between March 21, 2020 and May 3, 2024. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this Lawsuit about?

The Plaintiff in this Lawsuit, Montoya Fontenot, alleged that during the Class Period, Defendant violated California law by failing to provide Class Members with paid rest breaks, failing to provide them with off-duty meal breaks, failing to pay them at least minimum wage for all hours worked, failing to pay them overtime wages, failing to provide them with compliant wage statements, failing to reimburse them for necessary business expenses, and failing to pay them all wages owed at the time of discharge. Plaintiff also alleged that Defendant owed PAGA Penalties for those violations of California law during the PAGA Period. As noted above, Defendant denies each of these allegations and contends that Plaintiff’s claims have no merit. A copy of the most recent version of the Complaint (and other documents, as discussed below) may be found at www. .com.

3. Why is this a class action?

In a class action, one or more people called class representatives make allegations on behalf of other people who they allege have similar claims. All these people comprise a class and are referred to as class members, except for those who decide to exclude themselves from the class in response to the class notice. In a class action, one court resolves the issues for all class members in a single case.

4. Why is there a settlement?

The Parties disagree on the probable outcome of the case with respect to liability and damages. Plaintiff believes that the claims asserted against Defendant are valid and could be proved if the case went to trial. Defendant believes that Plaintiff's claims have no merit and that Plaintiff would not prevail if the case went to trial. Defendant further contends that, other than in the context of this Settlement, the case is not suitable for class treatment. The Court has not decided in favor of Plaintiff or Defendant. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption that are associated with continued litigation, and they have therefore chosen to resolve their differences by entering into this Settlement. The Parties entered into this Settlement after arm's length negotiations using the services of an experienced and neutral mediator.

5. What is a class action settlement?

In a class action, the Court must decide whether to grant final approval of the terms of the Settlement described below as fair and reasonable to the Class. Once approved, the Settlement will affect all Class Members who do not opt out. This Class Notice explains your legal rights, the terms of the Settlement, what you must do to participate or opt out, and the amount of money you may get. Please read this entire Class Notice carefully.

6. How do I know if I am a Class Member?

If you fit the following description, then you are a Class Member: All New Home Consultants who worked for Defendant in California and were paid on a commission basis at any time between March 21, 2020 and May 3, 2024.

7. Are there exceptions to being included?

You are not a Class Member if you do not meet the description in the preceding section. You can also choose to be excluded from this Settlement by opting out of this Settlement in the manner described below.

8. I'm still not sure if I am a Class Member. What should I do?

You may contact the Settlement Administrator for further information, or you may also contact Class Counsel at the phone number provided in Section 22 of this Notice. Or you can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you should contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you.

9. What does the Settlement provide?

The Parties have agreed to settle the Lawsuit for a "Gross Settlement Amount" of \$1,500,000. That amount will be reduced proportionately if eligible class members opt out. Once the opt-out process is complete, the Settlement is "non-reversionary," which means that the entire Gross Settlement Amount (reduced to account for any opt-outs) will be paid out, subject to various Court-approved deductions listed below in this Section, and none of the funds will revert to Defendant. In addition to the Gross Settlement Amount, Defendant will bear all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement. The Settlement Agreement also gives Defendant the right to void the agreement depending on the number or magnitude of Class Members who opt out. The Gross Settlement Amount shall be deemed in satisfaction of claims for: (1) unpaid wages, rest-break premiums, unreimbursed business expenses, waiting time penalties, other penalties, interest, and/or other amounts to

be paid to Class Members; (2) attorneys' fees not to exceed one-third of the Gross Settlement Amount and costs of Class Counsel not to exceed \$20,000; (3) a service payment not to exceed \$10,000 to the named Plaintiff; (4) all costs of third-party settlement administration not expected to exceed \$15,000; and (5) payment to the LWDA of \$9,750 as its share of \$15,000 allocated to penalties under PAGA (California Labor Code §§ 2698 *et seq.*).

10. Is it possible the Settlement will not go through?

It is possible that the Settlement that has been negotiated may be voided by Defendant if more than a certain number of Class Members opt out of the Settlement. Therefore, all statements made in this Notice are subject to this contingency. If the Settlement is voided, you will receive a notice from the Settlement Administrator informing you and the litigation would resume.

11. How will Settlement payments to Class Members be calculated?

The funds payable to Class Members will be divided up pro rata using the following formula:

From the Gross Settlement Amount, payments will be made to Class Counsel, the Class Representative, the LWDA for its share of PAGA Penalties, and the Settlement Administrator. What remains after these payments is called the "Net Settlement Amount." Its amount will depend on the final Court-approved amounts of the deductions just listed, as well as whether any Class Members opt out. In the case of opt-outs, the Gross Settlement Amount is reduced on a proportionate basis according to the amount of gross wages earned by the Class Members who opt out. The Net Settlement Amount shall be paid on a proportional basis to each Class Member based on the amount Defendant paid to each Class Member during the Class Period. In addition, the employees' share of PAGA Penalties included in the Net Settlement Amount will be paid on a proportional basis to each Class Member based on the amount Defendant paid to each Class Member during the PAGA Period.

12. How much will I get from the Settlement?

Defendant's records indicate that you were paid << >> as a New Home Consultant during the Class Period and << >> during the PAGA Period. Based on these records, your estimated settlement payment as a Class Member would be \$<<EstimatedAward>>, and your estimated PAGA payment will be \$<< >>.

Class Members who do not opt out will be paid their share of the Net Settlement Amount. One-third (33.33%) of each Settlement Payment will be designated as alleged unpaid wages, for which an IRS Form W-2 shall be issued. Two-thirds (66.67%) of each Settlement Payment will be designated as interest and penalties for which an IRS Form 1099 shall be issued as may be required. Class Members who opt out will still be paid their share of PAGA Penalties, for which an IRS Form 1099 shall be issued as may be required.

If you believe that you were paid a different amount (*i.e.*, a different total amount paid to you during the Class Period or the PAGA Period), you may dispute your Settlement Payment calculation by providing written documentation to the Settlement Administrator supporting your position on or before **[RESPONSE DEADLINE]**. Your dispute must contain: your full name, address, signature, last four digits of your Social Security number, and the case name and number, as well as facts supporting your dispute, along with any supporting materials confirming that the payment amounts attributed to you are incorrect. If you do not dispute your calculation and do not opt out of the Settlement, you will receive a Settlement Payment based on the above amounts and will be bound by the Settlement. The Settlement Administrator's determination of disputes will be final and non-appealable. **If you are a Class Member, you do not need to take any action to receive the Settlement Payment calculated as set forth above.**

13. When would I get my payment?

As set forth in Section 18, below, the Court will hold a hearing on [DATE OF FINAL APPROVAL] to decide whether to approve the Settlement. If the Court approves the Settlement, after that there may be appeals if anyone has filed a timely objection. It is always uncertain how and when objections and appeals will be resolved. To check on the progress of the Settlement, you may call the Settlement Administrator at XXX-XXX-XXXX, or contact Class Counsel (see Section 22, below, for contact info). *Please be patient.* Once you receive your check, you will have 180 days to cash it, after which time the check will be void.

14. What claims am I releasing if I participate in the Settlement?

Class Members who participate in the Settlement will release Defendant, and all of its predecessors, successors, affiliates, subsidiaries, parent companies, assigns, and related entities, and their respective officers, directors, shareholders, members, employees, administrators, fiduciaries, trustees, agents, and benefit plans (“Released Parties”) from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, actional or causes of action which are alleged, or could have been alleged based on the facts and claims asserted in the Complaint, and arising during the Class Period, including without limitation to, claims for restitution and other equitable relief, claims for unpaid wages, meal period penalties, rest break penalties, waiting time penalties, unfair business practices, failure to provide accurate wage statements, failure to reimburse business expenses, declaratory relief, injunctive relief, claims for penalties of any nature whatsoever arising out of the Released Claims, or any other benefit claimed on account of allegations and claims which could have been brought based on the allegations and claims asserted in the Complaint filed in this Lawsuit. This release shall apply to claims arising at any point during the Class Period. The release shall exclude claims for vested benefits, wrongful termination, unemployment insurance, disability, workers’ compensation, and claims outside of the Class Period. In addition, the claims of the LWDA for civil penalties under PAGA pertaining to all Class Members (including those who opt out) shall be released during the PAGA Period based on the claims asserted or other claims that could have been brought based on the facts alleged in the Plaintiff’s PAGA Notice.

15. Do I have a lawyer in this case?

The Court has appointed two law firms, The Law Office of Scott Stillman and The Jhaveri-Weeks Firm, P.C. (“Class Counsel”), to represent you and all the other Class Members in this Lawsuit. Class Counsel will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one, at your own expense, to enter an appearance on your behalf.

16. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of one-third of the Gross Settlement Amount (\$500,000) to them for attorneys’ fees, as well as costs in an amount not to exceed \$20,000. If Defendant discovers that there are more Class Members than currently understood, the Gross Settlement Amount, and the requested one-third attorneys’ fees award, may increase accordingly. The fees approved by the Court will pay Class Counsel for investigating the facts, litigating the case, and negotiating and finalizing the Settlement. Defendant has agreed not to oppose Class Counsel’s application for these fees and expenses. The Court may choose to award less than the amount requested by Class Counsel. The requested payments to the Representative Plaintiff and to the Settlement Administrator would also come from the balance of the Gross Settlement Amount, and must be approved by the Court.

17. How can I opt out of this Settlement?

You can opt out of this Settlement and retain your rights instead of receiving a payment under this Settlement. To do so, you must prepare and submit in writing a signed and dated statement that you want to be excluded from the Settlement. You must include: your full name, signature, address, last four digits of your Social Security number, the case name and the case number, and a clear statement that you seek to be excluded from the Settlement. Your written statement must be mailed to the Settlement Administrator, [Administrator], and be postmarked no later than [RESPONSE DEADLINE], or it will not be considered and you will still remain a Settlement Class Member and be bound by the Settlement. [Administrator's] address is listed in Section 23, below. You cannot opt out of the settlement of PAGA claims, so even if you opt out of this class action Settlement, you will still receive a payment for your share of PAGA penalties, if any, and the LWDA's claim for PAGA penalties pertaining to you will still be settled and released.

18. How do I tell the Court that I do not agree with the Settlement?

If you do not opt out, you can object to the Settlement if you do not agree with it. You should give reasons why you think the Court should not approve the Settlement and the Court will consider your views. To object, and to have the Court hear your views, you should send a letter saying that you object to the Settlement and give your reasons. Be sure to include your full name, address, last four digits of your Social Security number, case name and case number, and a clear statement of the reasons for your objection to the Settlement, and indicate whether you intend to appear at the Final Approval hearing. Your objection is to be mailed to the Settlement Administrator, [Administrator], and must be postmarked no later than [RESPONSE DEADLINE]. [Administrator's] address is listed in Section 23, below.

The Court will hold a hearing to decide whether to approve the Settlement. Regardless of whether you comply with the objection procedure in the preceding paragraph, the Court will generally hear from any class members who attend the final approval hearing and ask to speak regarding their objections.

19. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval hearing on [HEARING DATE] in Department 23 of the Sacramento County Superior Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections and they have been properly submitted, the Judge will consider them. The Judge will listen to people who attend the hearing and who do not opt out. The Court will also decide how much to award Class Counsel for their attorneys' fees and litigation costs. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long this decision will take. This hearing may be rescheduled by the Court without further notice to you. If you wish to confirm the date of the hearing, you may contact [Administrator] or Class Counsel, or view the Court's electronic docket for this case as explained below in Section 22.

You may attend the hearing in person or remotely using the following:

To join by Zoom link: - <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>

To join by phone: (833) 568-8864 / ID: 16108301121

20. Do I have to come to the hearing?

No. Class Counsel and LGI's counsel will answer any questions that the Judge may have. But you are welcome to attend. If you sent an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not required.

21. May I speak at the hearing?

The Court will generally permit Class Members to speak at the hearing. You may appear remotely as explained in Section 18. You cannot speak at the hearing if you have excluded yourself from the Settlement.

22. What happens if I do nothing at all?

You will be a member of the Settlement Class. You will receive a Settlement Payment calculated as explained in Section 11, above, and you will be bound by the release set forth in Section 13, above. Once the Settlement is finally approved by the Court, and the necessary deadlines have passed, you will be mailed your Settlement check.

GETTING MORE INFORMATION

23. Are there more details about the Settlement?

This Class Notice summarizes the proposed Settlement. You may call or contact the Settlement Administrator or Class Counsel if you would like more information about the Lawsuit. The Complaint, Motion for Preliminary Approval, and Settlement Agreement may be also obtained on the Settlement website here: url.com. The pleadings and other records in this Lawsuit may be examined online on the Sacramento County Superior Court's website at <https://www.saccourt.ca.gov/indexes/new-portal-info.aspx>. After arriving at the website, create a free account, login to your account, select "Searches," then "Case Number Search," and enter the case number (24cv012817). Images of every document filed in the case may be purchased at a minimal charge.

Class Counsel may be reached at:

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24. How do I get more information?

You may visit [www.\[website\]](http://www.[website]), call the Settlement Administrator at [\[Phone number\]](tel:[Phone number]), or Class Counsel above, or write to the Settlement Administrator at [\[mailing address\]](mailto:[mailing address]).

PLEASE DO NOT CONTACT THE COURT OR DEFENDANT WITH INQUIRIES.

EXHIBIT B

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Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

MONTOYA FONTENOT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

LGI REALTY – CALIFORNIA, INC., a
California corporation,

Defendant.

CASE NO. 24CV012817

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) **Failure to Authorize and Permit Paid Rest Breaks and Pay Premium Pay** (Cal. Lab. Code §§ 226.7, 1194, 1194.2; IWC Wage Order No. 4-2001 §§ 4, 12);
- (2) **Failure to Provide Off-Duty Meal Breaks and Pay Premium Pay** (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001 § 11);
- (3) **Failure to Pay at Least Minimum Wage for All Hours Worked** (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1; IWC Wage Order No. 4-2001 § 4)
- (4) **Failure to Pay Overtime** (Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001 § 3);
- (5) **Failure to Issue Accurate Itemized Wage Statements** (Cal. Lab. Code § 226(a), (e));
- (6) **Failure to Reimburse Business Expenses** (Cal. Lab. Code § 2802);
- (7) **Unfair, Unlawful, or Fraudulent Business Practices** (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and

- 1 (8) Civil Penalties Pursuant to Private
2 Attorneys General Act (Cal. Lab. Code
3 §§ 2698 *et seq.*).
4 (9) Waiting Time Penalties (Cal. Lab. Code §
5 203)

6 **DEMAND FOR JURY TRIAL**
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1 Plaintiff Montoya Fontenot (“Plaintiff”), on behalf of herself and all others similarly situated,
2 complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages
5 for unpaid wages, including unpaid overtime, unpaid time, and unpaid premium pay, as well as statutory
6 penalties, interest, restitution, and reasonable attorneys’ fees and costs under California Labor Code
7 (“Labor Code”) §§ 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Industrial
8 Welfare Commission Wage Order (“Wage Order”) No. 4-2001 §§ 3, 4, 11, 12, California Civil
9 Procedure Code § 1021.5, and restitution under California’s Unfair Competition Law (“UCL”),
10 Business & Professions Code §§ 17200 *et seq.* on behalf of Plaintiff and all other similarly situated
11 individuals employed by LGI Realty – California, Inc. (“LGI” or “Defendant”) as New Home
12 Consultants or similar positions in California (“Class Members”) from March 21, 2020 through May 3,
13 2024 (“Class Period”).¹ Defendant’s violations of California’s wage-and-hour and unfair competition
14 laws, as described more fully below, were ongoing throughout the Class Period.

15 2. Class Members sold homes for LGI out of offices located on LGI property development
16 communities. Until May 4, 2024, LGI paid Class Members as if they were exempt employees. LGI did
17 not track all their hours worked, and paid them a recoverable draw and commissions. However, during
18 the Class Period, Class Members were non-exempt employees because they did not fall within any
19 “white collar” exemption (they met neither the duties test nor the salary basis test), and they did not
20 qualify as exempt “outside salespersons” because they worked the majority of their time at Defendant’s
21 place of business (the LGI development where their office was located and where the homes they were
22 tasked with selling were located).

23 3. Class Members were therefore entitled to, but did not receive, separately paid rest breaks,
24 off-duty meal breaks, premium pay for missed rest and meal breaks, and accurate wage statements
25 containing their hours worked and hourly rates. As non-exempt employees, Class Members were
26 entitled to be paid for all hours worked, but their commission / recoverable draw pay structure

27 _____
28 ¹ Judicial Council of California Emergency Rule 9 tolled the statute of limitations from April 6, 2020,
until October 1, 2020, adding ninety-seven days to the four-year statute of limitations.

1 compensated them only for time spent selling, not time on rest breaks or time spent on other non-selling
2 tasks, such as the mandatory weekly sales training meeting that LGI required all Class Members to
3 attend.

4 4. After the Class Period, beginning May 4, 2024, Defendant ceased paying Class Members
5 as exempt employees and began paying them separately and hourly for all hours worked, but it did not
6 pay Plaintiff and Class Members the missed-break premiums and unpaid wages they were owed from
7 the Class Period.

8 5. Although Class Members were paid commissions, they did not fall within the
9 “commissioned pay” exception to the requirement to pay overtime wages because, in some or all weeks
10 throughout the Class Period, the requirements of the commissioned pay exception were not met,
11 including but not limited to the requirement that Class Members receive a draw equal to at least 1.5
12 times the minimum wage. Plaintiff and Class Members often worked overtime hours during the Class
13 Period, but they were never paid overtime wages. After the Class Period, effective May 4, 2024,
14 Defendant began paying overtime, but it did not pay Plaintiff and Class Members their unpaid overtime
15 during the Class Period.

16 6. This action is also brought on behalf of a subclass comprised of Plaintiff and Class
17 Members who are or have been employed by Defendant during the one year prior to the filing of the
18 Complaint through to the trial date (“Wage Statement Subclass Period”) for statutory penalties and
19 reasonable attorneys’ fees and costs pursuant to Labor Code § 226(a), (e), and (h) (“Wage Statement
20 Subclass”). During the Wage Statement Subclass Period, Defendant knowingly and intentionally failed
21 to furnish Plaintiff and Wage Statement Subclass Members with accurate itemized wage statements by
22 failing to include on their wage statements information including but not limited to: the total number of
23 hours worked; all applicable hourly rates and the corresponding number of hours worked at each rate;
24 and rate of compensation and gross wages earned for the rest periods. Plaintiff and Wage Statement
25 Subclass Members suffered injury as a result of Defendant’s violations of Labor Code § 226(a) for
26 purposes of Labor Code § 226(e). As a result, Wage Statement Subclass Members are entitled to
27 statutory penalties as provided for under Labor Code § 226(e) and reasonable attorneys’ fees and costs.
28

7. Defendant required Plaintiff and Class Members to have a car less than five years old and to use that car for work purposes, but did not, at times during the Class Period reimburse Class Members for car expenses (after the Class Period, Defendant began reimbursing for mileage). Defendant also required Plaintiff and Class Members to use their personal cell phones to perform their job duties but did not reimburse Class Members for the monthly cost of cell phone use. Although Defendant changed its policy effective May 4, 2024, it did not reimburse Class Members for expenses incurred prior to that date. Defendant's failure to reimburse Plaintiff and Class Members for these necessarily incurred business expenses violated Labor Code § 2802.

8. As a result of the above Labor Code violations, Defendant committed unfair, unlawful, and/or fraudulent business practices, in violation of the UCL.

9. Plaintiff also brings this action as a representative under the California Labor Code's Private Attorneys General Act ("PAGA"), Labor Code §§ 2698 *et seq.*, for civil penalties on behalf of herself and all other similarly situated individuals employed by Defendant as New Home Consultants or similar positions in California during the PAGA Period ("Aggrieved Employees"), for the Labor Code and Wage Order violations alleged herein, specifically Labor Code §§ 226(a), 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and Wage Order No. 4-2001, §§ 3, 4, 11, and 12.

10. The “PAGA Period” is from June 26, 2023, through May 3, 2024.

PARTIES

11. Plaintiff Fontenot is a resident of Stockton, California who was employed by Defendant in Sacramento and San Joaquin Counties, California, as a New Home Consultant throughout the Class Period. Throughout the Class Period, Plaintiff was subject to Defendant's unlawful conduct described herein.

12. LGI Realty – California, Inc. is a California corporation that employed Plaintiff and other Class Members in California to sell homes in residential developments built by the LGI family of companies. Class Members worked out of sales offices at LGI community developments.

JURISDICTION

13. This Court has jurisdiction over Plaintiff's and Class Members' claims for failure to pay separately and hourly for rest break time and/or failure to permit and authorize timely paid off-duty rest

breaks, and failure to pay premium pay for missed rest breaks pursuant to Labor Code §§ 226.7, 1194 and Wage Order No. 4-2001 §§ 4, 12.

14. This Court has jurisdiction over Plaintiff's and Class Members' claims for failure to provide compliant off-duty meal periods, and failure to pay premium pay for missed meal breaks pursuant to Labor Code §§ 226.7, 512 and Wage Order No. 4-2001 §§ 4, 11.

15. This Court has jurisdiction over Plaintiff's and Class Members' claims for failure to pay at least minimum wage for all hours worked pursuant to Labor Code §§ 1197 and 1197.1 and Wage Order No. 4-2001 § 4.

16. This Court has jurisdiction over Plaintiff's and Class Members' claims for failure to pay overtime wages pursuant to Labor Code §§ 510, 1194, 1198, and Wage Order No. 4-2001 § 3.

17. This Court has jurisdiction over Wage Statement Subclass Members' claims for failure to issue accurate itemized wage statements under Labor Code § 226(a).

18. This Court has jurisdiction over Plaintiff's and Class Members' claims for reimbursement of necessary business expenses under Labor Code § 2802.

19. This Court has jurisdiction over Plaintiff's and Class Members' claims for waiting time penalties under Labor Code § 203.

20. This Court has jurisdiction over the claims for restitution arising from Defendant's violations of Labor Code §§ 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 2802, Wage Order No. 4-2001 §§ 3, 4, 11, 12, and under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

21. This Court has jurisdiction over claims for attorney's fees and costs, including pursuant to Labor Code §§ 226(e), 1194, 2802, and Cal. Civ. Proc. Code § 1021.5, among others.

22. This Court has jurisdiction over the claims for declaratory relief under the UCL, Bus. & Prof. Code §§ 17200 *et seq.*

23. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code §§ 2698 *et seq.* On June 26, 2024, Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any of the claims alleged in the PAGA Notice. Defendant did not provide

1 notice pursuant to Labor Code § 2699.3(c)(2)(A) or any other notice that would prevent Plaintiff from
2 pursuing civil penalties. Plaintiff has therefore fully complied with the PAGA procedural requirements
3 and may commence this representative action pursuant to Labor Code §§ 2698 *et seq.*

4 **VENUE**

5 24. Venue is proper in the County of Sacramento pursuant to Cal. Code of Civ. Proc.
6 § 395(a). Defendant is a California corporation with its California office address in Sacramento,
7 according to its filings with the Secretary of State. Defendant employed Class Members throughout the
8 state of California. LGI committed the unlawful acts alleged herein against Plaintiff and other Class
9 Members in this County.

10 **FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS**

11 ***A. Defendant's Business and Class Members' Role in Business Operations***

12 25. LGI sells homes in housing developments that are developed and owned by LGI or a
13 corporate affiliate. Throughout the Class Period, LGI employed Plaintiff and the Class Members as
14 New Home Consultants who were stationed at particular LGI developments and whose primary duty
15 was to sell the homes in that development to consumers. Class Members spent the majority of their
16 working time at the LGI development where they were employed. The facility in which they worked
17 was owned and controlled by LGI and/or its corporate affiliates.

18 ***B. Class Members Were Non-Exempt Employees***

19 26. During the Class Period, Class Members were paid entirely on a commission basis with a
20 recoverable draw, except during an introductory training period when they were paid hourly.

21 27. During the Class Period, Class Members were not covered by any of the “white collar”
22 exemptions for multiple reasons: (1) they were not paid a “salary” for purposes of those exemptions
23 and, separately and independently (2) their duties did not satisfy any of those exemptions. *See* Wage
24 Order No. 4-2001 § 1(A).

25 28. In addition, Class Members did not qualify for the “outside sales” exemption because
26 they spent the majority of their working time at LGI’s place of business – the community developments
27 owned and controlled by LGI and/or its corporate affiliates. *Id.* § 1(C); 2(M).

1 **C. Defendant's Compensation Practices Applicable to Class Members Violated California's**
2 **Minimum Wage, Overtime, and Meal and Rest Break Laws**

3 29. After an introductory training period during which LGI paid Class Members on an hourly
4 basis, LGI paid them a commission equal to a percentage of the home sales they closed. LGI also paid
5 Class Members a recoverable draw, which was paid bi-weekly at the rate of approximately \$1,923.08.
6 When Class Members closed a sale, they would not receive commission from the sale until the draw had
7 been repaid. LGI also paid Class Members non-discretionary bonuses if Class Members sold a certain
8 number of homes in a given year.

9 30. LGI did not track Class Members' actual hours worked during the Class Period.
10 Although LGI had Class Members submit daily timesheets with when they came to and left the office,
11 Class Members did not track any of their time outside of those hours, and they were not paid based on
12 the hours they worked. LGI's timesheets included boxes to check stating that the Class Member had
13 taken rest breaks and a meal break, but Class Members' pay did not change depending on whether or
14 not they checked those boxes, and Plaintiff's understanding was that she was required to sign the forms
15 to be paid. LGI had no policy entitling Class Members to rest breaks, and LGI did not provide rest
16 breaks. LGI supervisors signed the forms knowing that Class Members had not taken rest breaks. But
17 regardless of whether Class Members took rest breaks, such breaks were not "paid" rest breaks because
18 Class Members could not earn commissions while they were on a rest break. *See Vaquero v. Stoneledge*
19 *Furniture, LLC*, 9 Cal.App.5th 98 (2017). After the introductory hourly period, LGI did not pay Class
20 Members hourly or separately for rest breaks. Because of its failure to compensate Class Members for
21 rest break time, LGI owes a missed break premium for every rest break that was required, whether the
22 break was taken or not. In addition, because there was no rest break policy, and because Class Members
23 were busy attempting to make sales, they rarely took 10-minute uninterrupted rest breaks.

24 31. During the Class Period, Class Members worked at least 3.5 hours or more straight, and
25 Class Members were entitled to a 10-minute paid rest break for every 3.5 hours of continuous work.
26 Defendant knew or should have known that Class Members worked 3.5 hours or more on any given day
27 and did not receive compliant, separately compensated rest breaks.

28 32. LGI also had no policy entitling Class Members to 30-minute uninterrupted meal breaks.
Class Members often could not or did not take 30-minute meal breaks because they were required to be

1 available at the sales office to take sales calls and meet with potential customers. Upon information and
2 belief, Class Members were instructed to write on their time sheets that they had taken a 30-minute
3 lunch break whether they had done so or not. During the Class Period, Class Members worked at least 5
4 hours or more straight, and Class Members were entitled to a 30-minute meal break. Defendant knew or
5 should have known that Class Members worked 5 hours or more on any given day and did not receive
6 an off-duty meal break. Supervisors signed the daily time sheets knowing that Class Members had not
7 taken compliant meal breaks.

8 33. LGI required Class Members to spend time on tasks other than selling, including
9 participating in a lengthy mandatory sales training meeting every week at every location in California.
10 This was a Company-wide policy. LGI did not separately compensate for this and other non-selling
11 time, and Class Members could not earn sales commission during those non-selling times. *See Vaquero*
12 *v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98 (2017).

13 34. Class Members regularly worked over eight hours in a day. For example, on Thursdays,
14 all Class Members were generally required to stay until 8:00 p.m., including Class Members who had
15 “opened” the office at 8:30 a.m. On Saturdays, Class Members were generally required to stay until
16 8:00 p.m. (or, during part of the Class Period, 7:30 p.m.), including Class Members who had “opened”
17 the office at 8:30 a.m. On the day of a “grand opening” or “community opening,” Class Members
18 would sometimes work until 11:00 p.m. In addition, Class Members worked as needed outside of in-
19 the-office hours communicating with customers, real estate agents, and their own managers, often
20 resulting in overtime work. Class Members did not fall within the overtime exception for commissioned
21 sales employees. Wage Order No. 4-2001 § 3(D) says that “[t]he [requirement to pay overtime] shall
22 not apply to any employee whose earnings exceed one and one-half (1½) times the minimum wage if
23 more than half of that employee’s compensation represents commissions.” Every workweek must stand
24 alone for purposes of minimum wage computation, and later commission payments cannot be used to
25 make up the “1.5x” requirement in prior workweeks. *See Peabody v. Time Warner Cable, Inc.*, 59 Cal.
26 4th 662 (2014). Because of the number of hours Plaintiff and Class Members worked, their
27 compensation in some weeks during the Class Period was not equal to 1.5x the minimum wage for each
28 hour worked.

1 ***D. Defendant's Compensation Practices Resulted in Failure to Issue Accurate Itemized Wage***
2 ***Statements***

3 35. During the Wage Statement Subclass Period, Defendant failed to issue accurate itemized
4 wage statements to Plaintiff and Wage Statement Subclass Members. Because Plaintiff and Wage
5 Statement Subclass Members were non-exempt employees, under Labor Code § 226(a), Defendant was
6 required but failed to furnish them with wage statements containing entries for, among other things, the
7 total hours worked by the employee, and all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee.

9 36. Defendant issued wage statements that included lump sum payments for draw and
10 commission (and occasionally bonuses) without breaking down hours worked, hourly rates, or
11 corresponding number of hours worked at each hourly rate. During the Wage Statement Subclass
12 Period, Plaintiffs' wage statements included the headings "hours" and "rate," but these columns were
13 left blank on the wage statements.

14 37. Defendant's practices of furnishing Plaintiff and Wage Statement Subclass Members
15 incomplete and/or inaccurate wage statements in violation of Labor Code § 226(a) was not an isolated
16 and unintentional payroll error due to a clerical or inadvertent mistake, but rather was willful and
17 intentional and the result of Defendant's regular compensation policies.

18 38. Plaintiff and Wage Statement Subclass Members could not promptly and easily
19 determine from the wage statements alone, without reference to other documents or information,
20 including wage statements from previous pay periods, their regular hourly rate, the total hours worked at
21 that rate, or the total hours worked during a pay period. As a result, Plaintiff and Wage Statement
22 Subclass Members suffered injury for the purposes of Labor Code § 226(e).

23 ***E. Defendant Failed to Reimburse Class Members for Necessary Business Expenses***

24 39. Defendant required Class Members to obtain a car no older than five years so the Class
25 Members could drive to the various homes within the LGI Community. Communities could be very
26 large, and having a car was necessary to drive from the office to the homes the Class Member was
27 showing to customers. Class Members would also have to drive outside of the community to show
28 customers community amenities, and would have to drive to various work meetings off-site. At some

1 point during the Class Period, Defendant began providing a car allowance, but prior to that point, this
2 expense was not reimbursed.

3 40. Defendant also required Class Members to use their personal cell phones for work. This
4 was necessary because Class Members had to speak on the phone with customers, real estate agents, and
5 managers on their days off and in the evenings as needed. For example, managers would contact Class
6 Members outside of their office hours and instruct them to send documents needed to move potential
7 deals forward (for example, a price sheet, disclosure, or amendment), and Class Members would use
8 their personal cell phones to send emails and make calls. At some point during the Class Period,
9 Defendant began reimbursing for cell phone use, and starting after the Class Period, Defendant began
10 reimbursing Class Members \$100/month for “business expenses,” but Defendant did not reimburse
11 monthly cell phone expenses throughout much of the Class Period.

12 41. Defendant’s failure to reimburse Class Members for these costs violated Labor Code
13 § 2802.

14 ***F. Defendant’s Labor Code Violations Were Unfair Business Practices Under the UCL***

15 42. Throughout the Class Period, Defendant has adopted and used unfair and/or unlawful
16 business practices to reduce Class Members’ compensation and increase profits. These practices
17 include failing to pay Class Members for non-selling time, including during rest breaks, failing to pay
18 premiums for non-compliant rest and meal breaks, failing to pay wages for all hours worked, failing to
19 pay overtime wages, and failing to reimburse Class Members for necessary business expenses.

20 ***G. Defendant Failed to Pay All Wages Due at Discharge***

21 43. As a result of the above violations, Defendant failed to pay Class Members all amounts
22 due at the time of discharge, in violation of Labor Code § 203.

23 **CLASS ACTION ALLEGATIONS**

24 44. Plaintiff brings this class action pursuant to Cal. Code of Civ. Proc. § 382 on behalf of
25 the Class and the Wage Statement Subclass. Upon information and belief, there are approximately at
26 least fifty Class Members and approximately at least thirty-five Wage Statement Subclass Members.
27 The members of the Class and Subclass are so numerous that joinder of all members is impractical.
28

1 45. Plaintiff's claims are typical of the claims of the members of the Class and Subclass
2 because Plaintiff was a New Home Consultant who was paid in the same way as the other Class
3 Members and who suffered the same alleged pay violations as the rest of the Class and Subclass, as
4 detailed above.

5 46. Plaintiff will fairly and adequately represent the interests of the Class and Subclass.
6 Plaintiff has no conflict of interest with any member of the Class or Subclass. Plaintiff has retained
7 competent and experienced counsel in complex class action litigation. Plaintiff's counsel have the
8 expertise and financial resources to adequately represent the interests of the Class and Subclass.

9 47. Common questions of law and fact exist as to all members of the Class and the Subclass
10 and predominate over any questions solely affecting individual members of the Class and Subclass.
11 Among the questions of law and fact common to Plaintiff, the Class, and the Subclass are the following:

- 12 a. Whether Class Members were exempt or not from the meal and rest break requirements,
13 overtime requirement, and requirement to pay at least minimum wage for all hours
14 worked under the Labor Code and Wage Order;
- 15 b. Whether Class Members were entitled to separate and hourly pay for non-selling time,
16 including but not limited to rest periods and sales training meetings, pursuant to *Vaquero*
17 *v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98 (2017) and authorities therein.
- 18 c. Whether Defendant is liable for liquidated damages to Class Members under Labor Code
19 §§ 1194.2 and 1197.1 for failure to pay for non-selling time;
- 20 d. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001 § 12 by
21 failing to pay one hour of premium pay to each Class Member for each day that a compliant
22 rest period was not provided;
- 23 e. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001 § 11 by
24 failing to pay one hour of premium pay to each Class Member for each day that a compliant
25 meal period was not provided;
- 26 f. Whether Class Members were paid in a way that satisfies the exemption from overtime pay
27 requirements for certain employees paid on a commission basis;

- g. Whether Defendant failed to establish and/or implement policies applicable to Class Members regarding tracking hours worked and meal and rest breaks;
- h. Whether Defendant violated Labor Code § 226(a) by failing to issue itemized wage statements to Wage Statement Subclass Members;
- i. Whether Defendant's violations of Labor Code § 226(a) were knowing and intentional;
- j. Whether Wage Statement Subclass Members suffered injury for the purposes of Labor Code § 226(e);
- k. Whether Defendant violated Labor Code § 2802 by failing to reimburse Class Members for necessary business expenses;
- l. Whether Defendant had an unlawful policy requiring Class Members, at their own expense, to use a car meeting certain requirements for work purposes;
- m. Whether Defendant owes waiting time penalties for failing to pay the wages sought herein at the time of discharge pursuant to Labor Code § 203.
- n. Whether Plaintiff and Class Members are entitled to restitution under Bus. & Prof. Code §§ 17200 *et seq.* for uncompensated hours worked, uncompensated rest periods, unpaid premium pay, unpaid overtime, and unreimbursed business expenses;
- o. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff, the Class, and the Subclass; and
- p. Whether the Class is entitled to declaratory relief.

48. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Class Members are readily identifiable from Defendant's employee rosters and/or payroll records.

1 compensation for every day during which they worked at least 3.5 hours while being paid on a
2 commission/draw basis.

3 56. Labor Code § 1194(a) provides, in relevant part:

4 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
5 than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil
6 action the unpaid balance of the full amount of this minimum wage . . . including interest
7 thereon, reasonable attorney’s fees, and costs of suit.”

8 57. Labor Code § 1194.2 provides, in relevant part:

9 “In any action under Section . . . 1194 . . . to recover wages because of the payment of a
10 wage less than the minimum wage fixed by an order of the commission or by statute, an
11 employee shall be entitled to recover liquidated damages in an amount equal to the wages
12 unlawfully unpaid and interest thereon.”

13 58. Therefore, in addition to or in the alternative to an hour’s premium pay for each day
14 when Plaintiff and Class Members worked at least 3.5 hours while being paid on a commission/draw
15 basis, they are entitled to recover minimum wage, plus liquidated damages in an additional amount
16 equal to the total amount of applicable minimum wages unlawfully withheld during the Class Period for
17 Class Members’ rest period time.

18 59. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
19 below.

20 **SECOND CAUSE OF ACTION**

21 **Failure to Provide Off-Duty Meal Breaks and Pay Premium Pay** 22 **[Labor Code §§ 226.7 and 512; Wage Order No. 4-2001 § 11]**

23 60. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
24 the preceding paragraphs.

25 61. Labor Code § 512 states that “[a]n employer shall not employ an employee for a work
26 period of more than five hours per day without providing the employee with a meal period of not less
27 than 30 minutes.” Wage Order No. 4-2001 § 11 includes the same requirement. Under the Wage Order,
28 “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be
considered an ‘on duty’ meal period and counted as time worked.” *Id.* In any day during which a
required meal break is not provided, the employer must pay a premium of an hour’s pay at the
employee’s regular rate of compensation. *See* Labor Code § 226.7; Wage Order No. 4-2001 § 11.

62. Because Defendant misclassified Plaintiff and the Class as non-exempt employees, Defendant did not ensure that they received compliant meal breaks. Plaintiff and the Class were rarely relieved of all duty for a 30-minute meal period when working more than five hours in a day.

63. As a result, Defendant was required but failed to pay premium pay pursuant to Labor Code § 226.7 and Wage Order No. 4-2001 § 11.

64. Plaintiff, on behalf of herself and all other Class Members, requests relief as described below.

THIRD CAUSE OF ACTION

Failure to Pay at Least Minimum Wage for All Hours Worked
[Labor Code §§ 1194, 1194.2, 1197, 1197.1; Wage Order No. 4-2001 § 4]

65. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

66. Labor Code § 1194 provides, in relevant part: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage [...], including interest thereon, reasonable attorney’s fees, and costs of suit.”

67. Labor Code § 1194.2 provides, in relevant part: “In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

68. Wage Order No. 4-2001 § 4(B) provides, in relevant part: “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period...”

69. As set forth above, during the Class Period, Plaintiff and Class Members were required, as part of their job duties, to attend regular, lengthy, weekly sales training meetings every week, in addition to other non-selling work. Plaintiff and Class Members were not able to earn commissions while performing such work, and commission (advanced in part as a recoverable draw) was the only compensation they received. Therefore, they did not receive compensation for their non-selling work.

1 70. Accordingly, pursuant to Labor Code §§ 1194 and 1194.2 and Wage Order No. 4-2001 §
2 4, Plaintiff and Class Members are entitled to recover their unpaid wages, plus liquidated damages in an
3 additional amount equal to the total wages unlawfully withheld during the Class Period.

4 71. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
5 below.

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Pay Overtime**

8 **[Labor Code §§ 510, 1194, 1198; Wage Order No. 4-2001 § 3]**

9 72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
10 the preceding paragraphs.

11 73. Because Defendant misclassified Plaintiff and the Class as non-exempt employees,
12 Defendant did not track all of their hours or pay them overtime wages when they worked over eight
13 hours in a day or forty hours in a week.

14 74. Under California Labor Code §§ 510, 1194, 1198 and Wage Order No. 4-2001 § 3,
15 Defendant was required to pay Plaintiff and Class Members overtime wages for any work in excess of
16 eight hours in a day or forty hours in a week.

17 75. Plaintiff and Class Members worked more than eight hours in a day or forty hours in a
18 week to carry out their duties, but Defendant did not pay them overtime wages. Defendant knew Class
19 Members were working more than eight hours in a day or forty hours in a week.

20 76. Defendant will not be able to establish that Plaintiff and Class Members fell within the
21 overtime exemption for certain commissioned employees. Among other potential reasons, the number
22 of hours Plaintiff and Class Members worked in some weeks during the Class Period meant that their
23 hourly pay was equal to less than 1.5 times the minimum wage in those weeks.

24 77. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
25 below.

26 **FIFTH CAUSE OF ACTION**

27 **Failure to Issue Accurate Itemized Wage Statements**

28 **[Labor Code § 226(a), (e)]**

 78. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
the preceding paragraphs.

1 79. During the Wage Statement Subclass Period, Defendant failed to furnish Plaintiff and
2 Wage Statement Subclass Members with accurate itemized wage statements containing required
3 information, including total hours worked by the employee, all applicable hourly rates in effect during
4 the pay period, and the corresponding number of hours worked at each hourly rate by the employee, in
5 violation of Labor Code § 226(a).

6 80. Defendant's failure to furnish accurate itemized wage statements to Plaintiff and Wage
7 Statement Subclass Members was knowing and intentional.

8 81. Wage Statement Subclass Members suffered injury as a result of Defendant's knowing
9 and intentional failure to comply with Labor Code § 226(a).

10 82. Pursuant to Labor Code § 226(e), Plaintiff and Wage Statement Subclass Members are
11 entitled to recover \$50 for each initial pay period with a violation and \$100 for each subsequent pay
12 period with a violation up to an amount not exceeding an aggregate penalty of \$4,000 for each Wage
13 Statement Subclass Member.

14 83. Plaintiff, on behalf of herself and all other Wage Statement Subclass Members, requests
15 relief as described below.

16 **SIXTH CAUSE OF ACTION**
17 **Failure to Reimburse Business Expenses**
 [Labor Code § 2802]

18 84. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
19 preceding paragraphs.

20 85. Under Labor Code § 2802, "[a]n employer shall indemnify his or her employee for all
21 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
22 or her duties."

23 86. Defendant did not reimburse Plaintiff and Class Members for necessary business expenses,
24 including but not limited to the expenses of providing a new car and a personal cell phone, in violation of
25 Labor Code § 2802.

26 87. Defendant required Class Members to incur these expenses to perform their duties.

27 88. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
28 below.

SEVENTH CAUSE OF ACTION
Violation of Unfair Competition Laws
[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

89. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

90. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards. Through its actions alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's conduct has violated state wage and hour laws as herein described.

91. Throughout the Class Period, Defendant committed acts of unfair competition, as defined in the UCL, by failing to pay Class Members separately and hourly for rest breaks and other non-selling time, failing to authorize and permit compliant meal and rest periods, failing to pay overtime wages when owed, and failing to reimburse necessary business expenses, in violation of Labor Code §§ 226.7, 510, 512, 1194, 1198, 2802 and Wage Order No. 4-2001 §§ 4, 11, 12.

92. By its actions and omissions, Defendant has substantially injured Plaintiff and Class Members. Defendant's conduct as herein alleged has damaged Plaintiff and Class Members and was substantially injurious to them.

93. The harm to Plaintiff and Class Members resulting from Defendant's Labor Code violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

94. Plaintiff, on behalf of herself and all other Class Members, requests relief as described below.

EIGHTH CAUSE OF ACTION
PAGA Civil Penalties
[Labor Code §§ 2698 *et seq.*]

95. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

96. Plaintiff is an “Aggrieved Employee” under the PAGA because she was employed by Defendant during the applicable statutory period and suffered each of the Labor Code violations alleged herein. As such, Plaintiff seeks to recover, on behalf of herself and all other similarly situated individuals employed by Defendant as New Home Consultants or similar positions in California during the PAGA Period (“Aggrieved Employees”), civil penalties under the PAGA, plus reasonable attorneys’ fees and costs.

97. Plaintiff seeks to recover PAGA penalties through a representative action as permitted by the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

98. Plaintiff seeks PAGA penalties on behalf of herself and Aggrieved Employees against Defendant for the following violations:

Rest Break Claims

99. During the PAGA Period, Defendant failed to authorize and permit paid rest breaks and pay premiums for missed rest breaks when Aggrieved Employees worked at least 3.5 hours or more in a row, in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

100. Commission pay only compensated Aggrieved Employees for time spent selling. Therefore, Aggrieved Employees did not receive any “paid” rest breaks at all. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98. Even if commission pay were considered “pay” for rest breaks, which it is not, Aggrieved Employees were not relieved of all duty for the required periods of time when rest breaks should have been provided. For example, Aggrieved Employees were required to be available for potential customers who walked in or called throughout the day.

101. As a result, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one hundred dollars (\$100) per employee per pay period for each violation, or two hundred dollars (\$200)

1 per employee per pay period for each violation if the evidence establishes that Defendant's conduct
2 giving rise to the violation was malicious, fraudulent, or oppressive.

3 ***Meal Break Claims***

4 102. During the PAGA Period, Defendant failed to provide compliant meal breaks and pay
5 premiums for missed meal breaks when Aggrieved Employees worked at least 5 hours or more in a row,
6 in violation of Labor Code §§ 226.7, 512 and Wage Order No. 4-2001 § 11.

7 103. Defendant was required, but failed, to provide Aggrieved Employees with 30-minute
8 uninterrupted meal breaks. However, Aggrieved Employees often ate at work and continued working
9 through lunch, or otherwise were not provided with uninterrupted 30-minute meal breaks.

10 104. As a result, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one
11 hundred dollars (\$100) per employee per pay period for each violation, or two hundred dollars (\$200)
12 per employee per pay period for each violation if the evidence establishes that Defendant's conduct
13 giving rise to the violation was malicious, fraudulent, or oppressive.

14 ***Minimum Wage Claims***

15 105. During the PAGA Period, Defendant failed to pay Aggrieved Employees at least
16 minimum wage for all hours worked, in violation of Labor Code § 1194 and Wage Order No. 4-2001
17 § 4.

18 106. By paying Aggrieved Employees only commission pay, Defendant failed to pay
19 Aggrieved Employees anything for time when they were working but could not earn commissions. This
20 time included, but was not limited to, time spent in weekly sales meetings that all Aggrieved Employees
21 were required to attend. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98.

22 107. As a result, under Labor Code § 2699(a) Aggrieved Employees are entitled to one
23 hundred dollars (\$100) per employee per pay period for each initial violation and two hundred fifty
24 dollars (\$250) per employee per pay period for each subsequent violation, in accordance with Labor
25 Code § 1197.1(a)(1)-(2). In the alternative, under Labor Code § 2699(f)(2), Aggrieved Employees are
26 entitled to one hundred dollars (\$100) per employee per pay period for each violation, or two hundred
27 dollars (\$200) per employee per pay period for each violation if the evidence establishes that
28 Defendant's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

1 ***Overtime Claims***

2 108. During the PAGA Period, Defendant failed to pay Aggrieved Employees overtime wages
3 when they worked more than 8 hours in a day and/or more than 40 hours in a week, in violation of
4 Labor Code §§ 510, 1194 and Wage Order No. 4-2001 § 3.

5 109. For example, on certain days, Aggrieved Employees would be scheduled to “open” the
6 sales office early in the morning, and they would be required to work until late in the evening.
7 Aggrieved Employees also worked on their days off from home, resulting in overtime work.

8 110. As a result of Defendant’s violation of the requirement to pay overtime, it is liable under
9 Labor Code § 558 for penalties amounting to fifty dollars (\$50) for each underpaid Aggrieved
10 Employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100)
11 for each underpaid employee for each pay period for which the employee was underpaid for each
12 subsequent violation. Alternatively, as a result of Defendant’s violation of Labor Code §§ 1194 and
13 510, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one hundred dollars (\$100)
14 per employee per pay period for each violation, or two hundred dollars (\$200) per employee per pay
15 period for each violation if the evidence establishes that Defendant’s conduct giving rise to the violation
16 was malicious, fraudulent, or oppressive.

17 ***Wage Statement Claims***

18 111. During the PAGA Period, Defendant was required but failed to furnish Aggrieved
19 Employees with wage statements containing the total hours worked by the employee, all applicable
20 hourly rates in effect during the pay period, and the corresponding number of hours worked at each
21 hourly rate by the employee, in violation of Labor Code § 226(a).

22 112. Defendant furnished Aggrieved Employees with wage statements that had blanks in the
23 spaces for “hours” and “rate.” Defendant did not track Aggrieved Employees’ hours worked because it
24 misclassified them as exempt. Therefore, throughout the PAGA Period, Defendant failed to keep the
25 records required in Labor Code § 226(a).

26 113. As a result, under Labor Code § 2699(a), Aggrieved Employees are entitled to two
27 hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per
28 employee per subsequent violation, in accordance with Labor Code § 226.3. Alternatively, Aggrieved

1 Employees are entitled to the default PAGA penalty under Labor Code § 2699(f)(2) of one hundred
2 dollars (\$100) per employee per pay period for each violation, or two hundred dollars (\$200) per
3 employee per pay period for each violation if the evidence establishes that Defendant's conduct giving
4 rise to the violation was malicious, fraudulent, or oppressive.

5 **NINTH CAUSE OF ACTION**

6 **Waiting Time Penalties**
7 **[Labor Code § 203]**

8 114. Plaintiff realleges and incorporates herein the foregoing Paragraphs.

9 115. Pursuant to Labor Code §§ 201 and 202, an employer is required to pay an employee all
10 outstanding wages owed at the time of discharge of employment. As a derivative of the above causes of
11 action, wages were owed to Plaintiff and Class Members at their time of discharge, but Defendant failed
12 to pay such wages in full.

13 116. As a result, Defendant owes waiting time penalties under Labor Code § 203. Such
14 penalties are equal to thirty days' wages for each discharged Class Member.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff, on behalf of herself and the Class, prays for the following relief:

17 A. An Order that this action may proceed and be maintained as a class action, with the Class
18 and Subclass as designated and defined in this Complaint, and that Plaintiff and her counsel be certified
19 as representatives and counsel for the Class and Subclass, respectively.

20 B. On the First Cause of Action: That the Court find and declare that Defendant violated
21 Labor Code §§ 226.7, 1194, 1194.2 and Wage Order No. 4-2001 §§ 4, 12 by failing to provide Plaintiff
22 and Class Members with paid rest breaks and award them rest break premiums for each day in which a
23 compliant rest break was not provided; or, in the alternative, the amount of their unpaid minimum wages
24 plus liquidated damages in an additional amount equal to the amount of wages unlawfully withheld
25 during the Class Period, as well as reasonable attorneys' fees and costs.

26 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
27 Labor Code §§ 226.7, 512, and Wage Order No. 4-2001 § 11 by failing to provide Plaintiff and Class
28 Members with compliant meal periods, and award Plaintiff and the Class unpaid premium pay for
missed meal periods, as well as reasonable attorneys' fees and costs.

1 D. On the Third Cause of Action: That the Court find and declare that Defendant violated
2 Labor Code §§ 1194, 1194.2, and Wage Order No. 4-2001 § 4 by failing to provide Plaintiff and Class
3 Members with compensation for required non-selling work, including but not limited to their
4 participation in weekly sales training meetings, and award Plaintiff and the Class the amount of their
5 unpaid minimum wages plus liquidated damages in an additional amount equal to the amount of wages
6 unlawfully withheld during the Class Period, as well as reasonable attorneys' fees and costs.

7 E. On the Fourth Cause of Action: That the Court find and declare that Defendant violated
8 Labor Code §§ 510, 1194, 1198, and Wage Order No. 4-2001 § 3 by failing to pay overtime, and award
9 Plaintiff and Class Members unpaid overtime wages, as well as reasonable attorneys' fees and costs.

10 F. On the Fifth Cause of Action: That the Court find and declare that Defendant violated
11 Labor Code § 226(a); award Plaintiff and Wage Statement Subclass Members who worked for
12 Defendant during the Wage Statement Subclass Period statutory penalties under Labor Code § 226(e);
13 and award reasonable attorneys' fees and costs.

14 G. On the Sixth Cause of Action: That the Court find and declare that Defendant violated
15 Labor Code § 2802 by failing to reimburse Plaintiff and Class Members for necessary business
16 expenses, and award Plaintiff and the Class reimbursement of such expenses, as well as reasonable
17 attorneys' fees and costs.

18 H. On the Seventh Cause of Action: That the Court find and declare that Defendant has
19 violated the UCL by failing to pay Plaintiff and Class Members for rest breaks and other non-selling
20 time, failing to authorize and permit meal and rest breaks, failing to pay premium pay for missed meal
21 and rest breaks, failing to pay overtime wages, and failing to reimburse necessary business expenses;
22 and award restitution to Plaintiff and the Class in the amount of unpaid compensation.

23 I. On the Eighth Cause of Action: That the Court award PAGA civil penalties, as well as
24 attorneys' fees and costs, as provided under Labor Code § 2699.

25 J. On the Ninth Cause of Action: That the Court award waiting time penalties under Labor
26 Code § 203.

27 K. That the Court issue declaratory relief stating that Defendant has violated the Labor Code
28 and Wage Order as alleged above.

1 L. That the Court award pre- and post-judgment interest on all amounts due to the extent
2 permitted by law.

3 M. That the Court award attorneys' fees and costs to the extent permitted by law, including,
4 but not limited to, Labor Code §§ 226(e), (h), 1194, 2802 and Cal. Code of Civ. Proc. § 1021.5.

5 N. All other relief as this Court deems proper.

6 Dated: _____, 2025

7 Respectfully submitted,

8 THE JHAVERI-WEEKS FIRM, P.C.

9
10 _____
11 William Jhaveri-Weeks

12 Sarah Abraham

13 Ally Girouard

14 THE LAW OFFICE OF SCOTT STILLMAN

15 Scott Stillman

16 *Attorneys for Plaintiff and the Putative Class*
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Dated: March __, 2025

THE JHAVERI-WEEKS FIRM, P.C.

Ally Girouard

Scott Stillman

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT – CASE No. 24CV012817

Settlement Agreement - Final

Final Audit Report

2025-04-21

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By:	William Jhaveri-Weeks (wjw@jhaveriweeks.com)
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