

SCOTT STILLMAN (SBN 267506)
scott@scottstillmanlaw.com
THE LAW OFFICE OF SCOTT STILLMAN
220 Jackson Street, Suite 350
San Francisco, CA 94111
Tel: 415-306-8024

WILLIAM JHAVERI-WEEKS (SBN 289984)
wjw@jhaveriweeks.com
SARAH ABRAHAM (SBN 326098)
sa@jhaveriweeks.com
ALLY GIROUARD (SBN 336625)
ag@jhaveriweeks.com
THE JHAVERI-WEEKS FIRM, P.C.
351 California Street, Suite 700
San Francisco, CA 94104
Tel.: (415) 463-8097
Fax: (415) 367-1439

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 ¹ Judicial Council of California Emergency Rule 9 tolled the statute of limitations from April 6, 2020,
28 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

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

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

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

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

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

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

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

17 20. This Court has jurisdiction over the claims for restitution arising from Defendant's
18 violations of Labor Code §§ 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 2802, Wage Order No. 4-
19 2001 §§ 3, 4, 11, 12, and under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

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

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

24 23. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code
25 §§ 2698 *et seq.* On June 26, 2024, Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to
26 the California Labor & Workforce Agency ("LWDA") and Defendant. The LWDA has provided no
27 notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to
28 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;

- 1 g. Whether Defendant failed to establish and/or implement policies applicable to Class
2 Members regarding tracking hours worked and meal and rest breaks;
- 3 h. Whether Defendant violated Labor Code § 226(a) by failing to issue itemized wage
4 statements to Wage Statement Subclass Members;
- 5 i. Whether Defendant's violations of Labor Code § 226(a) were knowing and intentional;
- 6 j. Whether Wage Statement Subclass Members suffered injury for the purposes of Labor
7 Code § 226(e);
- 8 k. Whether Defendant violated Labor Code § 2802 by failing to reimburse Class Members
9 for necessary business expenses;
- 10 l. Whether Defendant had an unlawful policy requiring Class Members, at their own
11 expense, to use a car meeting certain requirements for work purposes;
- 12 m. Whether Defendant owes waiting time penalties for failing to pay the wages sought
13 herein at the time of discharge pursuant to Labor Code § 203.
- 14 n. Whether Plaintiff and Class Members are entitled to restitution under Bus. & Prof. Code
15 §§ 17200 *et seq.* for uncompensated hours worked, uncompensated rest periods, unpaid
16 premium pay, unpaid overtime, and unreimbursed business expenses;
- 17 o. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff,
18 the Class, and the Subclass; and
- 19 p. Whether the Class is entitled to declaratory relief.

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

28

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.

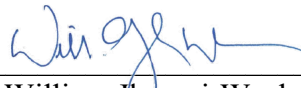
3 M. That the Court award attorneys' fees and costs to the extent permitted by law, including,
4 but not limited to, Labor Code §§ 226(e), (h), 1194, 2802 and Cal. Code of Civ. Proc. § 1021.5.

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

6 Dated: May 5, 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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1 **JURY DEMAND**

2 Plaintiff hereby demands trial by jury of all claims against Defendant alleged herein.

3
4 Dated: May 5, 2025

Respectfully submitted,

5 THE JHAVERI-WEEKS FIRM, P.C.

6
7 

8 William Jhaveri-Weeks

Sarah Abraham

9 Ally Girouard

10 THE LAW OFFICE OF SCOTT STILLMAN
11 Scott Stillman

12 *Attorneys for Plaintiff and the Putative Class*
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1 **PROOF OF SERVICE**

2 I am employed in the City and County of San Francisco, State of California in the office of a
3 member of the bar of this Court under whose direction the following service was made. I am over the
4 age of 18 and am not a party to this action. My business address is 351 California Street, Suite 700, San
5 Francisco, California 94104. My email address is nb@jhaveriweeks.com. On the date set forth below, I
6 served the following document:

7 **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

8 on the Defendant or its attorneys in this action by causing a true copy thereof to be distributed to the
9 individuals identified below, using the following means of service:

10
11 Scott Brutocao
sbrutocao@cornellsmith.com
12 Desiree Brutocao
dbrutocao@cornellsmith.com
13 Laura Fauber
lfauber@cornellsmith.com
14 Cornell Smith Mierl Brutocao Burton LLP
1607 West Avenue
15 Austin, TX 78701
16 Telephone: (512) 328-1540
Facsimile: (512) 328-1541
17

18 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document to be sent to the
19 persons at the e-mail addresses listed above, pursuant to the electronic service agreement between the
20 Parties and pursuant to California Rules of Court, Rule 2.251 and California Code of Civil Procedure
21 section 1010.6.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed on June 3, 2025, at San Francisco, CA.

24
25 
26 Netra C. Bhat
27
28