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16 *Attorneys for Plaintiff and the Putative Class*

17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

18 **COUNTY OF SACRAMENTO**

19 MONTROYA FONTENOT, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 LGI REALTY—CALIFORNIA, INC., a
24 California Corporation,

25 Defendant.

Case No. 24CV012817

**DECLARATION OF WILLIAM C.
JHAVERI-WEEKS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO
JUDGE JILL TALLEY
DEPARTMENT 23

Date: August 8, 2025

Time: 9:00 a.m.

Reservation No.: A-12817-001

Action Filed: June 26, 2024

Trial Date: None Set

1 I, William C. Jhaveri-Weeks, declare as follows:

2 **I. INTRODUCTION**

3 1. I am over the age of 18 and have personal knowledge of the facts set forth in this declaration
4 and could and would testify competently to them.

5 2. I am a member in good standing of the Bars of the States of California and New York.

6 3. I am the owner of The Jhaveri-Weeks Firm, P.C. Along with the law firm the Law Office
7 of Scott Stillman, I am counsel for Plaintiff Montoya Fontenot (“Plaintiff”) in this action against LGI
8 Realty—California, Inc. (“LGI” or “Defendant”), and am proposed Class Counsel for the putative class
9 in this case, which is defined as: all persons who have been employed by Defendant as New Home
10 Consultants in California and who were paid on a commissioned basis (the “Class,” “Class Members,” or
11 “CMs”) during the period from March 21, 2020 through May 3, 2024 (“Class Period”). I have no
12 knowledge of the existence of any conflict of interest between Class Counsel and Plaintiff, on the one
13 hand, and any Class Member, on the other hand.

14 4. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class
15 Action Settlement.

16 5. A true and correct copy of the executed Settlement Agreement is submitted to the Court as
17 **Exhibit 1** to the Proposed Order Granting Preliminary Approval of Class Action Settlement.

18 **II. ATTORNEY EXPERIENCE**

19 6. I graduated from law school in 2007, was admitted to practice in New York in 2008, and
20 have been practicing continuously (other than a one-year judicial clerkship) in the 17 years since I was
21 admitted. I relocated to California in 2013 and was admitted to the California Bar that year. Since 2013,
22 I have devoted a substantial percentage of my practice to representing employees in class and other group
23 actions involving wage and hour violations.

24 7. I founded The Jhaveri-Weeks Firm, P.C. (initially called Jhaveri-Weeks Law) in San
25 Francisco, California, in 2018. The majority of our practice is representing plaintiffs in individual and
26 class action employment law cases. Since founding the firm, I have been appointed by courts as class
27 counsel in *O’Connor v. HRL Laboratories, LLC*, 37-2022-00048942-CU-OE-CTL (San Diego Cty. Super.
28 Ct.) (class counsel for 700 employees in expense reimbursement case, scheduled for trial November

2025); *Daniel v. Mars Wrigley Confectionery US, LLC*, CVRI2204632 (Riverside County) (\$1.8 million settlement approved in 2024 in outside sales misclassification case for 56 California and approximately 218 non-California employees); *Foster v. Embry-Riddle University, Inc.*, CVRI2202995 (Riverside Cty. Super. Ct.) (\$559,483 settlement approved in 2024 for approximately 123 part-time adjunct instructors); *Harris v. Southern New Hampshire Univ.*, RG21109745 (Alameda Cty. Super. Ct.) (\$1,475,000 settlement approved in 2023 for approximately 475 adjunct instructors, including § 2802 and other claims); *Burleigh v. Walden University et al.*, RG21106062 (Alameda Cty. Super. Ct.) (\$815,000 settlement approved in 2022 for approximately 235 part-time adjunct instructors, including § 2802 and other claims); *Senese v. University of San Diego*, 37-2019-00047124-CU-OE-CTL (San Diego Cty. Super. Ct.) (approximately \$3.8 million settlement approved in 2022 for over 2,000 adjunct instructors), *Ott v. Cal. Baptist Univ.*, RIC 1904830 (Riverside Cty. Super. Ct.) (\$700,000 settlement approved in 2021 for over 900 adjunct instructors), and *Hoyle Zuta v. Fuzzy Pet Health, Inc.*, CGC-19-579373 (S.F. Cty. Super. Ct.) (\$150,000 class settlement for 20 veterinary assistants).

8. Before starting my firm approximately seven years ago, I was a partner at Goldstein, Borgen, Dardarian & Ho (“GBDH”), a plaintiff-side class action firm in Oakland, California. GBDH is a pioneering class action firm that has been operating for nearly 50 years (although its name has changed during that time). While there, I was appointed class counsel, along with other attorneys at the firm, in at least five class actions in California, including *Talamantes v. PPG Industries, Inc.*, 13-cv-4062-WHO (N.D. Cal.) (California class and nationwide collective of Business Development Representatives allegedly misclassified as exempt from overtime; settled for \$5 million); *Willey v. Techtronic Indus. N.A.*, RG 16806307 (Alameda Cty. Super. Ct.) (off-the-clock claims on behalf of California class of Sales Representatives; settled for \$3.5 million); *In re Uber FCRA Cases*, 14-cv-5200-EMC (background check violation case on behalf of class of drivers; settled for \$7.5 million); *Garcia v. PPG Industries, Inc.*, 15-cv-319-WHO (N.D. Cal.) (California class of employees whose non-discretionary bonus pay was not factored into their overtime rates; settled for \$500,000); *Munguia-Brown v. Equity Residential et al.*, 16-cv-1225-JSW (certified class of tens of thousands of tenants challenging late fee charges under California law – individual attorneys not named as class counsel, but I authored the motion for class certification).

1 9. Before joining GBDH, I was an associate at a Bay Area plaintiffs' employment law firm
2 for two years, where I was heavily involved in representing classes of employees in a range of wage and
3 hour cases.

4 10. Prior to that, I practiced at the law firm Debevoise & Plimpton LLP in New York for four
5 years. There, I handled high-stakes complex litigation and arbitration, including class action defense.

6 11. I served as a law clerk in 2008-09 for the Honorable R. Guy Cole Jr. on the U.S. Court of
7 Appeals for the Sixth Circuit. I graduated from New York University School of Law in 2007, *magna cum*
8 *laude* and Order of the Coif, and from Yale College in 2002, *cum laude* and with distinction in my major.

9 12. I regularly speak and publish on developing issues in litigation, with a focus on
10 employment class actions. In recent years, I have published five articles related to employment class
11 actions in *Plaintiff Magazine*, as well as articles for Lexis Practice Advisor, Law360, and the Georgetown
12 Journal on Poverty Law and Policy (addressing the difference between federal class and collective action
13 certification standards; cited by the U.S. Second Circuit Court of Appeals in a published decision on that
14 topic). I have served as a panelist at CLE presentations sponsored by the San Francisco Trial Lawyers
15 Association, CEB (Continuing Education of the Bar), the Bar Association of San Francisco, the National
16 Employment Lawyers Association, the California Employment Lawyers Association, Strafford CLE, and
17 Bridgeport CLE, most often discussing developments in employment law and/or class actions.

18 13. The Jhaveri-Weeks Firm, P.C. has been recognized by the "Best Law Firms" publication
19 (previously affiliated with U.S. News & World Report) in the area of Labor and Employment law (2022-
20 2024 editions) for San Francisco (currently rated as a "Tier 1" firm in that practice area). I have been
21 recognized as a Northern California Super Lawyer for the past three years, and as a "Rising Star" for four
22 years before that. I have also been recognized by other publications that rate attorneys.

23 14. I have been assisted in this case by Ally N. Girouard, an associate attorney at my firm. Ms.
24 Girouard received her J.D. from U.C. Hastings *cum laude* in 2020, where she was a senior editor of the
25 Hastings Law Journal, and her B.A. in history *cum laude* from New York University in 2015. Ms.
26 Girouard is a member of the Executive Committee of the Bar Association of San Francisco's Barristers'
27 Labor and Employment Section (*i.e.*, the section of BASF for attorneys in their first 10 years of practice).
28 She has published articles on employment law issues in *Plaintiff Magazine*, Lexis Practice Advisor, and

1 Law360, has moderated panels on developing issues in employment law at the Bar Association of San
2 Francisco, and has been a guest lecturer at Legal Aid at Work's Workers' Rights Clinic at U.C. Berkeley
3 School of Law and UC Law SF. Prior to joining my firm, Ms. Girouard had a fellowship at Legal Aid at
4 Work, where she provided direct legal services to low-income workers and assisted in wage and hour class
5 actions. Ms. Girouard is admitted to practice law in California. Ms. Girouard is admitted to practice law
6 in California.

7 15. My co-counsel in this case, Scott Stillman of the Law Office of Scott Stillman, is
8 submitting a declaration herewith describing his firm's experience in handling employment cases and
9 class actions. (*See* Decl. of Scott Stillman ISO Pl's. Mot. for Prelim. Approval of Class Action
10 Settlement ["Stillman Decl."] at ¶¶ 6-10.

11 16. Plaintiff's Counsel's broad collective experience in the prosecution and resolution of wage
12 and hour class action litigation enabled us to efficiently assess the value of the claims of Class Members
13 and obtain a fair and reasonable settlement.

14 **III. OVERVIEW OF THE CASE AND SETTLEMENT NEGOTIATIONS**

15 **A. Pleadings**

16 17. Plaintiff filed this action on June 26, 2024, alleging that Defendant's pay practices for its
17 New Home Consultants violated the California Labor Code, Wage Order No. 4-2001, and Business &
18 Professions Code sections 17200 *et seq.* Plaintiff alleged that CMs sold homes for LGI out of offices
19 located on LGI property development communities, and, until May 4, 2024, LGI paid CMs as if they were
20 exempt employees. Plaintiff alleged that LGI did not track all the CMs' hours worked, and paid them a
21 recoverable draw and commissions. However, Plaintiff contended that during the Class Period, CMs were
22 non-exempt employees because they did not fall within any "white collar" exemption, and they did not
23 qualify as exempt "outside salespersons" because they worked the majority of their time at Defendant's
24 place of business. CMs were therefore entitled to, but did not receive, separately paid rest breaks, off-
25 duty meal breaks, premium pay for missed rest and meal breaks, all in violation of Labor Code sections
26 226.7 and 512.

27 18. Plaintiff also alleged that LGI's treatment of CMs as exempt employees meant Defendant
28 failed to pay CMs for overtime hours worked, in violation of Labor Code section 510.

1 19. Additionally, Plaintiff alleged that LGI failed to reimburse CMs for necessarily incurred
2 business expenses, including, among other expenses, the cost related to their car expenses and cell phones
3 in violation of Labor Code section 2802.

4 20. As a result of the unpaid wage violations, Plaintiff asserted that Defendant owed waiting
5 time penalties under Labor Code section 203 for failure to pay all wages due at discharge.

6 21. Finally, Plaintiff alleged that CMs' wage statements did not contain required information,
7 including the total number of hours worked, all applicable hourly rates and the corresponding number of
8 hours worked at each rate, and rate of compensation and gross wages earned for the rest periods, giving
9 rise to wage statement penalties under Labor Code section 226(e).

10 22. On the day Plaintiff filed the Complaint, Plaintiff filed a PAGA Notice with the LWDA.
11 On September 19, 2024, Plaintiff filed a First Amended Complaint to add a Private Attorneys General Act
12 ("PAGA") claim.

13 **B. Mediation**

14 23. The Parties agreed to attend a mediation with experienced mediator Art Eidelhoch.

15 24. Ahead of mediation, Plaintiff requested necessary information from Defendant and LGI
16 cooperated by producing relevant data, including each CM's handwritten time records, spreadsheets
17 consisting of an anonymized class list showing detailed payroll records throughout the Class Period, the
18 job description for CMs, the employee handbook with relevant employment policies, the standard
19 employment agreement signed by CMs, and exemplar wage statements, among other documents.

20 25. Plaintiff retained an expert to assist in analyzing the raw data that LGI produced for
21 purposes of calculating damages. I also gathered evidence, including by conducting interviews with many
22 CMs, four of whom provided sworn declarations.

23 26. Plaintiff submitted a detailed mediation brief with fourteen exhibits. The brief described
24 the facts and law and summarized the informal discovery exchanged in aid of mediation. The brief also
25 detailed how Plaintiff calculated Defendant's estimated liability exposure for damages, interest, and
26 PAGA penalties.

27 27. Defendant, for its part, vigorously disputed all aspects of Plaintiff's case, submitting a 17-
28 page mediation statement with 73 pages of exhibits. Defendant argued not only that the case should not

1 be a class action because each class member signed a class action waiver, and that Plaintiff's attempt to
2 "opt out" of her class action waiver was ineffectual. It also argued that Plaintiff and all other sales
3 representatives were properly classified under the commissioned salesperson exemption during the entire
4 Class Period. It also provided evidence that it contended showed that Plaintiff rarely worked more than
5 40 hours per week. It further argued that the CMs were not owed meal or rest break premium pay because
6 LGI in all cases made rest and meal breaks available to the CMs, who structured their day according to
7 their discretion. Finally, Defendant observed that it had discontinued the pay practices that were the
8 subject of the litigation more than a month prior to the filing of Plaintiff's lawsuit, and argued that because
9 it had done so without any knowledge that Plaintiff would be bringing this action, Defendant fell squarely
10 within last year's PAGA amendments that capped PAGA penalties at 15% for defendant employers who
11 "cure" any allegedly offending pay practices prior to receiving any notice of the alleged violations.

12 28. The mediation was held on October 8, 2024, and lasted a full day. Although the Parties
13 did not reach an agreement, the Mediator issued a mediator's proposal at the end of the day. The Parties
14 eventually accepted the mediator's proposal following protracted negotiation over ancillary terms not
15 spelled out in the mediator's proposal.

16 29. After the mediation, Plaintiff Fontenot departed her employment at LGI and negotiated a
17 severance agreement that explicitly carved out and had no impact upon her class claims or her ability to
18 serve as Class Representative.

19 **C. Settlement**

20 30. The Settlement resolves all claims that were alleged or could have been alleged based on
21 the facts in the Second Amended Complaint. I am not aware of any other pending matter or action
22 asserting claims that will be extinguished or adversely affected by the Settlement. The maximum Gross
23 Settlement Amount ("GSA") is \$1,500,000, and the estimated Net Settlement Amount ("NSA") is
24 \$955,750 (assuming no CMs opt out).¹ The NSA will be paid pro rata based on the amount paid to each
25 CM during the Class Period. This allocation formula was selected because it was a reasonable proxy for
26

27 ¹ The NSA is equal to the GSA minus the following: requested attorneys' fees and costs, the LWDA's
28 share of PAGA Penalties, the requested Class Representative Service Award, and Settlement
Administration costs.

1 the value of each CM's released claims. Those CMs who worked extra days or extra hours would have
2 incurred more missed breaks and more overtime, and the allocation formula makes it more likely that such
3 differences will be fairly taken into account. The Settlement also allocates \$15,000 to PAGA (for reasons
4 discussed below).

5 31. The Parties have selected Phoenix Settlement Administrators ("Phoenix") as Settlement
6 Administrator. Phoenix is deeply experienced in administering class settlements and submitted an
7 extremely competitive capped bid of \$4,500 for estimated administration costs. (Decl. of Jodey Lawrence
8 on Behalf of Phoenix at Ex. A (curriculum vitae) & Ex. B (bid).) I requested and received bids from three
9 settlement administrators. Phoenix offered the lowest bid, and Phoenix's combination of price, reputation,
10 and quality of performance made it the best choice for the Class in my opinion.

11 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED**

12 32. The Settlement Class is ascertainable from Defendant's records, and the Class is
13 sufficiently numerous because it has 47 members.

14 33. Common questions of law and fact predominate in this case: Whether LGI properly treated
15 CMs as exempt employees under the "commissioned salesperson" exemption is a legal question that
16 drives the resolution of the CMs' claims for overtime pay and minimum wage for all hours worked. The
17 Court would also face the common question of whether CMs were entitled to separate and hourly pay for
18 non-selling time, including but not limited to rest periods and sales training meetings, pursuant to
19 authorities such as *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98.

20 34. Other common questions include: whether Defendant is liable for liquidated damages to
21 CMs under Labor Code sections 1194.2 and 1197.1 for failure to pay for non-selling time; whether
22 Defendant violated Labor Code section 226.7 and Wage Order No. 4-2001 § 12 by failing to pay one hour
23 of premium pay to each CM for each day that a compliant rest period was not provided; whether Defendant
24 violated Labor Code section 226.7 and Wage Order No. 4-2001 § 11 by failing to pay one hour of premium
25 pay to each Class Member for each day that a compliant meal period was not provided; whether LGI's
26 policy of not reimbursing for cell phones and car expenses until October 2022 violated the duty to
27 reimburse expenses under Labor Code section 2802; whether LGI's failure to include the total number of
28 hours worked, all applicable hourly rates and the corresponding number of hours worked at each rate, and

1 rate of compensation and gross wages earned for the rest periods on CMs' wage statements was "knowing
2 and intentional" and caused "injury" under Labor Code § 226(e); and whether LGI violated Labor Code
3 sections 201 and 202 by not paying CMs all wages due upon separation and/or discharge.

4 35. Plaintiff's claims are typical because Plaintiff, like the Class, was a New Home Consultant
5 who was paid in the same way as the other CMs and was subject to the same alleged unlawful pay
6 practices, suffered the same injuries, and seeks the same relief as the Class.

7 36. Plaintiff has undertaken to represent the interests of the Class, her interests are virtually
8 coextensive with those of the Class, and I am not aware of any conflicts between Plaintiff and the Class.
9 Thus, Plaintiff will adequately represent the Class.

10 37. Plaintiff's claims depend on common evidence, including LGI's uniform pay practices, its
11 mandatory weekly sales training meetings, and its uniform handbooks, payroll calendars, and standard
12 wage statements. It would be inefficient to resolve CMs' claims at separate trials. The amounts at stake
13 for CMs, while not insubstantial, may not be sufficient to enable them to maintain separate suits against
14 Defendant. Thus, a class action is a superior method for resolving CMs' claims.

15 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE**
16 **IT IS FAIR, REASONABLE, AND ADEQUATE**

17 38. In the following paragraphs, I provide a description of each Class claim, a calculation of
18 the maximum value of each claim, and a description of the risks that Plaintiff faced as to class certification
19 and the merits. I then provide a risk-adjusted valuation of each claim to account for these risks and to
20 describe the realistic value of the claims for settlement purposes. As detailed below, the Settlement
21 represents about **66%** of Defendant's realistic exposure (excluding PAGA penalties, which are discussed
22 below, liquidated damages and interest) after adjusting the maximum potential exposure to reflect the risks
23 the Class would face on the merits and class certification. Given the substantial relief obtained for the
24 Class, and the certainty of receiving a settlement payment now rather than years of uncertainty, the
25 Settlement clearly meets the criteria for preliminary approval, in my opinion.

26 **Rest Break Claims**

27 39. Plaintiff alleged that Defendant was required, but failed, to pay CMs hourly and
28 separately for rest break time under Labor Code section 226.7. Regardless of whether CMs took rest

1 breaks, such breaks were not “paid” rest breaks because CMs were paid only on a commission basis, and
2 therefore earned nothing if they took a rest break. (*See Vaquero v. Stoneledge Furniture, LLC* (2017) 9
3 Cal.App.5th 98; *see also Sanchez v. Martinez* (2020) 54 Cal.App.5th 535, 545.)

4 40. Using Defendant’s payroll data and with assistance from her expert, Plaintiff calculated
5 the regular hourly rate of pay and then estimated the number of workweeks and violations per workweek
6 during the class period to determine the premium pay owed. Plaintiff calculated Defendant’s maximum
7 liability on the rest break premium pay claim as \$1,779,756 (excluding interest).

8 41. As to class certification, Plaintiff faced significant risk because LGI and CMs agreed to
9 arbitrate all disputes, and notably, waive class action procedures. While Defendant would not be able to
10 force the PAGA claims here into arbitration and while Plaintiff contended various grounds existed to
11 challenge the enforceability of LGI’s arbitration provisions, Defendant might succeed in enforcing some
12 or all of the arbitration agreements, which might prevent class certification. Therefore, Plaintiff applied
13 a 25% discount for the risk of maintaining class certification through trial.

14 42. As to the merits, Defendant argued that CMs signed daily timesheets acknowledging that
15 they were provided breaks. Plaintiff gave little weight to this argument because, regardless of whether
16 rest breaks were provided, they were not separately and hourly paid. Plaintiff applied a 10% merits
17 discount.

18 43. After applying discounts, Plaintiff calculated Defendant’s realistic exposure on the rest
19 break claim as \$1,201,336.

20 **Meal Break Claims**

21 44. Plaintiff alleged that CMs worked at least five hours or more straight, and CMs were
22 therefore entitled to a 30-minute unpaid meal break. Because, as Plaintiff alleged, CMs rarely received
23 these meal breaks when working more than five hours in a day, Defendant was required, but failed, to pay
24 CMs a premium of an hour’s pay at the employee’s regular rate of compensation. (Lab. Code §§ 226.7,
25 512.). In particular, Plaintiff argued that CMs were pressured to skip their lunch breaks so as not to miss
26 out on sales leads that could generate commission, which was the only way they were paid.

1 45. Plaintiff applied the same 25% class certification discount as on the rest break claims, as
2 well as an additional discount of 10% to account for Defendant's argument that individual inquiries would
3 be needed to determine which CMs worked through their meal breaks.

4 46. On the merits, Plaintiff saw risk in both (a) whether each CM could prove the number of
5 alleged violations each week, and (b) Defendant's argument that it provided a meal break and that CMs
6 signed timesheets stating that they were taking meal breaks (even though CMs allege that LGI knew they
7 were not taking meal breaks). Plaintiff assumed that realistically they could prove two violations per five-
8 day workweek, and they would have a 60% chance of prevailing on the merits.

9 47. After applying discounts, Plaintiff calculated Defendant's realistic exposure on the meal
10 break claim as \$277,642.

11 **Minimum Wage Claim**

12 48. As non-exempt employees, CMs were entitled to be paid at least minimum wage for all
13 hours worked. (Lab. Code § 1194, Wage Order No. 4-2001 § 4(B).) Plaintiff alleged that LGI required
14 CMs, as part of their job duties, to attend weekly four-hour sales training meetings, in addition to other
15 non-selling work. Plaintiff argued that CMs did not receive minimum wage compensation for their non-
16 selling work because they were not able to earn commissions while performing such work. Because the
17 sales meetings that CMs were required to attend were scheduled on a regular basis (weekly) and attendance
18 was required as part of LGI's policies, Plaintiff was able to estimate the number of unpaid hours per
19 workweek and then calculate the minimum wage owed to CMs. Using Defendant's pay data, Plaintiff
20 calculated Defendant's maximum liability on this claim as \$267,935 (excluding interest and liquidated
21 damages).

22 49. With respect to risk on class certification, Plaintiff applied the same 25% discount because
23 of the arbitration issue, and an additional 10% discount because individual inquiries might have been
24 needed to determine the extent to which CMs actually attended sales meetings and performed other non-
25 selling work. With respect to risk on the merits, Plaintiff applied a 20% discount because (a) there is no
26 direct precedent that holds that "nonproductive time" must be paid for sales-related activities for
27 employees covered under the commissioned-salesperson exemption, (b) LGI had an argument that CMs'
28 time in sales-related meetings and receiving sales- and closing-related training were part of the process of

1 selling (as opposed to non-selling work), and (c) there was risk that the amount of unpaid hours CMs could
2 prove would be lower than Plaintiff's estimate suggested. Plaintiff also assumed that CMs would only be
3 able to prove this claim for 47 out of 52 weeks per year (due to vacations, etc.).

4 50. After applying discounts, Plaintiff calculated LGI's realistic exposure on this claim as
5 **\$125,930.**

6 **Overtime Claim**

7 51. Plaintiff alleged that CMs regularly worked over eight hours in a day, but that Defendant
8 failed to pay them owed overtime due to misclassifying them as exempt employees. Under the overtime
9 exception for commissioned sales employees, no overtime would be owed for weeks in which CMs both
10 (a) were paid at least 50% in the form of commission, and (b) earned at least 1.5x the minimum wage.
11 (Cal. Code Regs., tit. 8 § 11040(3)(D); Wage Order No. 4-2001 § 3(D).) Based on a review of the
12 timesheets produced by Defendant and interviews conducted by Plaintiff, Plaintiff estimated the number
13 of workweeks in which CMs received less than 1.5x the minimum wage. Plaintiff also estimated the
14 average number of overtime hours per workweek as 6 hours. Using Defendant's payroll data, Plaintiff
15 calculated the maximum liability on this claim as \$1,500,467.

16 52. Plaintiff applied the same 25% discount on the risk of class certification due to the
17 possibility that Defendant would enforce its arbitration provisions with CMs and an additional 10%
18 discount based on the risk that individual inquiries might have been required to ascertain the amount of
19 overtime worked by each CM.

20 53. On the merits, Plaintiff saw risk that CMs would not be able to prove the full six hours of
21 overtime every week, particularly because that assumption included proving that the CMs worked through
22 lunch every day. Defendant also argued that the car allowances paid to CMs counted toward the threshold
23 of 1.5x the minimum wage, which would have significantly reduced the number of weeks in which
24 overtime was owed. To reflect this discount, Plaintiff assumed that CMs could prove 2 hours of overtime
25 every week, with a reduction to account for an estimated five weeks per year when holidays, vacation,
26 and/or sick leave would have reduced CMs hours. This resulted in a realistic exposure of **\$293,841.**

1 **Expense Reimbursement Claim**

2 54. Plaintiff alleged that LGI required CMs to obtain a car no older than five years so the CMs
3 could drive customers to the various homes within the LGI development of properties and to show
4 customers amenities in the surrounding area. Plaintiff also contended that LGI required CMs to use their
5 personal cell phones for work. LGI did not begin providing CMs with any car or cell phone allowance
6 until October 2022, after which it provided CMs with \$1,125/month, paid as W-2 wages, to cover car and
7 phone expenses. Therefore, Plaintiff estimated that \$1,125/month was a reasonable amount of
8 reimbursement for CMs' car and phone expenses and then calculated the owed expenses from the
9 beginning of the class period through September 2022, which amounted to \$595,125.

10 55. With respect to class certification, Plaintiff applied the same 25% discount to apply for the
11 risk of arbitration. Plaintiff applied an additional 5% discount to account for the risk that individualized
12 inquiries into each CM's monthly expenses would defeat certification. On the merits, Plaintiff faced a
13 risk that the assumption of \$1,125 per month as a reasonable estimate of expenses might be reduced.
14 Defendant had an argument that CMs did not drive many miles at all and rarely needed to use their personal
15 phones in connection with work, such that CMs did not incur significant driving or phone expenses.
16 Further, based on such limited expenses, Defendant might even contend that CMs were actually overpaid
17 these W-2 wages and LGI should therefore be credited with any amounts overpaid, either toward the rest
18 break claims or overtime claims. Plaintiff assumed that realistically they could count on proving
19 unreimbursed expenses of \$300 per month.

20 56. After applying the class certification discount, Plaintiff calculated LGI's realistic exposure
21 on this claim as **\$111,090**.

22 **Inaccurate Wage Statements**

23 57. Plaintiff alleged that LGI violated Labor Code section 226(a) by failing to issue accurate
24 itemized wage statements because CMs, as non-exempt employees, were entitled to wage statements
25 containing the total hours worked by the employee, and all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff
27 sought penalties under Labor Code section 226(e) of \$50 for each initial violation, and \$100 for each
28 subsequent violation. Thus, Plaintiff calculated the maximum statutory penalties on this claim as \$58,600.

1 58. With respect to risk on class certification, Plaintiff applied the same arbitration-related
2 discount of 25%.

3 59. On the merits, LGI might argue that if CMs were covered by the commissioned salesperson
4 exemption, then there is no viable claim for violation of Section 226(a). (See *Aramark Mgmt v. Borquist*
5 (C.D. Cal. 2021) 2021 U.S. Dist. LEXIS 169021, *50.) Additionally, Defendant could contend that it had
6 a good faith belief that it was providing a complete and accurate wage statement in compliance with the
7 requirements of Section 226(a), such that did not “knowingly and intentionally” fail to comply with
8 California’s wage statement law. (See Lab. Code § 226(e); *Naranjo v. Spectrum Security Services, Inc.*
9 (2024) 15 Cal.5th 1056, 1065.) Even if Plaintiff prevailed, there was significant risk that they would
10 recover less than the maximum exposure. Defendant could have argued that Section 226(e) penalties
11 should be calculated at \$50 for all violations, rather than \$50 for the first pay period and \$100 for all
12 subsequent pay periods, which would cut the penalty recovery in half. (*Robinson v. Open Top Sightseeing*
13 *S.F., LLC* (N.D Cal. Feb. 14, 2018) 2018 U.S. Dist. LEXIS 24556, at *51-58 [awarding \$50 penalty for
14 all wage statement violations].) Plaintiff applied a 20% discount for these risks on the merits.

15 60. After applying discounts, Plaintiff calculated LGI’s realistic exposure on this claim as
16 **\$35,160.**

17 **Waiting Time Penalties**

18 61. Plaintiff’s claim for waiting time penalties under Labor Code section 203 for failure to pay
19 all wages due at separation/discharge was derivative of the claims for minimum wage and overtime pay –
20 i.e., because such wages were not paid at the time of separation from employment, waiting time penalties
21 accrued. Plaintiff determined that approximately seventeen CMs ceased working for Defendant during
22 the relevant period, and Plaintiff calculated that thirty days’ penalties at CMs’ average daily rate of pay
23 amounted to \$358,550.

24 62. Certification risk was the same as for the claims of which it is derivative – 25%. Plaintiff
25 applied a 20% reduction on the merits because to recover penalties under Section 203, Plaintiff would
26 have had to prove that Defendant’s violation of Labor Code sections 201 and 202 was “willful.” (Lab.
27 Code § 203; Cal. Code Regs., tit. 8, § 13520(a) [“willfulness” lacking if “employer presents a defense,
28 based in law or fact which, if successful, would preclude any recovery on the part of the employee”].)

1 Given LGI's non-frivolous arguments on the merits of the minimum wage and overtime claims, Plaintiff
2 saw risk in proving "willfulness."

3 63. After applying the discount, Plaintiff calculated LGI's realistic exposure on this claim as
4 **\$215,130.**

5 **Defendant's Total Exposure on All Class Claims**

6 64. Plaintiff calculated the Class's maximum recovery before discounts as approximately
7 **\$6,340,190** (excluding PAGA penalties, interest, and liquidated damages). After applying the foregoing
8 discounts for certification and merits risks on each claim, Defendant's realistic liability for settlement
9 purposes is **\$2,260,129**. The Settlement reached by the Parties represents slightly more than 24% of
10 Defendant's maximum theoretical exposure with no discounts for any of the risks explained above, and
11 66% of Defendant's realistic exposure taking into account those risks. I believe this is a fair and reasonable
12 result for the Class.

13 **The PAGA Allocation Is Fair and Adequate**

14 65. The \$15,000 allocated to PAGA Penalties, 1% of the GSA and 24.5% of the maximum
15 (un-stacked) PAGA exposure, is fair and adequate. There were 612 pay periods in the PAGA Period. If
16 the civil penalty of \$100 were to apply and if the Court declined to "stack" PAGA penalties (*i.e.*, decline
17 to award multiple penalties for each employee in each pay period), the PAGA exposure was approximately
18 \$61,200. (*Castillo v. ADT, LLC* (E.D. Cal. Jan. 25, 2017) 2017 U.S. Dist. LEXIS 10579, at *11 [declining
19 to stack PAGA penalties].) Defendant contended that it "cured" the violation because it began paying
20 CMs as non-exempt employees from the end of the Class Period forward, and therefore the \$15 cap for
21 PAGA Penalties would apply. (See Lab. Code § 2699(j).)

22 66. The PAGA allocation is reasonable for several reasons. First, the Court has discretion to
23 reduce any award of PAGA penalties as "unjust, arbitrary and oppressive, or confiscatory" under Labor
24 Code section 2699(e)(2). This is especially the case when, as here, the PAGA penalties are in conjunction
25 with a significant settlement of underlying Labor Code claims. (*O'Connor v. Uber Techs., Inc.* (N.D. Cal.
26 2016) 201 F. Supp. 3d 1110, 1134 [courts reviewing PAGA awards in the context of class settlements
27 consider the relief obtained for the class, as well as the deterrent effect of the settlement].) The Settlement
28 provides robust relief, which reduces the need for PAGA to serve as a punishment or a deterrent. Here,

1 LGI could point to the fact that it changed its policies *before* Plaintiff filed a PAGA notice. This supports
2 the reasonableness of the \$15,000 PAGA allocation.

3 67. Several other reasons exist to support the PAGA allocation being reasonable. For one,
4 Defendant contended that Plaintiff's claims for PAGA penalties would fail for the same reasons as the
5 underlying claims, and the merits risks on the underlying claims apply to the PAGA claims.

6 68. Second, PAGA claims can be dismissed if "found to be 'unmanageable,'" and Plaintiff
7 faced that risk for many of the same reasons they faced class certification risk. (*Raphael v. Tesoro Ref. &*
8 *Mktg. Co.* (C.D. Cal. Sept. 25, 2015) 2015 U.S. Dist. LEXIS 130532, at *6-7].)

9 69. For these reasons, the \$15,000 allocated to PAGA Penalties is adequate and fair. My firm
10 submitted a copy of the SA to the LWDA on the date of this declaration, along with the Motion for
11 Preliminary Approval and information about the date and time of the preliminary approval hearing,
12 permitting the LWDA the option of objecting to the PAGA allocation.

13 **The Risk, Expense, Complexity, and Likely Duration of Further Litigation Support the**
14 **Reasonableness of the Settlement**

15 70. This case would take years to resolve absent settlement. Voluminous evidence would be
16 needed to prove damages; expert testimony and discovery would be required; and trial would be complex.
17 Neither side would likely prevail on all positions, making appeals likely. Moreover, if Defendant
18 prevailed on a motion to compel arbitration then CMs who do not proceed with an individual arbitration
19 will receive nothing. Therefore, absent a settlement, the Class would not receive relief for many years, if
20 ever. This Settlement provides an early resolution of this dispute, and CMs will obtain a substantial
21 recovery now without the risks and delays that further litigation would entail.

22 71. The Settlement is the result of arm's-length negotiations, reached after mediation with an
23 experienced mediator. My firm, along with our co-counsel, engaged in significant informal discovery, in
24 addition to conducting our own investigation that included interviewing CMs. By analyzing (with expert
25 assistance) the data and documents produced, interviewing CMs, and preparing for a full-day mediation,
26 Plaintiff was well-informed about the strengths and weaknesses of the Class's claims.

27 72. The Settlement provides an average gross recovery per CM of \$31,914 and an average net
28 recovery of approximately \$20,335. I consider the Settlement an excellent result for the Class, particularly

1 given that CMs were employees instructed to schedule their workdays at their discretion and who signed
2 arbitration agreements. Additionally, the Escalator Clause will ensure that the settlement amount
3 increases in proportion to any significant increase in the Class size. (See SA § 19.)

4 **The Class Representative Service Award Is Preliminarily Reasonable**

5 73. In conjunction with seeking final approval, Plaintiff will move for approval of a Service
6 Award of up to \$10,000 for the Class Representative to recognize her effort for the Class and the general
7 release she is giving. (SA §§ 7, 16.2.) The requested award falls well within the range of those typically
8 awarded. (See, e.g., *Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 [affirming awards
9 of \$10,000].)

10 74. Plaintiff served the Class well. Plaintiff was diligent in assisting my firm and co-counsel
11 in this litigation by promptly responding to our emails and calls, responding to detailed factual questions
12 from us, reviewing drafts, searching Plaintiff's records and providing us with documents, carefully
13 evaluating the case for settlement, being available throughout the day during the full-day mediation, and
14 remaining up-to-date on the case during the preliminary approval process. This Settlement, which would
15 not have been possible absent Plaintiff's willingness to step forward and pursue this case on behalf of the
16 Class, directly furthers the public policy underlying the California Labor Code by requiring Defendant to
17 comply with California's wage-and-hour laws. (See *Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34
18 Cal.4th 319, 340.)

19 75. This litigation resulted in substantial monetary relief to the Class for their wage-and-hour
20 claims – an average gross award of \$31,914 – which CMs will receive automatically without the need to
21 file a claim (SA § 14). Without Plaintiff, the Class would not have received these benefits.

22 76. Plaintiff assumed risks by agreeing to represent the Class. For one thing, she brought the
23 case as a current employee, giving rise to the risk of her workplace becoming uncomfortable and her job
24 being put in jeopardy. Her name is now associated with this public lawsuit, creating a risk of being
25 branded as a “troublemaker” by future employers. Other real estate companies might refrain from hiring
26 Plaintiff. These risks were in addition to the risks of failing to maintain a group action in this case.

27 77. Plaintiff is entering into a general release of all potential claims against Defendant – a far
28 broader release than other CMs are giving.

1 78. In my view, service awards of the amount requested are necessary to incentivize employees
2 to step forward and obtain benefits for a larger group. Plaintiff will further brief the reasons supporting
3 the Service Award with the Final Approval Motion.

4 79. Granting preliminary approval will also provide the Class notice of the requested Service
5 Award and the opportunity to object to it. (*See* SA § 12, Ex. A [Notice].)

6 **The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable**

7 80. Also in conjunction with final approval, Plaintiff will move for an award of attorneys' fees
8 of one-third of the GSA (*i.e.*, \$500,000, as reduced pro rata by any opt-outs). (SA § 6.) This is the
9 benchmark award typically approved in class actions. (*See, e.g., Laffitte v. Robert Half Int'l Inc.* (2016)
10 1 Cal.5th 480, 487 [affirming fee award of one-third].) Plaintiff will also request reimbursement of
11 litigation costs not to exceed \$20,000. (SA § 6; Lab. Code §§ 226(e), 1194.2, 2802.)

12 81. My firm's costs to date are \$4,791.38. This includes a portion of Plaintiff's share of the
13 mediation fee (\$2,625), the costs of filing the case (\$1,495.76), a portion of the expert fees for analyzing
14 Defendant's data (\$450), and filing fees and service costs (\$220.62). At present, I estimate that Plaintiff's
15 future costs will be approximately \$200, which includes the fees for filing this motion, the final approval
16 motion, and the final accounting and amended judgment authorizing disbursement to the *cy pres* recipient
17 following distribution of the settlement funds.

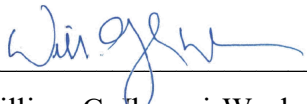
18 82. If the Court grants preliminary approval, Class Counsel will file a fully-briefed motion,
19 supported by detailed lodestar information, to be heard with the final approval motion.

20 **Cy Pres Beneficiary**

21 83. Subject to Court approval, Bay Area Legal Aid has been designated as the *cy pres*
22 beneficiary and recipient of funds associated with uncashed settlement checks. Bay Area Legal Aid fulfills
23 the requirements of Code of Civil Procedure section 384(b) because it is a "nonprofit organization
24 providing civil legal services to the indigent." Bay Area Legal Aid is a nonprofit organization with a
25 mission to "provide meaningful access to the civil justice system through quality legal assistance" to "low-
26 and very low-income members of" a seven-county service area around the Bay Area. (*See*
27 <https://baylegal.org/who-we-are/our-mission/>.) I and my firm have no connection with Bay Area Legal
28 Aid. My co-counsel has no connection with Bay Area Legal Aid. (Stillman Decl. ¶ 14.)

1
2 I declare under penalty of perjury under the laws of the United States and the State of California
3 that the foregoing is true and correct.

4
5 Dated: June 4, 2025



6 William C. Jhaveri-Weeks