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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiff,

v.

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

Defendant.

Case No. 24CV012817

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO
JUDGE JILL TALLEY
COMPLEX CIVIL 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

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1 **I. INTRODUCTION**

2 Plaintiff Montoya Fontenot (“Plaintiff”) seeks preliminary approval of a \$1,500,000 settlement
3 of her class wage and hour claims against LGI Realty—California, Inc. (“LGI” or “Defendant”). This
4 case was brought on behalf of approximately 47 New Home Consultants in California who worked for
5 Defendant. The Class is defined as “all persons who have been employed by Defendant as New Home
6 Consultants in California and who were paid on a commissioned basis during the period from March 21,
7 2020 through May 3, 2024” (the “Class,” “Class Members,” or “CMs”). This Settlement was reached
8 after a full-day mediation and the acceptance of a mediator’s proposal after months of continued
9 negotiations following receipt of the proposal. In advance of the mediation, LGI produced extensive
10 informal discovery and class data. If approved, the Settlement is estimated to provide CMs with an
11 average gross recovery of \$31,914 and net recovery of \$20,335 – a fair and reasonable result.

12 The Settlement avoids significant risks posed by Defendant’s arguments with respect to class
13 certification and the merits. The terms of the Settlement Agreement (“SA”) are fair and reasonable. The
14 Settlement was negotiated by, and is supported by, proposed Class Counsel who have extensive
15 experience representing plaintiffs in similar employment cases in California. Plaintiff requests that the
16 Court certify the Class for settlement purposes, grant preliminary approval of the Settlement, approve the
17 proposed Class Notice, and set a final approval hearing. The “SA” is attached as **Exhibit 1** to the
18 Proposed Order.

19 **II. OVERVIEW OF THE SETTLEMENT**

20 The Settlement resolves all claims that were alleged or could have been alleged based on the facts
21 in the Second Amended Complaint. (Decl. of William Jhaveri-Weeks ISO Mot. for Prelim. Appr.
22 [“Jhaveri-Weeks Decl.”] ¶ 29.) The key Settlement terms are:

23 1. Gross Settlement Amount (“GSA”) – The maximum GSA is \$1,500,000. (SA §§ 1.12, 4.) If any
24 of the 47 CMs opts out, the GSA will be reduced proportionately by the pro rata amount of earnings
25 attributable to the CMs who opt out. (*Id.* § 5.1.3.) For example, if the wages paid to the CMs who opt
26 out equal 2% of the total wages paid by Defendant to all of the CMs during the Class Period, the GSA
27 will be reduced by 2%. (*Id.*) Once the GSA is determined, it is non-reversionary. (*Id.* § 1.12.) In
28 addition to the GSA, LGI will pay its share of payroll taxes on the portion of the Settlement allocated as
wages. (*Id.* § 15.1.)

2. Class Definition and Class Period – The Class is “all persons who have been employed by
Defendant as New Home Consultants in California and who were paid on a commissioned basis during
the Class Period.” (*Id.* § 1.2.) The Class Period is from March 21, 2020 through May 3, 2024 (“Class
Period”). (*Id.* § 1.5.)

3. Escalator Clause – The Class consists of approximately 47 individuals. If that number goes up by 7% or more (more than 50 individuals), the GSA will begin to increase proportionately. (*Id.* § 19.)
4. Attorneys’ Fees, Costs, and Named Plaintiff’s Service Award – Class Counsel will seek fees of up to one-third of the GSA (\$500,000), reimbursement of out-of-pocket costs up to \$20,000, and a service award of \$10,000 for the named Plaintiff. (*Id.* §§ 6, 7.)
5. PAGA Penalties – \$15,000 allocated to the PAGA claim. (*Id.* § 8.) The LWDA will be paid 65% (\$9,750). (*Id.*) The remaining \$5,250 will be added to the Net Settlement Amount for CMs in the PAGA Period. (*Id.*)
6. Settlement Administration Costs are estimated not to exceed \$15,000. (*Id.* § 9.) The Parties selected Phoenix Settlement Administrators (“Phoenix”) as Administrator. (*Id.*) Phoenix is very experienced and submitted the lowest of three bids. (Decl. of Jodey Lawrence on Behalf of Phoenix [“Phoenix Decl.”] Ex. A [C.V.] & Ex. B [bid]; Jhaveri-Weeks Decl. ¶ 30.)
7. The Net Settlement Amount (“NSA”) will total approximately \$955,750, assuming no CMs opt out. (Jhaveri-Weeks Decl. ¶ 29.) This is the GSA minus attorneys’ fees, costs, class representative award, the LWDA’s share of PAGA Penalties, and Settlement Administration costs.¹ The NSA will be paid pro rata based on the amount paid to each CM during the Class Period. (*Id.* ¶ 29 [describing rationale for allocation]; SA § 5.1.1.)
8. Class Notice – Within fifteen business days of preliminary approval, LGI will provide Phoenix with the Class Data List. (SA § 10.1.1.) Within 10 business days of receipt of the Class Data List, after updating the addresses using the NCOA database, Phoenix will mail each CM a Notice substantially in the form attached to the Settlement Agreement as **Exhibit A**. (*Id.* §§ 10.1.2, 10.1.3.) For all returned Notices, Phoenix will use skip tracing to update addresses and initiate a second mailing. (*Id.* § 10.1.4.)
9. Automatic Participation – The Settlement is non-claims made: each CM will receive his or her share of the NSA, unless he or she opts out. (*Id.* §§ 4, 11.3.) CMs in the PAGA Period will receive a PAGA allocation even if they opt out of the class settlement. (*Id.* § 1.14.)
10. Opting Out or Objecting – CMs who wish to opt out must send a written Request for Exclusion to Phoenix within 60 days of the date the Notices are mailed. (*Id.* §§ 1.19, 1.20, 11.) Any CM who properly requests to opt out will not receive a payment under the Settlement and will not be bound by it. (*Id.* § 11.2.) In the event that two or more of the anticipated 47 Class Members opt out of the Settlement, or in the event that Class Member(s) opting out of the Settlement, in the aggregate, have earned more than three percent (3%) of the total wages earned by all Class Members during the Class Period,

¹ Phoenix bid \$4,500. (Phoenix Decl. Ex. B.)

Defendant shall have the right to void the Settlement. (*Id.* § 1.20.) A CM who remains part of the Settlement may object to the terms of the Settlement by mailing an objection to Phoenix within 60 days of the date the Notice is mailed out. (*Id.* §§ 1.20, 12.)

11. Tax Consequences of Settlement Payments – For tax purposes, each CM’s payment will be allocated 33% to wages and 67% to penalties and interest. (*Id.* § 5.1.2.)

12. Uncashed Checks – Checks not cashed 180 days from issuance by Phoenix will be voided and funds will be tendered to Bay Area Legal Aid as the *cy pres* recipient under Cal. Code of Civ. Proc. § 384. (*Id.* § 14.2; Jhaveri-Weeks Decl. ¶ 82 [explaining why *cy pres* recipient meets statutory criteria].)

13. Scope of Release and Final Judgment – The Class will release claims “which are alleged, or could have been alleged based on the facts asserted in the Complaint, and arising during the Class Period.” (SA § 16.1.) The release is not effective until the date when LGI fully funds the GSA. (*Id.*) The named Plaintiff will also give a general release. (*Id.* § 16.2.)

III. OVERVIEW OF THE LITIGATION

A. Pleadings

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

Plaintiff also alleged that LGI’s treatment of CMs as exempt employees meant Defendant failed to pay CMs for overtime hours worked, in violation of Labor Code section 510. (*Id.* ¶ 18.)

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

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

Finally, Plaintiff alleged that CMs’ wage statements did not contain required information,

including the total number of hours worked, all applicable hourly rates and the corresponding number of hours worked at each rate, and rate of compensation and gross wages earned for the rest periods, giving rise to wage statement penalties under Labor Code section 226(e). (*Id.* ¶ 21.)

On the day Plaintiff filed the Complaint, Plaintiff filed a PAGA Notice with the LWDA. (*Id.* ¶ 22.) On September 19, 2024, Plaintiff filed a First Amended Complaint to add a Private Attorneys General Act (“PAGA”) claim. (*Id.*)

B. Mediation

The Parties agreed to attend a mediation with experienced mediator Art Eidelhoch. (*Id.* ¶ 23.) Ahead of mediation, Plaintiff requested necessary information from Defendant and LGI cooperated by producing relevant data, including each CM’s handwritten time records, spreadsheets consisting of an anonymized class list showing detailed payroll records throughout the Class Period, the job description for CMs, the employee handbook with relevant employment policies, the standard employment agreement signed by CMs, and exemplar wage statements, among other documents. (*Id.* ¶ 24.)

Plaintiff retained an expert to assist in analyzing the raw data that LGI produced for purposes of calculating damages. (*Id.* ¶ 25.) Plaintiff also gathered her own evidence, including by conducting interviews with many CMs, four of whom provided sworn declarations. (*Id.*)

Plaintiff submitted a detailed mediation brief with fourteen exhibits. (*Id.* ¶ 26.) The brief described the facts and law and summarized the informal discovery exchanged in aid of mediation. (*Id.*) The brief also detailed how Plaintiff calculated Defendant’s estimated liability exposure for damages, interest, and PAGA penalties. (*Id.*)

Defendant, for its part, vigorously disputed all aspects of Plaintiff’s case, submitting a 17-page mediation statement with 73 pages of exhibits. (*Id.* ¶ 27.) Defendant argued not only that the case should not be a class action because each class member signed a class action waiver, and that Plaintiff’s attempt to “opt out” of her class action waiver was ineffectual. (*Id.*) It also argued that Plaintiff and all other sales representatives were properly classified under the commissioned salesperson exemption during the entire Class Period. (*Id.*) It also provided evidence that Plaintiff rarely worked more than 40 hours per week. (*Id.*) It further argued that the CMs were not owed meal or rest break premium pay because LGI in all cases made rest and meal breaks available to the CMs, who structured their day according to their discretion. (*Id.*) Finally, Defendant observed that it had discontinued the pay practices that were the subject of the litigation more than a month prior to the filing of Plaintiff’s lawsuit, and because it had done so without any knowledge that Plaintiff would be bringing this action, Defendant fell squarely within last year’s PAGA amendments that capped PAGA penalties at 15% for defendant employers who “cure” any allegedly offending pay practices prior to receiving any notice of the alleged violations. (*Id.*)

1 The mediation was held on October 8, 2024, and lasted a full day. (*Id.* ¶ 28.) Although the Parties
2 did not reach an agreement, the Mediator issued a mediator’s proposal at the end of the day. (*Id.*) The
3 Parties eventually accepted the mediator’s proposal following protracted negotiation over ancillary terms
4 not spelled out in the mediator’s proposal. (*Id.*)²

4 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED**³

5 When a negotiated class settlement is reached before certification, the Court may certify a
6 provisional settlement class. (Cal. Rule of Ct. 3.769(d).) This is a procedural decision based on the
7 allegations in the Complaint, not the perceived merit of the claims. (*Linder v. Thrifty Oil Co.* (2000) 23
8 Cal.4th 429, 439-41.) A class is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there
9 is a well-defined community of interest; and (3) a class action would be a superior method of adjudication.
(*Id.* at p. 435; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021.)

10 **A. The Class Is Ascertainable and Sufficiently Numerous**

11 Whether a class is ascertainable is determined by examining the class definition, the size of the
12 class, and the means available for identifying CMs. (*Reyes v. Bd. of Supervisors* (1987) 196 Cal.App.3d
13 1263, 1271.) Class members are “ascertainable” if they may be readily identified without unreasonable
14 expense or time by reference to official records. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986
15 n.15.) Here, Plaintiff contends that the Class is ascertainable from Defendant’s records. (SA § 10.1.1;
16 Jhaveri-Weeks Decl. ¶ 32.) Plaintiff further contends that the Class is sufficiently numerous because it
17 has 47 members. (*Id.*; see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [much smaller
class was numerous], disapproved on another ground in *Noel, supra*, 7 Cal.5th at p. 985, n. 15.)

18 **B. A “Community of Interest” Exists Among CMs**

19 The “community of interest” requirement has three factors: (1) common questions of law or fact
20 that predominate; (2) a class representative with typical claims; and (3) a class representative who can
21 adequately represent the class. (*Fireside Bank v. Super. Ct.* (2007) 40 Cal.4th 1069, 1089.)

22 **1. Common Questions of Law and Fact Predominate**

23 The ultimate question of predominance is whether “the issues which may be jointly tried, when
24 compared with those requiring separate adjudication, are so numerous or substantial that the maintenance
25 of a class action would be advantageous to the judicial process and to the litigants.” (*Brinker, supra*, 53

26 ² After the mediation, Plaintiff Fontenot departed her employment at LGI and negotiated a severance
27 agreement that explicitly carved out and had no impact upon her class claims or her ability to serve as
28 Class Representative. (See Jhaveri-Weeks Decl. ¶ 29.)

³ Defendant contends that class action treatment would be inappropriate in this case if this motion is
denied, and reserves all rights to oppose class action mechanisms if this motion is denied by the Court.

Cal.4th at p. 1021 [citations omitted].) This depends on whether a plaintiff's theory of recovery is "as an analytic matter, likely to prove amenable to class treatment." (*Id.*) If liability can be determined by common facts, the need to individually prove damages does not prevent certification. (*Id.* at p. 1022.)

Plaintiff contends common questions of law and fact predominate here. Whether LGI properly treated CMs as exempt employees under the "commissioned salesperson" exemption is a legal question that drives the resolution of the CMs' claims for overtime pay and minimum wage for all hours worked. (Jhaveri-Weeks Decl. ¶ 33.) The Court would also face the common question of whether CMs were entitled to separate and hourly pay for non-selling time, including but not limited to rest periods and sales training meetings, pursuant to authorities such as *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98. (*Id.*) Plaintiff contends other common questions include: whether Defendant is liable for liquidated damages to CMs under Labor Code sections 1194.2 and 1197.1 for failure to pay for non-selling time; whether Defendant violated Labor Code section 226.7 and Wage Order No. 4-2001 § 12 by failing to pay one hour of premium pay to each CM for each day that a compliant rest period was not provided; whether Defendant violated Labor Code section 226.7 and Wage Order No. 4-2001 § 11 by failing to pay one hour of premium pay to each Class Member for each day that a compliant meal period was not provided; whether LGI's policy of not reimbursing for cell phones and car expenses until October 2022 violated the duty to reimburse expenses under Labor Code section 2802; whether LGI's failure to include the total number of hours worked, all applicable hourly rates and the corresponding number of hours worked at each rate, and rate of compensation and gross wages earned for the rest periods on CMs' wage statements was "knowing and intentional" and caused "injury" under Labor Code § 226(e); and whether LGI violated Labor Code sections 201 and 202 by not paying CMs all wages due upon separation and/or discharge. (*Id.* ¶ 34.)

2. Plaintiff's Claims Are Typical

Typicality asks whether Plaintiff suffered a similar injury as the Class. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Here, Plaintiff, like the Class, was a New Home Consultant who was paid in the same way as the other CMs and was subject to the same alleged unlawful pay practices, suffered the same injuries, and seeks the same relief as the Class. (Jhaveri-Weeks Decl. ¶ 35.) Defendant contests the typicality of Plaintiff's claims on various factual grounds, but concedes that Plaintiff was paid according to the same pay practices as the other CMs.

3. Plaintiff and Her Attorneys Will Adequately Represent the Class

Adequacy depends on whether the plaintiff's attorney is qualified and the plaintiff's interests are not antagonistic to those of the class. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669, n. 21 [citations omitted].) Plaintiff's Counsel have extensive class action litigation experience. (Jhaveri-

Weeks Decl. ¶¶ 6-14; Decl. of Scott Stillman ISO Pl.’s Mot. for Prelim. Appr. [“Stillman Decl.”] ¶¶ 6-9.) Plaintiff has undertaken to represent the interests of the Class, her interests are virtually coextensive with those of the Class (although Defendant denies certain aspects of her interests being coextensive with the class), and Counsel are not aware of any conflicts between Plaintiff and the Class. (Jhaveri-Weeks Decl. ¶ 36; Stillman Decl. ¶ 5.)

C. A Class Action Is a Superior Method of Adjudication

Plaintiff’s claims depend on common evidence, including LGI’s uniform pay practices, its mandatory weekly sales training meetings, and its uniform handbooks, payroll calendars, and standard wage statements. (Jhaveri-Weeks Decl. ¶ 37.) Plaintiff contends that it would be inefficient to resolve CMs’ claims at separate trials. (*Id.*; *Bufile v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1208, disapproved on another ground in *Noel, supra*, 7 Cal.5th at p. 985, n. 15.) The amounts at stake for CMs, while not insubstantial, may not be sufficient to enable them to maintain separate suits against Defendant. (Jhaveri-Weeks Decl. ¶ 37; *Bufile, supra*, 162 Cal.App.4th at p. 1208.) While Defendant disputes that class treatment is appropriate to try the issues in this lawsuit, it agrees that settlement of the class claims on the terms agreed between Plaintiff and Defendant is the most efficient way to resolve this lawsuit.

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

A. The Two-Step Settlement Approval Process

Approval of a class settlement is a two-step process: first, a preliminary review of the reasonableness of the settlement, and second, after notice has been distributed to the Class, a final analysis that takes into account the Class’s response. (Cal. Rule of Ct. 3.769; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) Courts analyzing whether a settlement is reasonable (either at the preliminary or final step) consider a number of factors: (1) the strength of Plaintiff’s case balanced against the settlement amount; (2) the risk, expense, complexity, and likely duration of further litigation and the risk of maintaining class action status through trial; (3) the extent of discovery completed and stage of the proceedings; (4) the experience and views of counsel; and (5) the reaction of the Class to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, 130.) At preliminary approval, courts generally approve the sending of notice if the settlement appears to be within the range of acceptable settlements. (Cal. Rule of Ct. 3.769(f); *N. Cty. Contractor’s Ass’n v. Touchstone Ins. Servs.* (1994) 27 Cal.App.4th 1085, 1089-90.) A settlement is “presumed to be fair” when (1) it “is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52 [citation omitted].)

As detailed below, the Settlement represents about 66% of Defendant's realistic exposure (excluding PAGA Penalties, liquidated damages, and interest) after adjusting the maximum potential exposure to reflect the risks the Class would face on the merits and class certification. (Jhaveri-Weeks Decl. ¶ 38.) Given the substantial relief obtained for the Class, and the certainty of receiving a settlement payment now rather than years of uncertainty, the Settlement meets the criteria for preliminary approval. (*Id.*)

1. The Gross Settlement Amount Is Reasonable Compared to the Risk-Adjusted Potential Recovery

A comparison of the recovery achieved by the Settlement to the strength of the Class's claims is the most important fairness factor. (*Kullar, supra*, 168 Cal.App.4th at p.130.) Here, Plaintiff's analysis of the likely recovery on each cause of action demonstrates that the proposed Settlement of \$1,500,000 is reasonable.

Rest Break Claims: Plaintiff alleged that Defendant was required, but failed, to pay CMs hourly and separately for rest break time under Labor Code section 226.7. (*Id.* ¶ 39.) Regardless of whether CMs took rest breaks, such breaks were not "paid" rest breaks because CMs were paid only on a commission basis, and therefore earned nothing if they took a rest break. (See *Vaquero, supra*, 9 Cal.App.5th 98; see also *Sanchez v. Martinez* (2020) 54 Cal.App.5th 535, 545.)

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

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

As to the merits, Defendant argued that CMs signed daily timesheets acknowledging that they were provided breaks. (*Id.* ¶ 42.) Defendant also argued that *Vaquero* was wrongly decided, vowing to appeal the proposition that a commissioned employee is entitled to separate compensation for rest breaks, but in addition, argued that Plaintiff and all CMs received extra pay in the form of an auto allowance that

1 was subject to W-2 withholdings and exceeded the value of the allegedly uncompensated rest breaks.
2 Plaintiff gave little weight to these arguments because, regardless of whether rest breaks were provided,
3 they were not separately and hourly paid. Plaintiff applied a 10% merits discount. (*Id.*) After applying
4 discounts, Plaintiff calculated Defendant's realistic exposure on the rest break claim as **\$1,201,336**. (*Id.*
¶ 43.)

5 **Meal Break Claims:** Likewise, Plaintiff alleged that CMs worked at least five hours or more
6 straight, and CMs were therefore entitled to a 30-minute unpaid meal break. (*Id.* ¶ 44.) Plaintiff alleged,
7 and Defendant contested, that CMs rarely received these meal breaks when working more than five hours
8 in a day; Plaintiff therefore took the position that Defendant was required, but failed, to pay CMs a
9 premium of an hour's pay at the employee's regular rate of compensation. (Lab. Code §§ 226.7, 512.).
10 In particular, Plaintiff argued that CMs were pressured to skip their lunch breaks so as not to miss out on
11 sales leads that could generate commission, which was the only way they were paid. (Jhaveri-Weeks
12 Decl. ¶ 44.) This would have been the subject of intense litigation on a CM-by-CM basis and could have
jeopardized the "class" treatment of these claims.

13 Plaintiff applied the same 25% class certification discount as on the rest break claims, as well as
14 an additional discount of 10% to account for Defendant's argument that individual inquiries would be
15 needed to determine which CMs worked through their meal breaks. (*Id.* ¶ 45.)

16 On the merits, Plaintiff saw risk in both (a) whether each CM could prove the number of alleged
17 violations each week, and (b) Defendant's argument that it provided a meal break and that CMs signed
18 timesheets stating that they were taking meal breaks (even though CMs allege that LGI knew they were
19 not taking meal breaks). (*Id.* ¶ 46.) Plaintiff assumed that realistically they could prove two violations
20 per five-day workweek, and they would have a 60% chance of prevailing on the merits. (*Id.*) After
21 applying discounts, Plaintiff calculated Defendant's realistic exposure on the meal break claim as
22 **\$277,642**. (*Id.* ¶ 47.)

23 **Minimum Wage Claim:** As non-exempt employees, CMs were entitled to be paid at least
24 minimum wage for all hours worked. (Lab. Code § 1194, Wage Order No. 4-2001 § 4(B).) Plaintiff
25 alleged that LGI required CMs, as part of their job duties, to attend weekly four-hour sales training
26 meetings, in addition to other non-selling work. (Jhaveri-Weeks Decl. ¶ 48.) Plaintiff argued that CMs
27 did not receive minimum wage compensation for their non-selling work because they were not able to
28 earn commissions while performing such work. (*Id.*) Because the sales meetings that CMs were required
to attend were scheduled on a regular basis (weekly) and attendance was required as part of LGI's
policies, Plaintiff was able to estimate the number of unpaid hours per workweek and then calculate the

1 minimum wage owed to CMs. (*Id.*) Using Defendant's pay data, Plaintiff calculated Defendant's
2 maximum liability on this claim as **\$267,935** (excluding interest and liquidated damages). (*Id.*)

3 With respect to risk on class certification, Plaintiff applied the same 25% discount because of the
4 arbitration issue, and an additional 10% discount because individual inquiries might have been needed to
5 determine the extent to which CMs actually attended sales meetings and performed other non-selling
6 work. (*Id.* ¶ 49.) With respect to risk on the merits, Plaintiff applied a 20% discount because (a) there is
7 no direct precedent that holds that "nonproductive time" must be paid for sales-related activities for
8 employees covered under the commissioned-salesperson exemption, (b) LGI had an argument that CMs'
9 time in sales-related meetings and receiving sales- and closing-related training were part of the process
10 of selling (as opposed to non-selling work), and (c) there was risk that the amount of unpaid hours CMs
11 could prove would be lower than Plaintiff's estimate suggested. (*Id.*) Plaintiff also assumed that CMs
12 would only be able to prove this claim for 47 out of 52 weeks per year (due to vacations, etc.). After
13 applying discounts, Plaintiff calculated LGI's realistic exposure on this claim as **\$125,930**. (*Id.* ¶ 50.)

14 **Overtime Claim:** Plaintiff alleged that CMs regularly worked over eight hours in a day, but that
15 Defendant failed to pay them owed overtime due to misclassifying them as exempt employees. (*Id.* ¶
16 51.) Under the overtime exception for commissioned sales employees, no overtime would be owed for
17 weeks in which CMs both (a) were paid at least 50% in the form of commission, and (b) earned at least
18 1.5x the minimum wage. (Cal. Code Regs., tit. 8 § 11040(3)(D); Wage Order No. 4-2001 § 3(D).) Based
19 on a review of the timesheets produced by Defendant and interviews conducted by Plaintiff, Plaintiff
20 estimated the number of workweeks in which CMs received less than 1.5x the minimum wage. (Jhaveri-
21 Weeks Decl. ¶ 51.) Plaintiff also estimated the average number of overtime hours per workweek as 6
22 hours. (*Id.*) Using Defendant's payroll data, Plaintiff calculated the maximum liability on this claim as
23 **\$1,500,467**. (*Id.*)

24 Plaintiff applied the same 25% discount on the risk of class certification due to the possibility that
25 Defendant would enforce its arbitration provisions with CMs and an additional 10% discount based on
26 the risk that individual inquiries might have been required to ascertain the amount of overtime worked
27 by each CM. (*Id.* ¶ 52.)

28 On the merits, Plaintiff saw risk that CMs would not be able to prove the full six hours of overtime
every week, particularly because that assumption included proving that the CMs worked through lunch
every day. (*Id.* ¶ 53.) Defendant also argued that the car allowances paid to CMs counted toward the
threshold of 1.5x the minimum wage, which would have significantly reduced the number of weeks in
which overtime was owed. (*Id.*) To reflect this discount, Plaintiff assumed that CMs could prove 2 hours
of overtime every week, with a reduction to account for an estimated five weeks per year when holidays,

vacation, and/or sick leave would have reduced CMs hours. (*Id.*) This resulted in a realistic exposure of **\$293,841**. (*Id.*)

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

With respect to class certification, Plaintiff applied the same 25% discount to apply for the risk of arbitration. (*Id.* ¶ 55.) Plaintiff applied an additional 5% discount to account for the risk that individualized inquiries into each CM's monthly expenses would defeat certification. (*Id.*) On the merits, Plaintiff faced a risk that the assumption of \$1,125 per month as a reasonable estimate of expenses might be reduced. (*Id.*) Defendant had an argument that CMs did not drive many miles at all and rarely needed to use their personal phones in connection with work, such that CMs did not incur significant driving or phone expenses. (*Id.*) Further, based on such limited expenses, Defendant might even contend that CMs were actually overpaid these W-2 wages and LGI should therefore be credited with any amounts overpaid, either toward the rest break claims or overtime claims. (*Id.*) Plaintiff assumed that realistically they could count on proving unreimbursed expenses of \$300 per month prior to October of 2022. (*Id.*) After applying the class certification discount, Plaintiff calculated LGI's realistic exposure on this claim as **\$111,090**. (*Id.* ¶ 56.)

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

With respect to risk on class certification, Plaintiff applied the same arbitration-related discount of 25%. (*Id.* ¶ 58.)

On the merits, LGI might argue that if CMs were covered by the commissioned salesperson exemption, then there is no viable claim for violation of Section 226(a). (See *Aramark Mgmt v. Borquist* (C.D. Cal. 2021) 2021 U.S. Dist. LEXIS 169021, *50.) Additionally, Defendant could contend that it had a good faith belief that it was providing a complete and accurate wage statement in compliance with the requirements of Section 226(a), such that did not “knowingly and intentionally” fail to comply with California’s wage statement law. (See Lab. Code § 226(e); *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065.)

Even if Plaintiff prevailed, there was significant risk that they would recover less than the maximum exposure. (Jhaveri-Weeks Decl. ¶ 59.) Defendant could have argued that Section 226(e) penalties should be calculated at \$50 for all violations, rather than \$50 for the first pay period and \$100 for all subsequent pay periods, which would cut the penalty recovery in half. (*Id.* citing *Robinson v. Open Top Sightseeing S.F., LLC* (N.D Cal. Feb. 14, 2018) 2018 U.S. Dist. LEXIS 24556, at *51-58 [awarding \$50 penalty for all wage statement violations].) Plaintiff applied a 20% discount for these risks on the merits. (*Id.*) After applying discounts, Plaintiff calculated LGI’s realistic exposure on this claim as **\$35,160**. (*Id.* ¶ 60.)

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

Certification risk was the same as for the claims of which it is derivative – 25%. (*Id.* ¶ 62.) Plaintiff applied a 20% reduction on the merits because to recover penalties under Section 203, Plaintiff would have had to prove that Defendant’s violation of Labor Code sections 201 and 202 was “willful.” (*Id.*; Lab. Code § 203; Cal. Code Regs., tit. 8, § 13520(a) [“willfulness” lacking if “employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee”].) Given LGI’s non-frivolous arguments on the merits of the minimum wage and overtime claims, Plaintiff saw risk in proving “willfulness.” (Jhaveri-Weeks Decl. ¶ 62.) After applying the discount, Plaintiff calculated LGI’s realistic exposure on this claim as **\$215,130**. (*Id.* ¶ 63.)

Defendant’s Total Exposure on All Class Claims: Plaintiff calculated the Class’s maximum recovery before discounts as approximately **\$6,340,190** (excluding PAGA penalties, interest, and liquidated damages). (*Id.* ¶ 64.) After applying the foregoing discounts for certification and merits risks on each claim, Plaintiff calculated Defendant’s realistic liability for settlement purposes was **\$2,260,129**.

(*Id.*) The Settlement reached by the Parties represents slightly more than 24% of Plaintiff’s calculation of Defendant’s maximum theoretical exposure with no discounts for any of the risks explained above, and 66% of Plaintiff’s calculation of Defendant’s realistic exposure taking into account those risks. (*Id.*) This is a fair and reasonable result for the Class. (*Id.*)

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

The PAGA allocation is reasonable for several reasons. First, the Court has discretion to reduce any award of PAGA penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code section 2699(e)(2). (Jhaveri-Weeks Decl. ¶ 66.) This is especially the case when, as here, the PAGA penalties are in conjunction with a significant settlement of underlying Labor Code claims. (*Id.*; *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1134 [courts reviewing PAGA awards in the context of class settlements consider the relief obtained for the class, as well as the deterrent effect of the settlement].) The Settlement provides robust relief, which reduces the need for PAGA to serve as a punishment or a deterrent. (Jhaveri-Weeks Decl. ¶ 66.) Here, LGI could point to the fact that it changed its policies *before* Plaintiff filed a PAGA notice. (*Id.*) This supports the reasonableness of the \$15,000 PAGA allocation. (*Id.*)

In addition, beyond the 15% cap, Defendant contended that Plaintiff’s claims for PAGA penalties would fail for the same reasons as the underlying claims, and the merits risks on the underlying claims apply to the PAGA claims. (*Id.* ¶¶ 67-68.)

Plaintiff submitted the SA to the LWDA on the date of this filing with information about the date and time of the preliminary approval hearing, giving the LWDA the opportunity to object. (*Id.* ¶ 69.)

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation Support the Reasonableness of the Settlement

This case would take years to resolve absent settlement. (*Id.* ¶ 70.) Voluminous evidence would be needed to prove damages; expert testimony and discovery would be required; and trial would be complex. (*Id.*) Neither side would likely prevail on all positions, making appeals likely. (*Id.*) Moreover,

1 if Defendant prevailed on a motion to compel arbitration then CMs who do not proceed with an individual
2 arbitration would receive nothing. (*Id.*) Therefore, absent a settlement, the Class would not receive relief
3 for many years, if ever. (*Id.*) This Settlement provides an early resolution of this dispute, and CMs will
4 obtain a substantial recovery now without the risks and delays that further litigation would entail. (*Id.*)

5 **3. The Settlement Is the Product of Informed, Non-Collusive Negotiations**

6 The Settlement is the result of arm's-length negotiations, reached after mediation with an
7 experienced mediator. (*Id.* ¶ 71.) Class Counsel engaged in significant informal discovery, in addition
8 to conducting their own investigation that included interviewing CMs. (*Id.*) By analyzing (with an
9 expert) the data and documents produced, interviewing CMs, and preparing for a full-day mediation,
10 Plaintiff was well-informed about the strengths and weaknesses of the Class's claims. (*Id.*)

11 **4. Views of Experienced Counsel Support the Settlement**

12 Class Counsel have extensive class experience. (*Id.* ¶¶ 6-15; Stillman Decl. ¶¶ 6-9.) Class
13 Counsel consider the Settlement a fair and reasonable result, with an average gross recovery per CM of
14 \$31,915 and net recovery of \$20,335.11. (Jhaveri-Weeks Decl. ¶ 72; Stillman Decl. ¶ 11.)

15 **B. The Proposed Class Notice Content and Procedure Are Adequate**

16 Due process requires that CMs be provided with notice sufficient to give them an opportunity to
17 be heard. (*Mullane v. Cent. Hanover Bank & Tr. Co.* (1950) 339 U.S. 306, 314.) Proper notice must
18 provide information to allow CMs to make an informed decision to accept or object to the settlement.
19 (*Id.*; see also *Wershba v. Apple Comput., Inc.* (2001) 91 Cal.App.4th 224, 251-52.) Here, the proposed
20 Notice provides: (1) the material terms of the Settlement, (2) the CM's anticipated payment, (3) how to
21 object or opt out, (4) how to obtain more information, (5) the proposed fees, costs, settlement
22 administration costs, and service award, and (6) the date and time of the final approval hearing. (See
23 **Exhibit A** to the SA [Class Notice]; see also Cal. Rule of Ct. 3.766.) The procedure for distribution of
24 the Class Notice has "a reasonable chance of reaching a substantial percentage of the [CMs]." (*Cartt v.*
25 *Super. Ct.* (1975) 50 Cal.App.3d 960, 974.) The Notice will be sent by first class mail to the most recent
26 address of each CM, updated using the National Change of Address Database. (SA §§ 10.1.1-10.1.3.) If
27 a Notice is returned as undeliverable, Phoenix will perform a skip trace and resend it if a new address is
28 identified. (SA § 10.1.4.) As such, the Notice is likely to reach most, if not all, CMs.

29 **C. The Class Representative Service Award Is Preliminarily Reasonable**

30 In conjunction with seeking final approval, Plaintiff will move for approval of a Service Award
31 of up to \$10,000 for the Class Representative to recognize her effort for the Class and the general release
32 she is giving. (SA §§ 7, 16.2; Jhaveri-Weeks Decl. ¶ 73.) The requested award falls well within the

1 range of those typically awarded. (See, e.g., *Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380,
2 1393 [affirming awards of \$10,000].) Plaintiff served the Class well. (Jhaveri-Weeks Decl. ¶ 74.)
3 Plaintiff was diligent in assisting Class Counsel by promptly responding to emails and calls, responding
4 to detailed factual questions, reviewing drafts, searching for records and providing counsel with
5 documents, carefully evaluating the case for settlement, participating in a full-day mediation, and
6 remaining up-to-date on the case during the preliminary approval process. (*Id.*; Montoya Fontenot
7 Declaration [“Fontenot Decl.”] ¶¶ 2-16.) Other reasons supporting this Service Award include: (1) this
8 litigation resulted in substantial monetary relief to the Class for their wage-and-hour claims and had it
9 not been for Plaintiff, the Class would not have received these benefits; (2) the Service Award provides
10 appropriate compensation to Plaintiff for the time and effort she expended in this litigation; (3) Plaintiff
11 assumed real and concrete risks to her career by bringing this case as a current employee; and (4) Plaintiff
12 is entering into a general release. (*Id.* ¶¶ 75-77; Fontenot Decl. ¶¶ 18-19 [expounding on these facts].)
13 Plaintiff will further brief the reasons supporting the Service Award with the Final Approval Motion.
(Jhaveri-Weeks Decl. ¶ 78.) Granting preliminary approval will provide the Class notice of the requested
14 Service Award and the opportunity to object to it. (*Id.* ¶ 79; see SA § 12, Ex. A [Notice].)

15 **D. The Requested Attorneys’ Fees and Costs Are Preliminarily Reasonable**

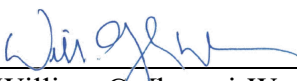
16 In conjunction with final approval, Plaintiff will move for an award of attorneys’ fees of one-third
17 of the GSA (*i.e.*, \$500,000, reduced pro rata if there are opt-outs). (SA § 6.) This is the benchmark award
18 typically approved in class actions. (See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 487
19 [affirming fee award of one-third].) Plaintiff will also request reimbursement of litigation costs not to
20 exceed \$20,000. (SA § 6; Lab. Code §§ 226(e), 1194.2, 2802; Jhaveri-Weeks Decl. ¶ 80 and Stillman
21 Decl. ¶ 13 [stating an itemized detail of the costs incurred to date and the estimated future costs].) If the
22 Court grants preliminary approval, Class Counsel will file a fully-briefed motion, supported by detailed
23 lodestar information, to be heard with the final approval motion. (Jhaveri-Weeks Decl. ¶ 82.)

24 **VI. CONCLUSION**

25 Plaintiff respectfully requests that the Court enter the proposed order certifying the settlement
26 Class, preliminarily approving the Settlement, and ordering distribution of the Notice to the Class.

27 DATED: June 4, 2025

Respectfully submitted,



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Attorneys for Plaintiff and the Putative Class