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*Court Appointed Co-Lead Class Counsel*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

RUBY MITCHELL *and* EDWARD J. KELLY,  
*individually, and on behalf of a class of similarly*  
*situated persons,*

Plaintiffs,

v.

INTERO REAL ESTATE SERVICES,

Defendant.

Case No. 5:18-cv-05623-BLF

**DECLARATION OF GEORGE V. GRANADE IN SUPPORT OF PLAINTIFFS RUBY MITCHELL'S AND EDWARD J. KELLY'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Date: October 20, 2022

Time: 9:00 a.m.

Place: Courtroom 3, 5th Floor

Judge: Honorable Beth Labson Freeman

1 Pursuant to 28 U.S.C. § 1746, I, George V. Granade, declare as follows:

2 1. I am a partner at the law firm of Reese LLP, which, along with Tycko & Zavareei LLP  
3 and Bailey & Glasser LLP, is court-appointed Class Counsel<sup>1</sup> in the above-captioned action.

4 2. I am a member in good standing of the bars of the States of California, New York,  
5 and Georgia, as well as the bars of the United States Courts of Appeals for the Ninth Circuit and the  
6 Second Circuit and the United States District Courts for the Northern District of California, Southern  
7 District of California, Central District of California, Eastern District of California, Southern District  
8 of Illinois, Northern District of Illinois, Northern District of New York, Western District of New  
9 York, Eastern District of New York, and Southern District of New York.

10 3. I respectfully submit this declaration in support of Plaintiffs' concurrently filed motion  
11 for final approval of the Parties' class action settlement.

12 4. The facts set forth in this declaration are based on personal knowledge, and I could  
13 competently testify to them if called upon to do so.

14 5. Class Counsel negotiated the Settlement based on ample information. The Parties  
15 conducted extensive discovery, and they have vigorously litigated this case to the eve of trial. In brief,  
16 the Parties conducted discovery including but not limited to the following, during two discovery  
17 periods: Plaintiffs served on Intero numerous requests for production of documents and  
18 interrogatories, took two Rule 30(b)(6) depositions, took numerous individual depositions of real  
19 estate agents, and deposed both of Intero's proffered experts; Plaintiffs served a subpoena on Mojo  
20 (among other third parties); and Intero served on Plaintiffs numerous requests for production of  
21 documents and interrogatories, took the depositions of all Plaintiffs, and deposed Plaintiffs' expert.  
22 For more detail, in accordance with the Northern District of California's Procedural Guidance for  
23 Class Action Settlements (Final Approval ¶ 2), I respectfully refer the Court to the declarations of  
24 Sabita J. Soneji and Michael R. Reese which accompany Plaintiffs' Motion for Award of Attorneys'

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26 <sup>1</sup> Unless otherwise indicated, capitalized terms are defined in the Settlement Agreement and Release.  
27 *See generally* Decl. Soneji Supp. Pls.' Mot. Prelim. Approval Class Action Stlmt, Ex. A (Stlmt Agmt &  
28 Release), ECF No. 277-2 (filed November 1, 2021).

1 Fees and Costs and Services Awards. ECF No. 289-2 at ¶¶ 4-26; ECF No. 289-4 at ¶¶ 6-35. For all  
2 these reasons, Plaintiffs and Class Counsel were well apprised of the salient legal and factual issues  
3 before reaching the decision to settle the Action.

4 6. Before agreeing to terms of the Settlement, the Parties engaged in three intensive  
5 settlement conferences with Chief Magistrate Judge Joseph C. Spero. These conferences took place  
6 on July 21, 2021 (ECF No. 232), September 9, 2021 (ECF No. 261), and September 22, 2021 (ECF  
7 No. 265).

8 7. The Parties negotiated a cap on Attorneys' Fees and Costs and Service Awards only  
9 after they had agreed on the material terms of the relief for the Settlement Class, including the  
10 definition of the Settlement Class, the Notice Plan, and the benefits to the Settlement Class.

11 8. The strengths and risks of Plaintiffs' case weigh in favor of final approval. While  
12 Plaintiffs and Class Counsel are confident in the strength of the claims and their evidence, including  
13 expert testimony, they recognize the risks and uncertainties posed by Intero's defenses and the  
14 potential difficulties in proving liability, especially in complex actions such as this one. It is possible  
15 Plaintiffs' claims could be dismissed or narrowed by motions *in limine*, at trial, or on appeal. The jury  
16 could decline to credit Plaintiffs' evidence, including the Mojo call records or their critical expert  
17 testimony, or could decline to award at least \$350 per class member on account of Intero's TCPA  
18 violations. A failure of proof on any element—many of which have been hotly contested throughout  
19 the litigation—could doom the claims in whole or in part.

20 9. The risk, expense, complexity, and likely duration of further litigation support final  
21 approval as well. Although the Parties have been litigating this case for almost four years, that timeline  
22 would be extended even further by litigating this case to a final resolution through a jury trial. The  
23 Parties' expenses would increase as litigation costs continue to accrue, and any recovery of a monetary  
24 judgment, which is not guaranteed, would be prolonged. Moreover, the limitations on Intero's  
25 financial ability to pay a final judgment (discussed in paragraph 10 below) may have substantially  
26 narrowed the Settlement Class Members' actual recovery after trial. By contrast, the settlement in this  
27 action provides compensation that is available now, without the additional time and risk of decisions  
28 that would likely be subject to lengthy appeals processes.

1           10.     Intero has produced evidence reflecting an inability to pay. On April 1, 2021, this  
2 Court referred the Parties to Chief Magistrate Judge Spero for a settlement conference. ECF No. 186.  
3 One of the issues raised by Defendant during the first discussions with Chief Magistrate Judge Spero  
4 was the ability to pay. On April 13, 2021, as a result of Interor’s professed limited ability to pay any  
5 judgment secured at trial, Chief Magistrate Judge Spero, in connection with scheduling the first  
6 settlement conference he had with the Parties, ordered Interor to produce to Plaintiffs, for settlement  
7 purposes only, audited profit and loss statements and balance sheets for the preceding three years,  
8 along with any applicable insurance policies. ECF Nos. 192, 193. In advance of the settlement  
9 conference, Interor provided to Class Counsel an unaudited income statement, a balance sheet, and  
10 unfiled tax returns for the preceding three years, all of which provided information related to Interor’s  
11 ability to pay for a class-wide settlement. This information, which Interor has warranted in the  
12 Settlement Agreement as being “true and accurate,” shows that Interor would not even be able to  
13 afford a low eight-figure settlement. Additionally, Class Counsel retained a forensic accounting expert  
14 to assist Plaintiffs in analyzing this data and assessing the validity of Interor’s ability-to-pay argument.

15           11.     Class Counsel are experienced in class action litigation, including TCPA cases, and  
16 they have a nuanced understanding of the legal and factual issues involved in this case. They fully  
17 endorse the Settlement as fair, adequate, and reasonable.

18           12.     No governmental participant has objected to the Settlement.

19           13.     Upon notice from KCC that it had deemed 1,922 of the 11,119 claims that it had  
20 received as of July 26, 2022, late—around 17% of the total claims received—the Parties met and  
21 conferred regarding acceptance of claims received by KCC after the July 6, 2022, claims deadline.  
22 Plaintiffs’ counsel undertook a review of claims-related data provided by KCC and a sample of the  
23 claim forms submitted, and Plaintiffs’ counsel conferred with Interor’s counsel and KCC. The Parties  
24 ultimately agreed that all claims that had been signed by the claims deadline would be deemed valid,  
25 so long as they had been postmarked by July 11, 2022, or, if not postmarked, received by KCC by July  
26 14, 2022. As part of the same agreement, Interor also will not be required to pay any Notice and  
27 Administrative Costs associated with the email notices that were sent on June 24, 2022, and the  
28 postcard notices that were sent on June 28, 2022, both of which Defendant contended were not

1 contemplated by the Settlement Agreement; KCC has agreed not to charge the Parties for those  
2 Notice and Administrative Costs. Other than the Settlement Agreement and the aforementioned  
3 agreement, there are no agreements between Plaintiffs and Intero.

4 14. KCC and the Parties are in the process of reviewing the late claims to calculate the  
5 total number of valid claims, but Plaintiffs preliminarily estimate that approximately 40-60% of the  
6 previously rejected late claims will be validated on account of the agreement set forth in the preceding  
7 paragraph. Plaintiffs base this estimate on their review of (1) a spreadsheet provided by KCC on July  
8 26, 2022, including select data on all of the claims rejected for various reasons; (2) a small sample of  
9 the claim forms that were rejected by KCC as untimely; and (3) 868 paper claim forms that KCC had  
10 deemed untimely either because they were received after the claims deadline and were not postmarked  
11 by USPS or were illegibly postmarked.

12  
13 I declare under penalty of perjury under the laws of the United States of America that the  
14 foregoing is true and correct. Executed on August 19, 2022, at Santa Monica, California.

15 By: /s/ George V. Granade  
16 George V. Granade

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