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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MONA COPAS, an individual, ALICIA
SOTELO, an individual, MARIA
GUDINO, an individual and CLAUDIA
RUIZ, an individual, on behalf of
themselves and all persons similarly
situated, and as aggrieved employees in
representation of the State of California,

Plaintiffs,

vs.

SAN BERNARDINO CARE COMPANY,
INC., dba MEDICAL CENTER
CONVALESCENT HOSPITAL, a
California corporation;

Defendants.

Case No. CIVDS1705324

Complaint filed: March 24, 2017

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Date: February 22, 2024

Time: 1:30 p.m

Dept.: S17

Judge: Hon. Judge Joseph T. Ortiz

NOTICE IS HEREBY GIVEN that, on February 22, 2024, at 1:30 p.m., or as soon thereafter
as the matter may be heard, in Department S17 of the Superior Court of California, County of San
Bernardino before the Honorable Judge Joseph T. Ortiz, pursuant to Cal. Code of Civ. Pro. § 382,

Plaintiffs Alicia Sotelo and Claudia Ruiz (“Plaintiffs”) individually and on behalf of all others similarly situated, will and do hereby move this Court for entry of an Order:

1. Preliminarily certifying the Settlement Class for purposes of Settlement;
2. Preliminarily appointing Plaintiffs Alicia Sotelo, and Claudia Ruiz as Class Representatives for purposes of settlement;
3. Preliminarily appointing James M. Treglio of Potter Handy LLP as Class Counsel for purposes of settlement;
4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Parties’ Joint Stipulation of Settlement and Release (“Settlement Agreement”), including payment by San Bernardino Care Company, Inc., dba Medical Center Convalescent Hospital (“Defendants”) of Three Hundred Thousand Dollars (\$300,000.00)
5. Preliminarily approving a Service Award of \$2,500 for each of the named Plaintiffs from the Net Settlement amount in recognition of their service to the Settlement Class;
6. Preliminarily approving Plaintiffs’ Counsel’s request for up to one third of the Maximum Settlement Amount as attorneys’ fees (i.e., up to \$99,990).
7. PAGA Payment. As one part of the Motion for Order Granting Preliminary Approval, Plaintiffs Sotelo and Ruiz and Class Counsel shall seek approval from the Court of the PAGA Payment of Fifteen Thousand Dollars (\$15,000.00).
8. Appointing payment of up to Eleven Thousand Seven Hundred Fifty Dollars (\$11,750.00) to the Settlement Administrator.
9. Approving the proposed Notice of Class Action Settlement (“Class Notice”) and Claim Form and ordering they be disseminated to the Settlement Class as provided in the Settlement Agreement.

This Motion is based upon the supporting Memorandum of Points and Authorities, the Declarations of James M. Treglio and the attached Exhibits, Alicia Sotelo, and Claudia Ruiz, the Settlement Agreement, the Class Notice, and the other papers and exhibits filed herewith.

Dated: January 4, 2024

Respectfully submitted,
LAW OFFICE OF

POTTER HANDY LLP

By: /s/ James M. Treglio

.
James M. Treglio, Esq.

Attorney for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiffs Alicia Sotelo and Claudia Ruiz (“Plaintiffs”) and San Bernardino Care Company, Inc., dba Medical Center Convalescent Hospital (“Defendants”) for approximately 423 current and former hourly employees of Defendants in California which Plaintiffs maintain provides them with an overall value of \$300,000. Plaintiffs seek to represent a Class defined as (a) All bilingual or monolingual Spanish speaking employees employed by Defendant in California at any time during the Class Period (“English Only Class”); and (b) All hourly non-exempt employees employed by Defendant in California at any time during the Class Period (“Hourly Non-exempt Class”).¹

Because the settlement is fair and reasonable, was negotiated at arm’s length between counsel following extensive informal and formal discovery, and was reached after attendance at a full-day mediation and continued negotiations over several months, it should be preliminarily approved. Subject to court approval, the Net Settlement Amount to Class Members of approximately \$148,260 will be distributed to Class Members who submit timely Claim Forms, as follows:

Monetary Component of Settlement	\$300,000.00
Attorneys’ Fees (1/3 of the TSV)	(\$99,990.00)
Class Counsel Costs	(\$20,000.00)
Claims Administration Costs	(\$11,750.00)
Service Awards to Class Representatives	(\$5,000.00)
PAGA payment to the LWDA	(\$15,000.00)
Net Payments to Class Members	\$148,260.00

Through this motion, Plaintiffs request that the Court enter an order: (1) conditionally certifying the Settlement Class under Cal. Code of Civil Procedure § 382 and California Rule of Court 3.769(c) for settlement purposes only and preliminarily approving the settlement; (2) approving the proposed Class

¹ Any Class Member hired after the date of preliminary approval shall not be included in the Settlement Class.

Notice to be distributed to Class Members pursuant to the Settlement Agreement²; (3) appointing Phoenix Class Action Administration Solutions as the Administrator; and (4) scheduling a hearing for final approval.

The settlement fairly takes into account the significant risks associated with pursuing this litigation further. Those risks include, by way of example only, denial or limitation of class certification, decertification of the class, key factual and legal disputes as to the viability of Plaintiffs' claims under the Labor Code, the potential for the action to be compelled into individual arbitration, and the risk of loss on the merits at trial. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the settlement as fair, reasonable, and adequate, allow notice to issue, and schedule proceedings for final approval of the settlement.

II. BACKGROUND

A. General Background Information About Defendants and Plaintiffs

Defendant San Bernardino Care Company, dba Medical Center Convalescent Hospital ("Defendants" or "SBCC") is a California corporation licensed to do business in the State of California, County of San Bernardino. SBCC is a convalescent care and medical center for elderly patients primarily receiving Medicaid/MediCal. (Treglio Decl., ¶ 11.a).

Plaintiffs are current or former California residents who worked for Defendants during the relevant time period as non-exempt employees. (*Id.* at ¶ 11.b).

This complaint alleges that Defendant SBCC violated the Fair Employment & Housing Act (Cal. Gov't Code § 12940, et seq. of "FEHA"), specifically, class-wide discrimination based on an unlawful "English Only" policy and discrimination based on national origin, including language and race/color. Plaintiffs also filed the class action against Defendants for wage and hour violations of the California Labor Code, including, §§ 226.7, 512, 510, 1194, 204, 216, 223, 226, 1182, 1194, 1197, 1198.5 and 432.5, and for damages, restitution, attorneys' fees and injunctive relief for violation of Cal. Bus. & Prof. Code § 17200, et seq. (*Id.* at ¶ 11.c).

² The Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Payment are attached to the Settlement Agreement as Exhibits B and C, respectively. (*See*, Declaration of James M. Treglio in Support of Plaintiffs' Motion for Order Granting Preliminary Approval of Class Action Settlement ("Treglio Decl."), Exhibits B and C.).

Plaintiffs allege that in order to ensure overtime hours were not accurately recorded or be paid, SBCC undertook a scheme to prevent employees from recording overtime or doubletime hours on their time cards. Plaintiffs allege that SBCC required Ms. Copas, Ms. Gudino and Ms. Sotelo as well as other nonexempt employees to sign their names on time cards before overtime was computed. (*Id.* at ¶ 11.d).

Plaintiffs also allege that the paycheck details verify that any hours worked over 80 hours per pay period was paid as straight time and not overtime or doubletime. Plaintiffs further assert that in the event overtime was recorded, they were never paid for the hours entered because SBCC management removed and/or manipulated the entries to ensure that overtime was not paid or not paid fully. (*Id.* at ¶ 11.e).

According to information supplied by Defendants, there are approximately 423 individuals in the Settlement Class. (*Id.* at ¶ 11.f).

According to information supplied by Defendants, there are approximately 19,122 pay periods. (*Id.* at ¶ 11.g).

B. Procedural History, Informal Discovery, and Mediation

On May 13, 2016, Plaintiffs submitted their notification to the California Labor Workforce and Development Agency (“LWDA”) alleging that (i) Plaintiffs’ and the other Class members were discriminated against by Defendants based on their national origin, including their language and race/color; (ii) Defendants failed and refused to pay Plaintiffs and Class Members timely or accurately for overtime wages and meal and rest period premiums, among others; (iii) Defendants actively prevented Plaintiffs and the Class Members from taking meal or rest periods; (iv) Plaintiffs and the Class Members were denied minimum and straight time wages; (v) Plaintiffs and the Class Members were denied holiday bonus; (vi) Plaintiffs were denied access to their personnel files and payroll records; and (vii) Defendants failed and refused to pay all wages owed to Plaintiffs following demand. Pursuant to Labor Code §2699.3, the notification was mailed to the Defendants in this action. (*Id.* at ¶ 12).

Plaintiffs filed their complaint on March 24, 2017. In their complaint, Plaintiffs allege the following causes of action: (1) discrimination based³ on unlawful “English Only” policy (Cal. Gov’t.

Code § 12951(a); (2) discrimination based on national origin, including language, race and color (Cal Gov't Code §12940(a); (3) failure to pay overtime and doubletime compensation (Cal. Labor Code §§510, 1194); (4) failure to pay minimum wages (Cal. Labor Code §§1194, 1197); (5) failure to provide meal and rest periods (Cal. Labor Code §§226.7, 512); (6) waiting time penalties for failure to pay all wages due on discharge or quit (Labor Code §§201-2013); (7) failure to timely pay all wages earned (Cal. Labor Code §204); (8) unlawfully withholding wages due following demand (Cal. Labor Code §216); (9) failure to pay wages pursuant to statute or contract (Cal. Labor Code §223); (10) illegal terms and conditions (Cal. Labor Code §432.5); (11) failure to provide accurate wage statements (Cal. Labor Code §§226(a) and (b), 226.3); (12) failure to permit inspection of wage statements within 21 days of request (Cal. Labor Code §§226(c) and (f)); (13) failure to provide personnel files (Cal. Labor Code §1198.5); (14) conversion and theft of labor (Cal. Civil Code §§3294 and 3336); (15) unfair competition (Cal. Bus. & Prof. Code §17200, et seq.; and (16) penalties under the Private Attorneys General Act of 2004 (PAGA; Labor Code 2698, et seq. (*Id.* at ¶ 13).

On February 27 and 28, 2017, Plaintiffs and Defendant participated in their first mediation under the guidance of the Hon. Michael D. Marcus (Ret.). The Action did not settle. (*Id.* at ¶ 14).

On May 14, 2020, Plaintiffs and Defendant participated in full day of mediation under the guidance of an experienced wage and hour neutral, Gig Kyriacou, Esq. After the mediation, the Parties continued to work with Mr. Kyriacou, and through further discussions under the guidance of Mr. Kyriacou eventually reached an agreement to resolve all claims in this Action. (*Id.* at ¶ 15).

Finally, the Parties were able to execute the long form Settlement Agreement now before the Court for preliminary approval. (*Id.* at ¶ 16).

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Overview

Under the terms of the Settlement Agreement (“S.A.”) Settlement Class Members will release claims “that were alleged or that could have been alleged based on the factual allegations in the Action, and/or claims which could have been alleged that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, in exchange for Defendant to (1) pay \$300,000 to the Settlement Class which includes (a) the fees and ⁴expenses of the Claims Administrator, not to exceed

\$11,500 (S.A., ¶ 52e); (b) Plaintiffs' proposed Service Awards of \$2,500 each (*Id.*); (c) attorneys' fees of up to \$99,990 (up to one third of the MSF) (*Id.*); litigation costs of \$20,000 and (d) a payment to the LWDA for their portion of the PAGA penalties in the amount of \$15,000 (*Id.*). The remaining amount, an estimated \$148,260 (the "Net Settlement Amount") will be available to be claimed by all Class Members (*Id.*).

Individual Settlement Payments shall be paid from the Net Settlement Amount. Individual Settlement Payments shall consist of two parts: An English Only Class Payment for Settlement Class Members of the English Only Class and an Hourly Non-exempt Class Payment for all Settlement Class Members of the Hourly Non-exempt Class. The payments shall be calculated in accordance with the following steps:

- i. From the Net Settlement Amount, there shall first be paid Twenty- Five Dollars (\$25.00) to each Settlement Class Member of the English Only Class. This amount shall be known as the English Only Class Payment. The Net Settlement Amount, when reduced by all of the English Only Class Payments, shall be known as the remaining Net Settlement Amount.
- ii. Using the Class Data, the Settlement Administrator will calculate the total Compensable Pay Periods for all Settlement Class Members of the Hourly Non-exempt Class by adding the number of Compensable Pay Periods worked by each Settlement Class Member in the Hourly Non-exempt Class during the Class Period. The respective Compensable Pay Periods for each Settlement Class Member of the Hourly Non-exempt Class will be divided by the total Compensable Pay Periods for all Settlement Class Members in the Hourly Non-exempt Class, resulting in the Payment Ratio for each Settlement Class Member of the Hourly Non-exempt Class. Each Hourly Non-exempt Class Settlement Class Members Payment Ratio will then be multiplied by the remaining Net Settlement Amount to calculate each Hourly Non-exempt Class Settlement Class Member's estimated Individual Settlement Payments.
- iii. The sum of the English Only Class Payment, and the Hourly Non- Exempt Class Payment, if any, for each Settlement Class Member shall be the Individual Settlement Payment for the Settlement Class Member. (*Id.*, ¶ 52b(i-iii)).

The Notice of Class Action Settlement contained in the Notice Packet shall state that Class

Members who wish to exclude themselves from the Settlement must submit to the Settlement Administrator either the Request for Exclusion form or a written statement requesting exclusion from the Settlement. The written statement must contain the Class Member's name (and former names, if any), signature, address, and telephone number. The Request for Exclusion will not be valid if it is not timely submitted by the Response Deadline and received by the Settlement Administrator. The date of the postmark on the on the return mailing envelope transmitting the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon, however, all PAGA Covered Employees will receive their PAGA Individual Payments and will be releasing the PAGA Released Claims since they cannot opt out of the PAGA settlement. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be bound by the terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion (*Id.*, ¶ 51g).

The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement must serve on the Settlement Administrator by first class mail a written statement of objection ("Notice of Objection") by the Response Deadline. The date of the postmark on the envelope transmitting the Objection shall be deemed the exclusive means for determining that a Notice of Objection was submitted timely. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member (and former names, if any); (2) the dates of employment of the Settlement Class Member; (3) the last four digits of the Settlement Class Member's Social Security number and/or the Employee ID number; and (4) the reason(s) for the objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to⁶ file or serve written objections to the Settlement or

solicit or encourage Settlement Class Members to appeal from the Order and Final Judgment. Class Members who submit a Request for Exclusion are not entitled to object to the Settlement. (*Id.* ¶ 51h).

B. Scope of the Release

a. “English Only Class Released Claims” means any and all claims for wages, damages, monies, punitive damages, restitution, injunctive and declaratory relief, pre-judgment and post-judgment interest, attorneys’ fees and costs, that were alleged or that could have been alleged based upon the factual allegations in the Action, and/or claims which could have been alleged that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Settlement Period, including, but not limited to all claims asserted in the Action for alleged: (1) discrimination based on unlawful English Only policy, Cal. Gov’t Code § 12951(a); (2) discrimination based on national origin, including language, race, and color, Cal. Gov’t Code § 12940(a); and (3) violation of California Business and Professions Code section 17200, et seq. based on the Government Code sections alleged (the “English Only Class Released Claims”) against the Released Parties. The Parties agree that the judgment and release of claims provided herein shall have res judicata and collateral estoppel effect.

b. “Hourly Non-exempt Class Released Claims” means any and all claims for wages, statutory and civil penalties (but not PAGA Penalties), monies, damages, liquidated damages, premiums, restitution, injunctive and declaratory relief, pre-judgment and post-judgment interest, fees and costs, that were alleged or that could have been alleged based upon the factual allegations in the Action, and/or claims which could have been alleged that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Settlement Period, including, but not limited to all claims asserted in the Action for alleged: (1) failure to pay overtime and double time, Cal. Lab. Code §§ 510, 1194; (2) failure to pay minimum wage, Cal. Lab. Code §§ 1194, 1197; (3) failure to provide meal and rest periods, Cal. Lab. Code §§ 226.7, 512; (4) waiting time penalties for failure to pay wages due on discharge, Cal. Lab. Code §§ 201-203; (5) failure to timely pay all wages earned, Cal. Lab. Code § 204; (6) unlawfully withholding wages due following demand, Cal. Lab. Code § 216; (7) failure to pay wages pursuant to statute or contract, Cal. Lab. Code § 223; (8) illegal terms and conditions, Cal. Lab. Code § 432.5; (9) failure to provide accurate

wage statements, Cal. Lab. Code §§ 226(a), (b), and 226.3; (10) failure to permit inspection of wage statements within 21 days of request, Cal. Lab. Code §§ 226(c), (e), and (f); (11) failure to provide personnel files, Cal. Lab. Code § 1198.5; (12) conversion and theft, Cal. Civ. Code §§ 3294, 3336; (13) violation of Business and Professions Code section 17200, et seq. based on the Labor Code and Civil Code sections alleged, and with respect to the statutory and civil penalties claimed in the Action, any source of obligation as a basis for claiming such penalties, including any and all obligations imposed by the applicable Wage Orders (the “Hourly Non-Exempt Class Released Claims”) against the Released Parties. The Parties agree that the judgment and release of claims provided herein shall have res judicata and collateral estoppel effect.

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of settlement only. In the event this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein:

a. This Settlement Agreement shall be void *ab initio* and of no force or effect and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

b. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

c. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, Defendant have informed Plaintiffs' counsel that the proposed Class consists of approximately 423 Class Members. (Treglio Decl., ¶ 11.f).

B. Well-Defined Community of Interest

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). The commonality element is satisfied here.

In this case, there are common legal and factual question as to whether (1) Defendant discriminated based on unlawful English Only policy Cal. Gov't Code § 12951(a); (2) discrimination based on national origin, including language, race, and color, Cal. Gov't Code § 12940(a); (3) Defendant failed to pay overtime and double time, Cal. Lab. Code §§ 510, 1194; (4) Defendant failed to pay minimum wage, Cal. Lab. Code §§ 1194, 1197; (5) whether Defendant failed to provide meal and rest period,³ Cal. Lab. Code §§ 226.7, 512; (6) waiting time penalties for failure to pay wages due on discharge, Cal. Lab. Code §§ 201-203; (7) Defendant failed to timely pay all wages earned, Cal. Lab. Code § 204; (8) unlawfully withholding wages due following demand, Cal. Lab. Code § 216; (9) Defendant failed to pay wages pursuant to statute or contract, Cal. Lab. Code § 223; (10) illegal terms and conditions, Cal. Lab. Code § 432.5; (11) Defendant failed to provide accurate wage statements, Cal. Lab. Code §§ 226(a), (b), and 226.3; (12) Defendant failed to permit inspection of wage statements within 21 days of request, Cal. Lab. Code §§ 226(c), (e), and (f); (13) failure to provide personnel files, Cal. Lab. Code § 1198.5; (14) conversion and theft, Cal. Civ. Code §§ 3294, 3336; (15) violation of

³ *See, e.g., Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, ("the employer's liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages" *Ibid.* [citations omitted]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728.)

Business and Professions Code section 17200, et seq.; and (16) civil penalties pursuant to the California Private Attorney General Act (Cal. Lab. Code §§ 2698 et seq.), based on the Labor Code sections alleged.

2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiffs’ claims and the claims alleged on behalf of the class.” *Newberg*, § 3:13. Here, Plaintiffs’ claims are typical of the Class because they were subject to Defendant’s policy of failing to provide duty free rest periods, not allowing employees to leave the premises during rest periods, understaffing worksites, not providing duty free meal periods, not compensating employees with meal and rest break premium payments for non-compliant meal and rest breaks, not providing all wages due upon termination to former employees, not providing wage statements in compliance with Labor Code section 226, and failing to properly calculate overtime.

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Specifically, Plaintiffs are adequate as Class representatives since they are committed to representing the interests of the Class, have no interests that are averse to members of the Class, and understand and accepted their duty to represent the best interests of the class. Plaintiffs provided counsel with information which was crucial to the drafting of the class complaint and mediation brief, discussed settlement strategy with their counsel, spoke to other Class Members about their experiences working for Defendant, and were available for the duration of the all-day mediation, all of which demonstrated their commitments to the Class. (*Id.*).

Adequacy may be established by the fact that counsel is an experienced practitioner. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Plaintiffs are represented by counsel experienced in the litigation of wage and hour class actions, who have no interests averse to Plaintiffs or the Class, who have and will continue to vigorously prosecute this action on behalf of the Class alongside Plaintiffs, and who have the financial resources to handle this case. (Treglio Decl., ¶¶ 4-9).

4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

5. Predominance

The common issues here, concerning uniform deficiencies to Defendant's compensation, meal and rest break, final pay, wage statement⁴, and overtime policies raise predominating factual and legal issues supporting certification of a settlement class.

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

A. Class Action Settlements are Subject to Judicial Review and Approval Under the California Rules of Court

The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117. The Court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

This is the preliminary approval stage, and final approval will come in a few months, after the Class members have had an opportunity to participate in the settlement, object, or request exclusion from the settlement. The purpose of the preliminary evaluation of a class action settlement is to determine whether the proposed settlement is within the range of possible approval, and thus whether notice to the class of the settlement terms and the scheduling of a formal fairness hearing is worthwhile. *Wershba*, supra, 91 Cal.App.4th at 234–35; 4 Newberg on Class Actions § 13:13 (5th ed.).

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.* 9 (“*Dunk*”), 48 Cal. App. 4th 1794, 1801 (1996) (setting forth the “fair, adequate, and reasonable” standard) (citing *Officers for Justice*, 688 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class

⁴ See, e.g. *McKenzie*, 275 F.R.D. at 299-300; see also *Willner*¹¹ v. *Manpower, Inc.*, 2012 U.S. Dist. LEXIS 62227 (N.D. Cal. May 3, 2012 (certifying settlement class for purposes of wage statement settlement)).

action settlement agreement, but only after determining that it is “‘fair, adequate and reasonable,’” considering factors such as the “‘risk, expense, [and] complexity’” of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

[T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court’s consideration at final approval).

The above factors are not exclusive, “. . . and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” (*Id.*) The inquiry must be limited “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” (*Id.*, citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802. A “presumption of fairness exists where: (1) the settlement 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.” *Dunk*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations

The Settlement is fair and reasonable, and was negotiated at arm's length between counsel that included a mediator and lasted for nearly a year. Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (*Id.*). The Settlement is a product of intensive negotiations, supported by investigation and direct exchanges of information through formal and informal discovery, and during the course of settlement negotiations, including a full-day mediation. (*Id.*).

C. The Settlement is Non-Reversionary

Defendant shall pay the Maximum Settlement Amount, which shall fund the Individual Settlement Payments, the Class Representative Enhancement, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs, as specified in this Agreement. Defendant shall not be required to pay more than the Maximum Settlement Fund except its share of payroll taxes. This settlement is non-reversionary and none of the Maximum Settlement Fund shall revert to Defendant.

D. The Extent of the Pre-Litigation Discovery and Investigation was More Than Sufficient to Permit Preliminary Approval of the Settlement

Notably, the parties spent months prior to the mediation developing the factual record for this case, engaging in formal and informal discovery and exchanges of documents and information, and drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Treglio Decl., ¶¶ 14-16). The Parties and their counsel attended a full-day mediation session before an experienced and well-respected mediator, Gig Kyriacou, Esq. and continued negotiations for several months thereafter, which resulted in the resolution of the case on a class basis. (*Id.*). In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating and settling similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiffs' counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 35).

E. The Settlement is a Reasonable Compromise of Claims

The Settlement represents a fair compromise given the risks and uncertainties presented by continued litigation. (Treglio Decl. ¶ 35). Defendants asserted and would have continued to assert legal and factual grounds to defend against this action, including the possibility of having to pursue only his individual claims in arbitration, non-certification of claims, and factual and legal defenses on the merits. Moreover, continued litigation would be costly, time consuming, and uncertain in outcome. By contrast, this Settlement ensures timely relief and substantial recovery of penalties Plaintiffs contend are owed to the Class. (*Id.*, ¶ 36).

1. Plaintiffs' Claims and Estimated Damages

Plaintiffs' estimated damages are based on the following facts and figures:

Unpaid Time and Doubletime

The calculation for unpaid time and doubletime is as follows:

Class Period = June 6, 2020 – February 6, 2020 (when policy manual was changed)

Total Pay Periods = 19,122.37 (from documents provided by Defendants)

Average Pay = 13.78

Average due per class member = \$137.80

PAGA Violations = \$100 x 9,772.79 violations = \$977,279.00

Member Claims = \$2,635,062.59.

Rest Breaks

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order 4-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four (4) hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."). In *Augustus*, the court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained "that employers [must]¹⁴ relinquish any control over how employees spend

their break time, and relieve their employees of all duties." *Id.* at 273.

California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each rest period the employer fails to provide in accordance with the applicable Industrial Welfare Commission Wage Order. Therefore, Plaintiffs calculated Defendants' maximum liability for rest breaks as follows: \$27.56 per missed rest period * 5 missed meal period/week * 19,122 workweeks = \$2,635,062.59. (*Id.*, ¶ 20).

Meal Breaks

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty free meal period. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide in accordance with the applicable statute or Industrial Welfare Commission Wage Order.

Therefore, Plaintiffs calculated Defendants' maximum liability for meals breaks as follows \$27.56 per missed rest period * 5 missed meal period/week * 19,122 workweeks = \$2,635,062.59. (*Id.*, ¶ 21).

Failure to Pay All Wages Due

The penalty for violation of Labor Code § 204 is \$100.00 for each initial violation and \$200.00 for each subsequent violation plus 25% of the amount owed. Here, the Defendant violated § 204 across the board, incurring PAGA penalties and § 210 penalties throughout the PAGA period. The PAGA period is split into two periods, the pre-notice period (June 6, 2015-June 6, 2016) and the post notification period, of June 6, 2016-April 20, 2020.

Pre-Notice: (\$100 per violation)

Total PAGA Pay periods: 9722.29

Post-PAGA Periods: 7069.88

PAGA Total: $2652.90 \times \$100 = \$265,290.20$

Post-Notice: (\$200 per violation plus 25% of amount withheld)

PAGA Pay periods = 7069.88

Hours per week = 30

Median Wage = \$13.78

Weekly Wage = \$826.80

Total Withheld = \$5,845,376.78

Withholding Penalty = \$1,461,344.20

Pay Period Penalty: \$1,413.976.

PAGA Total: \$3,140,610.40

Inaccurate Itemized Wage Statements

Labor Code Section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing, showing among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

Pursuant to Labor Code Section 226(e), Plaintiffs and the other current and former employees of Defendants are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable attorneys' fees.

Therefore, Plaintiffs calculated Defendants' maximum liability for inaccurate itemized wage statements as follows:

Total Exposure: $9,772.79 \times \$100 = \$977,279.00$

Failure to Make Payment

Labor Code § 216 makes it unlawful to willfully refuse to make payment, "having the ability to pay, ... wages due and payable after the demand has¹⁶ been made."

Respondents are liable for a violation of Labor Code § 216 on grounds that they refused to pay Plaintiffs for nonpayment of straight time and overtime wages and failure to provide meal and rest periods. The penalty for violation of Labor Code § 216 provides for a civil penalty in the amount of \$100.00 for first violation and \$200.00 for each subsequent willful violation plus 25% of the amount withheld. L.C § 2699.3.

PAGA Pay Period: 9722.79

Notice = $423 \times \$100 = \$42,300$

Post-Notice Period: $7069.88 \times \$200 = \$1,413,976$

Total PAGA Penalties = \$1,456,276

Total Withheld: \$5,845,376.78

PAGA Withholding Penalty = \$1,461,344.20

Illegal Contract under PAGA

Cal. Labor Code § 432.5 provides that “[n]o employer, ... shall require any employee, ... to agree, in writing, to any term or condition which is known by such employer, ... to be prohibited by law.” The penalty recoverable under PAGA for violation of this section is PAGA penalty of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 per employee per employee per pay period. L.C § 2699.3

PAGA Pay Period: 9722.79

Notice = $423 \times \$100 = \$42,300$

Post-Notice Period: $7069.88 \times \$200 = \$1,413,976$

Total Penalties = \$1,456,276

PAGA Penalties: \$9,469,064

SBCC has identified a total of 423 employees. Each of the 4 Plaintiffs in this case have filed PAGA complaints and are therefore entitled to each maintain a representative PAGA action against SBCC for penalties. Unlike the class action, PAGA penalties are limited to one year from the time of filing, however they continue to accrue. The PAGA period is now five years.

F. The Risks Inherent in Continued Litigation are Great

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider “[t]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status.” *See Dunk*, 48 Cal. App. 4th at 1801. As described above, Defendant has strong defenses to Plaintiffs’ claims summarized below, which create a real possibility that the claims might not be certified and/or might fail on the merits. Proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take substantial time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for Class Members, which also benefits the parties and the Court.

G. Defendant’s Defenses

Defendant maintains that it would be able to defeat a class certification motion and/or class claims on the merits, as discussed below.

Case May Not Be Properly Maintained as a Class Action

Should this case proceed without settling, Defendant would argue that the suit could not be properly maintained as a class action because Plaintiffs and the class members cannot establish the necessary procedural elements for class treatment. In particular, there are concerns here that highly individualized factual inquiries predominate over common legal and factual issues. *See Gonzalez v. Millard Mall. Servs.*, 281 F.R.D. 455, 457 (S.D. Cal. Mar. 2, 2012) (plaintiffs failed to show a common policy where managers at different locations had discretion in scheduling work schedules and meal and rest breaks); *Brown v. Fed. Express Corp.*, 249 F.R.D. 580, 586 (C.D. Cal. Feb. 26, 2008) (meal and rest break class action had highly individualized factual inquiries predominate over common legal and factual issues); *Rojas-Cifuentes v. ACX Pac. Northwest Inc.*, No. 2:14- cv-00697-JAM-CKD, 2018 U.S. Dist. LEXIS 83583, at *7-8 (E.D. Cal. May 17, 2018) (class certification denied on commonality grounds because plaintiff failed to identify any policy or practice to demonstrate the claim was capable of resolution by common proof).

Defendant's Arbitration Agreements

Defendants claimed that some Class Members signed arbitration agreements with class action waivers. If enforced by the Court, these arbitration agreements would eliminate all or some of the claims released in the Settlement Agreement (which are not subject to arbitration), as all other claims would be compelled to individual arbitration. This could now include PAGA penalties as the Supreme Court is currently reviewing whether PAGA cases could be compelled into arbitration, wiping out all of Plaintiffs' collective and representative claims. Therefore, Plaintiffs assessed an 85% discount on the risk of Defendant's arbitration agreement with respect to Plaintiffs' claims. (*Id.*).

Risk of Prevailing on the Merits

Even if Plaintiffs successfully obtained certification, it was not a foregone conclusion that Plaintiffs would prevail on the merits and failure to certify or decertification of the class also remained a possibility.

Meal and Rest Periods

Defendant denies Plaintiffs' allegations that Defendant failed to provide compliant meal and rest periods. Defendant relies upon policies, time records showing consistent patterns of taking meal and rest periods, and other such evidence of compliance.

In another recent case—which also applies here—a federal jury found in favor of the defendant against 37,208 employees on a claim for failure to provide lawful rest periods despite the fact that the defendant's policy was facially invalid because it “only provides one ten-minute break for employees working between six and seven hours.” *See In re Taco Bell Wage & Hour Actions* No. 1:07-cv-01314-SAB) 2016 U.S. Dist. LEXIS 32690, at *4-5 (E.D. Cal. Mar. 14, 2016); *In re Taco Bell Wage & Hour Actions*, No. 1:07cv1314 LJO DLB, 2012 U.S. Dist. LEXIS 168219, at *12 (E.D. Cal. Nov. 26, 2012). Therefore, Plaintiffs assessed a 25% discount on the risk of losing on the merits. (Treglio Decl. ¶ 27). Further, Defendant contended, and had evidence of, Class Members documenting both their meal periods, and rest periods. Further, there was evidence that the tracking function of the Defendant's time-keeping application, which Plaintiffs contended resulted in on-duty meal periods and on-duty rest periods, was turned off during employee breaks at some point in time during the Class Period.

Waiting Time Penalties

Defendant pled that Plaintiff and the class members are not entitled to any waiting time penalties because there existed at the time of Plaintiffs' and any class members' termination a good faith dispute regarding their entitlement to additional wages.

Wage Statement Defense

Defendants can rely on a recent California Court of Appeal case, *Maldonado, et al. v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1334-37, 2018 Cal.App. LEXIS 413, *46-52 (April 18, 2018) where the Court reversed their award for penalties for inaccurate wage statements because the Court found that inaccurate wage statements alone do not justify penalties; the plaintiff must establish injury from the inaccuracy.

In addition, Defendants allege that there was no knowing or intentional failure to comply with Labor Code section 226 and that penalties are therefore not available.

Therefore, Plaintiffs assessed an 80% discount on Plaintiffs' claims for inaccurate wage statements. (Treglio Decl., ¶ 25).

Minimum and Overtime Claims

Defendants can rely on time records and wage statements to show that non-exempt employees were paid for all hours worked, including overtime wages when applicable. As such, the settlement value should be further discounted accordingly.

Discounts on the PAGA Penalties

Under Labor Code section 2699(e)(2) a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive or confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as \$5.00 per pay period or 18% of the available PAGA penalties.⁵ Additionally, the Labor Commissioner has specifically stated as recently as last year that the main purpose for assessing PAGA penalties by the Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain compliance. Specifically, with

⁵ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

regard to assessing the adequacy of settlements, the penalty amounts are resigned to “promote PAGA’s compliance and deterrence goals.” Amicus Curiae Brief submitted by the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017.

In addition, the settlement value was significantly discounted based on the risk that a PAGA claims could be deemed unmanageable. See *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (Sept. 9, 2021). For the same reasons discussed above regarding the potential challenge in maintaining a class action, the need for individualized proof regarding whether employees were provided compliant meal and rest breaks raises manageability concerns.

Therefore, Plaintiffs assessed a 70% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties. (Treglio Decl. ¶ 31).

In sum, the settlement amount, negotiated at arms’-length, is fair and reasonable in light of the strengths and weaknesses of Plaintiffs’ case and Defendants’ defenses.

H. Plaintiffs’ Counsel are Experienced in Similar Wage-and-Hour Litigation

Plaintiffs’ counsel is experienced in wage-and-hour class actions. Numerous state and federal courts have certified them as adequate and competent class counsel in similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiffs’ counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 35).

Experienced counsel, operating at arm’s length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (*Id.*). The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account “the experience and view of counsel”) (internal quotation and citation omitted).

I. The Class Notice Plan Conforms to All Applicable Statutes and Rules

The proposed Class Notice should be approved, as it fully informs the Class members of the nature of the lawsuit and each Class Member’s rights under the terms of the Settlement Agreement and

applicable law. The manner in which the Class Notice shall be disseminated, as outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified of the proposed settlement.

The proposed Class Notice and proposed plan for the Claims Administrator to mail the Class Notice to the last known address of all class members complies with all the requirements of California Rule of Court 3.766(b). The contents of the proposed Class Notice include: (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing, how class members may participate in the settlement and receive their settlement share, exclude themselves, or make an objection; and (4) how class members can obtain additional information. In addition, the Notice of Settlement Payment will inform Class Members of their Settlement Share and afford them the opportunity to make corrections to their "workweeks" information if they have a dispute.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976). Here, the parties' notice plan is that notice of the Settlement will be disseminated directly to the class members by first class mail by the Claims Administrator, since Defendants have the last known addresses of all class members and the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any identifiable address changes.

The notice plan and the class Notice satisfy the requirements of Rule of Court 3.766 and affords Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, and release of claims will have res judicata and collateral estoppel effect.; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The 45-day deadline for Class Members

to exclude themselves is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim.

J. The Class Representative Service Awards are Fair and Appropriate

Plaintiffs SOTELO AND RUIZ and Class Counsel shall draft and file with the Court the necessary papers for approval of payment to the Settlement Administrator of the costs of administration of the Settlement from the Maximum Settlement Fund. Defendant agrees not to oppose or object to any application or motion by Plaintiffs SOTELO and RUIZ for payment of up to Eleven Thousand Seven Hundred Fifty Dollars (\$11,750.00) to the Settlement Administrator. Any portion of the requested payment to the Settlement Administrator that is not awarded to the Settlement Administrator shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall pay the approved Settlement Administration Costs no later than fifteen (15) calendar days after the final payment of One Hundred and Fifty Thousand Dollars (\$150,000.00) of the Maximum Settlement Fund is provided to the Settlement Administrator.

K. The Attorneys' Fee Allocation Under the Settlement Agreement is Fair

Plaintiffs SOTELO and RUIZ and Class Counsel shall draft and file with the Court the necessary papers for approval of the attorneys' fees and costs. Defendant agrees not to oppose or object to any application or motion by Class Counsel for attorneys' fees not to exceed one third (33.33%) of the Maximum Settlement Fund, one third (33.33%) of the Maximum Settlement Amount being Ninety-Nine Thousand Nine Hundred Ninety Dollars and No Cents (\$99,990.00). Additionally, Defendant agrees not to oppose or object to any application or motion by Class Counsel for costs not to exceed Twenty Thousand Dollars (\$20,000.00) from the Maximum Settlement Fund for all past and future litigation costs and expenses necessary to prosecute, settle and administer the Action as supported by a declaration from Class Counsel. The Parties agree that any and all claims for reasonable attorneys' fees and costs have been settled by this Agreement and that neither Plaintiffs SOTELO and RUIZ, Settlement Class Members, nor Class Counsel shall seek payment of attorneys' fees or reimbursement of costs/expenses from the Released Parties except as

set forth in this Agreement. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall pay the approved Class Counsel Award to Class Counsel from the Maximum Settlement Fund no later than fifteen (15) calendar days after the final payment of One Hundred and Fifty Thousand Dollars (\$150,000.00) of the Maximum Settlement Fund is provided to the Settlement Administrator. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 -MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiffs SOTELO and RUIZ and Class Counsel shall not have the right to revoke the Settlement, and it will remain binding.

VI. CONCLUSION

For these reasons, Plaintiffs' motion for preliminary approval of the parties' class action settlement should be granted.

Dated: January 4, 2024

LAW OFFICE OF
POTTER HANDY LLP

/s/ James M. Treglio

James M. Treglio, Esq.

Attorney for Plaintiffs and the Class