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11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 HAROLD JONES, et al.,

14 Plaintiffs,

15 vs.

16 CERTIFIEDSAFETY, INC.

17 Defendants.

**Lead Case No. 3:17-cv-02229-EMC**

Consolidated with 3:17-cv-03892-EMC (*Crummie*)

Related to: 3:18-cv-04379-EMC (*Ross*)

3:19-cv-01338-EMC (*Jones II*)

3:19-cv-01380-EMC (*Jones III*)

3:19-cv-01381-EMC (*Jones IV*)

3:19-cv-01427-EMC (*East*)

3:19-cv-01428-EMC (*Jones V*)

18 **JOINT SUPPLEMENTAL BRIEF IN SUPPORT**  
 19 **OF PLAINTIFFS' MOTION FOR**  
 20 **PRELIMINARY APPROVAL OF CLASS AND**  
 21 **COLLECTIVE ACTION SETTLEMENT**

22 Date: January 8, 2020

Time: 11:00 a.m.

23 Courtroom: 5 (17th Floor)

Judge: Honorable Edward M. Chen

24 *Jones* Complaint filed: April 21, 2017

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Pursuant to the Court’s Order Re Supplemental Briefing and/or Evidence (ECF 210), Plaintiffs in these consolidated and related actions, Harold Jones, Tierre Crummie, Genea Knight, Marcellous Ross, and Michael East (“Plaintiffs”) and Defendant CertifiedSafety, Inc. (“CertifiedSafety”) hereby provide additional briefing and evidence in response to each of the issues identified by the Court.

**1. How did Plaintiffs arrive at the conclusion that the California PAGA claim was worth approximately \$6.8 million? See Mot. at 12.**

To calculate the PAGA penalties owed to California Safety Attendants, Plaintiffs’ counsel used the number of Safety Attendants<sup>1</sup> and the number of pay periods within the PAGA limitations period. Plaintiffs then applied assumptions about California Labor Code violation rates and the amount of penalties that would be imposed per violation to arrive at an estimate of Defendant’s total PAGA exposure.

Ahead of the April 23, 2019 mediation, Defendant’s counsel provided updated class data that included, *inter alia*, the total number of California Safety Attendants from April 21, 2013 through April 15, 2019 and the number of pay periods that they worked. Declaration of Carolyn Hunt Cottrell (“Cottrell Decl.”), ¶ 5. This data showed that there were 1,245 Safety Attendants who worked for CertifiedSafety in California during this timeframe, and these individuals worked a total of 21,367 pay periods. *Id.* To provide an accurate damages and penalty analysis with their motion, Plaintiffs extrapolated this data so that it extended to November 22, 2019, the date of filing of the preliminary approval motion. *Id.*, ¶ 6. With extrapolation, Plaintiffs estimated that there were 1,371 California Safety Attendants from April 21, 2013 through November 22, 2019, and these individuals worked an estimated 23,528 pay periods. *Id.*

Next, Plaintiffs further estimated the number of Safety Attendants and the number of pay periods during the narrower timeframe of the PAGA limitations periods. *Id.*, ¶ 7. To do so, Plaintiffs’ counsel assumed that the Safety Attendants and pay periods were evenly distributed from

<sup>1</sup> As in Plaintiffs’ preliminary approval motion, Plaintiffs use the term Safety Attendants to refer to CertifiedSafety’s Safety Attendants and Safety Foremen, the two positions that are within the proposed Class and Collective definitions.

1 April 21, 2013 through November 22, 2019. *Id.* Plaintiffs applied a one-year look-back period for  
 2 the PAGA claims (from the April 21, 2017 filing date of Plaintiffs’ initial complaint), as “[t]he  
 3 statute of limitations on a PAGA claim is one year.” *Robles v. Schneider Nat’l Carriers, Inc.*, No.  
 4 EDCV 16-2482 JGB (KKx), 2017 U.S. Dist. LEXIS 132065, at \*23 (C.D. Cal. Aug. 15, 2017)  
 5 (citing Cal. Code Civ. Proc. § 340). Thus, Plaintiffs calculated, on a proportional basis, the number  
 6 of California Safety Attendants and the number of associated pay periods from April 21, 2016  
 7 through November 22, 2019. Cottrell Decl., ¶ 7. Plaintiffs’ resulting estimates for the number of  
 8 California Safety Attendants and pay periods per year in this timeframe are as follows: 151 Safety  
 9 Attendants and 2,594 pay periods in 2016, 217 Safety Attendants and 3,727 pay periods in 2017,  
 10 217 Safety Attendants and 3,727 pay periods in 2018, and 134 Safety Attendants and 2,298 pay  
 11 periods in 2019. *Id.* In total, Plaintiffs estimated that 719 California Safety Attendants worked  
 12 12,346 pay periods during this timeframe. *Id.*

13 Plaintiffs then assumed that they could prove three PAGA violations per every pay period  
 14 for every one of these employees from 2016 through 2018, and two PAGA violations per every pay  
 15 period for every one of these employees in 2019. *Id.*, ¶ 8. For 2016 through 2018, Plaintiffs  
 16 assumed that they could prove one violation each for (1) off-the-clock work/unpaid overtime, (2)  
 17 meal and rest break violations, and (3) unreimbursed business expenses. For 2019, Plaintiffs  
 18 assumed that they could prove one violation each for (1) off-the-clock work/unpaid overtime, and  
 19 (2) unreimbursed business expenses. *Id.* Plaintiffs’ counsel deducted the 2019 meal and rest break  
 20 violations from this analysis because CertifiedSafety began paying premium pay for missed meal  
 21 and rest breaks. *Id.*

22 Plaintiffs assumed that each Safety Attendants is owed \$100 per first pay period violations,  
 23 and \$200 for all subsequent pay period violations, for each of these PAGA violations. *Id.*, ¶ 9; *see*  
 24 Cal. Lab. Code § 2699(f) (“If, at the time of the alleged violation, the person employs one or more  
 25 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay  
 26 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay  
 27 period for each subsequent violation.”). This is an aggressive assumption, as there is some authority  
 28 that the enhanced “subsequent violation” penalty may be assessed only after the Labor

1 Commissioner or a court rules that the employer’s conduct is in violation of the Labor Code.<sup>2</sup> *See*  
2 *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (“Until the employer has been  
3 notified that it is violating a Labor Code provision (whether or not the commissioner or court  
4 chooses to impose penalties), the employer cannot be presumed to be aware that its continuing  
5 underpayment of employees is a ‘violation’ subject to penalties.”). Plaintiffs also did not  
6 incorporate any discretionary reduction by the Court, even though the PAGA statute enables the  
7 Court to make such a reduction. Cottrell Decl., ¶ 9; *see* Cal. Lab. Code § 2699(e)(2) (“In any action  
8 by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f),  
9 a court may award a lesser amount than the maximum civil penalty amount specified by this part if,  
10 based on the facts and circumstances of the particular case, to do otherwise would result in an  
11 award that is unjust, arbitrary and oppressive, or confiscatory.”). Plaintiffs did not “stack”  
12 derivative violations, such as failure to provide accurate, itemized wage statements and waiting time  
13 penalties. Cottrell Decl., ¶ 10.

14 With these inputs and assumptions, Plaintiffs calculated the PAGA penalties as follows. For  
15 2016, Plaintiffs multiplied the number of Safety Attendants in the year (151) by the number of  
16 PAGA violations per pay period (3) by the \$100 first pay period penalty amount. In this calculation,  
17 the number of Safety Attendants in the year is used to approximate the number of first pay periods  
18 in the year. The resulting amount (\$45,340) is the estimated penalties for first pay period violations  
19 in 2016. Also for 2016, Plaintiffs multiplied the number of subsequent pay periods (2,594 minus  
20 151) by the number of PAGA violations per pay period (3) by the \$200 subsequent pay period  
21 penalty amount. The resulting amount (\$1,465,608) is the estimated penalties for subsequent pay  
22 period violations in 2016. Adding these amounts together yields the total estimated PAGA penalties  
23 for 2016 (\$1,510,948). Plaintiffs used the same calculation to estimate PAGA penalties for 2017  
24 (\$2,171,245), 2018 (\$2,171,245), and 2019 (\$892,292). Totaling all of these amounts yields  
25 Plaintiffs’ total estimate for Defendant’s PAGA exposure of \$6,745,730. Cottrell Decl., ¶ 11.

26  
27 <sup>2</sup> If the Court found that the \$100 penalty applied to all violations, regardless of whether they were a  
28 first or subsequent violation, Defendant’s exposure for PAGA penalties would be reduced by  
slightly less than 50% under Plaintiffs’ analysis.

1           **2. Why does the California class include individuals who attended pre-**  
 2           **employment training? Why do the classes for the other jurisdictions not**  
 3           **include such individuals? See Mot. at 13; Sett. Agmt. ¶ 2.46.**

4           On January 10, 2018, CertifiedSafety’s Rule 30(b)(6) designee, Vice President of Human  
 5 Resources Steve Hines, testified that Safety Attendants are required to complete uncompensated  
 6 pre-employment training to be eligible to work for CertifiedSafety. Cottrell Decl., ¶ 12, Ex. 1  
 7 (Hines deposition transcript 38:7-40:18).<sup>3</sup> VP Hines testified that these trainings are held in three  
 8 locations: Benicia, California, League City, Texas, and Gonzales, Louisiana. *Id.* Of these three  
 9 jurisdictions, Plaintiffs assert a Rule 23 class only for Safety Attendants who worked in California;  
 10 Plaintiffs do not assert Rule 23 classes for Texas or Louisiana. CertifiedSafety does not provide this  
 11 training in the other states for which Plaintiffs assert Rule 23 classes (Washington, Minnesota,  
 12 Illinois, Ohio, and Alaska). *Id.*, ¶ 13. Therefore, the class definitions for the other classes do not  
 13 include pre-employment training as CertifiedSafety does not conduct pre-employment training in  
 14 those states.

15           **3. Do the parties have a sense of how long checks will be maintained by each**  
 16           **state’s Unclaimed Property Division (or other such similar agency)? Did the**  
 17           **parties discuss a cy pres beneficiary as an alternative?**

18           The Parties have proposed the uncashed check funds “be tendered to the State Controller’s  
 19 Office Unclaimed Property Division (or similar/equivalent state agency) for the state where the  
 20 Participating Individual most recently worked for CertifiedSafety.” Settlement Agreement, ¶ 4.17.  
 21 As Safety Attendants worked for CertifiedSafety in numerous different states across the country,  
 22 these funds may be transferred to the unclaimed property divisions of several states. Cottrell Decl.,  
 23 ¶ 14. A review of their websites confirms that monies tendered to these programs are held  
 24 indefinitely and can be claimed at any time.

25  
 26  
 27 <sup>3</sup> Plaintiffs proffer Mr. Hines’s testimony here and elsewhere as additional support for their motion  
 28 for preliminary approval. Certified Safety does not waive and expressly reserves the right to  
 challenge these characterizations if the settlement is not approved and litigation continues.

- 1 • In California, the State Controller’s Unclaimed Property Division holds unclaimed property  
2 indefinitely. According to the Division, “there is no time limit for filing a claim. You can  
3 file a claim at any time after the Unclaimed Property has been transferred to the State  
4 Controller’s Office.” *See* California State Controller’s Unclaimed Property Division  
5 website, [https://sco.ca.gov/upd\\_faq\\_consumer\\_claim\\_about\\_q10.html](https://sco.ca.gov/upd_faq_consumer_claim_about_q10.html).
- 6 • In Washington, there is no time limit for filing a claim and rightful owners or their heirs can  
7 claim property reported since 1955. *See* Washington Department of Revenue’s Unclaimed  
8 Property Section website, <https://ucp.dor.wa.gov/aboutUCP.aspx>.
- 9 • Minnesota also appears to hold unclaimed property indefinitely. According to the Minnesota  
10 Commerce Department Unclaimed Property Program, “the Department is responsible for  
11 safeguarding the funds or property until claimed by the rightful owners or heirs.” *See*  
12 Minnesota Commerce Department Unclaimed Property Program website,  
13 <https://mn.gov/commerce/consumers/your-money/find-missing-money/>.
- 14 • Illinois holds unclaimed property indefinitely. According to the Illinois State Treasurer's  
15 Unclaimed Property Division, “[t]he State of Illinois serves as a custodian of the assets and  
16 never takes ownership of them. Generations from now, a family member could claim your  
17 property with the right paperwork.” *See* Illinois State Treasurer's Unclaimed Property  
18 Division website, <https://icash.illinoistreasurer.gov/app/faq-general>.
- 19 • Ohio holds unclaimed property indefinitely. According to the Ohio Department of  
20 Commerce Division of Unclaimed Funds, “the funds are held until the rightful owner or his  
21 or her heir claims them.” *See* Ohio Department of Commerce Division of Unclaimed Funds  
22 website, <https://www.com.ohio.gov/unfd/ClaimantFAQ.aspx>.
- 23 • The State of Alaska's Unclaimed Property program does not set forth any time limitations or  
24 deadlines to file claims for unclaimed property. *See* State of Alaska's Unclaimed Property  
25 program website, <https://treasury.dor.alaska.gov/Unclaimed-Property.aspx>.
- 26 • In Texas, funds remain with the Texas Comptroller’s State of Texas Unclaimed Property  
27 Program indefinitely. “There is no statute of limitations for unclaimed property. Funds  
28 reported will remain here indefinitely until returned to their rightful owner.” *See* Texas

1 Comptroller's State of Texas Unclaimed Property Program website,  
2 <https://claimitexas.org/app/faq-ucp>.

3 Cottrell Decl., ¶ 15.

4 Until receiving the Court's Order re Supplemental Briefing and/or Evidence (ECF 210), the  
5 Parties had not discussed using a cy pres beneficiary as an alternative to uncashed check funds  
6 going to the state unclaimed property programs. *Id.*, ¶ 16. As the Safety Attendants are a highly  
7 mobile group of employees who regularly travel around the country for their work, the Parties  
8 sought to maximize the opportunity for these workers to obtain their settlement allocations beyond  
9 the check-cashing deadline. *Id.*, ¶ 17. However, if the Court prefers that the uncashed check funds  
10 are transferred to cy pres, the Parties are amenable to proposing an appropriate cy pres recipient to  
11 the Court and amending the Settlement Agreement to effect this change. *Id.*

12 **4. Was any discovery, formal or informal, taken with respect to any refinery? Was**  
13 **any discovery, formal or informal, taken with respect to the alleged joint**  
14 **employer relationships between CS and the various refineries?<sup>4</sup>**

15 Plaintiffs asked CertifiedSafety's Rule 30(b)(6) designee, VP Hines, about issues related to  
16 the alleged joint employer relationship. VP Hines testified that the Refineries controlled multiple  
17 aspects of Safety Attendants and Safety Foremen's work, including their rate of pay, schedules,  
18 shifts, hours worked, timekeeping, reimbursements, training, and safety protocols. Cottrell Decl., ¶  
19 18. In particular, VP Hines testified that rates of pay, shifts, and hours worked by the Safety  
20 Attendants are dictated by the Refineries. *Id.*, ¶ 19, Ex. 1 (Hines deposition transcript, 205:20-  
21 207:7). The Refineries also determine the per-diem amount that is reimbursed to Safety Attendants  
22 for travel expenses for out-of-town assignments. *Id.* (Hines deposition transcript, 227:20-229:25,  
23 233:11-15, 235:6-12).

24 VP Hines further testified that labor budgets and scope of the work performed by Safety  
25 Attendants are dictated by the Refineries. *Id.*, ¶ 20 (Hines deposition transcript, 78:6-79:17). He  
26

27 <sup>4</sup> The statements in this section are Plaintiffs' characterizations of Mr. Hines's testimony, and  
28 proffered as additional support for their motion for preliminary approval. Certified Safety does not  
waive and expressly reserves the right to challenge these characterizations if the settlement is not  
approved and litigation continues.

1 testified that the Refineries determine the work schedules and staffing levels for Safety Attendants.  
2 *Id.* (Hines deposition transcript, 54:14-25). Shift times, job duties, timekeeping process, and lunch  
3 break timing are all set by the Refineries. *Id.* (Hines deposition transcript, 77:10-78:5). VP Hines  
4 testified that the Refineries require Safety Attendants to use their own timekeeping systems, in the  
5 form of the Refineries' badging systems. *Id.* (Hines deposition transcript, 46:18-47:1). He also  
6 testified that the Refineries determine the safety procedures to be followed on each job, and the  
7 amount and level of equipment and personal protective gear required. *Id.* (Hines deposition  
8 transcript, 143:5-22). Taken together, CertifiedSafety has admitted that the Refineries have direct  
9 control over the wages, hours, and working conditions for the Safety Attendants.

10         Additionally, CertifiedSafety has produced Bates-stamped documents that contain pre-  
11 assignment instructions for specific assignments for the Named Plaintiffs. *Id.* ¶ 22, Ex. 2  
12 (CertifiedSafety/Jones 000147). Plaintiffs maintain that these documents show that the Refineries  
13 control where Safety Attendants are to park, the precise route they are to use to traverse the refinery  
14 location, and the location where they are to report. *Id.*

15         At the time of mediation, the Parties were involved in extensive and ongoing meet and  
16 confer efforts regarding Plaintiffs' formal discovery requests. *Id.*, ¶ 23. Plaintiffs anticipated that  
17 these requests would have adduced additional evidence regarding their joint employer claims of  
18 liability against the Refineries. *Id.* At the time of settlement and the preliminary approval motion,  
19 Plaintiffs had not yet conducted formal or informal discovery directly with any Refinery Defendant.  
20 *Id.*, ¶ 24. However, Plaintiffs acknowledge that discovery with CertifiedSafety and later discovery  
21 taken directly against the Refineries may have shown that the level of control exercised by the  
22 Refineries varies from company to company, location to location, and assignment to assignment,  
23 and may have contradicted the testimony of VP Hines. Plaintiffs acknowledged a significant risk  
24 that, in the end, the Court would find for the Defendants on the joint employer issue, at the  
25 summary judgment or trial phase of the litigation.

1           **5. What is the estimated lodestar with respect to attorney’s fees? Plaintiffs shall**  
 2           **also provide the Court with the underlying information used to calculate the**  
 3           **lodestar – i.e., the hourly rates and the number of attorney and/or nonattorney**  
 4           **hours (estimates are acceptable). In addition, Plaintiffs shall provide estimates**  
 5           **as to many hours were spent on the major litigation tasks (e.g., the complaint,**  
 6           **motion work, discovery (formal and informal), settlement, etc.).**

7           The overall lodestar for Schneider Wallace Cottrell Konecky Wotkyns LLP (“SWCKW”)  
 8 across all of the consolidated and related actions is currently \$1,664,249, based on 2,631 hours of  
 9 attorney and staff labor. Cottrell Decl., ¶ 26. This is comprised of \$1,491,229 in aggregate lodestar  
 10 for SWCKW attorneys, based on 2,060 attorney hours, as well as \$173,020 in aggregate lodestar for  
 11 SWCKW staff members, based on 571 staff hours.<sup>5</sup> *Id.* SWCKW’s lodestar is calculated based on  
 12 hourly rates for attorneys ranging from \$600 to \$925 per hour, and hourly rates for staff members  
 13 ranging from \$200 to \$400 per hour.<sup>6</sup> *Id.*, ¶ 27. A summary of the hours billed by all SWCKW  
 14 attorneys and staff in each of the actions and their hourly rates is attached to the Cottrell Decl. as  
 15 Exhibit 3.

16           SWCKW has estimated the number of hours spent on major litigation tasks, across all of the  
 17 consolidated and related actions, as follows:

- 18           • Case and Document Administration: 305.7 hours
- 19           • Case Management Conferences: 50.1 hours
- 20           • Case Organization, Planning, and Strategy (including mediation efforts): 209.5 hours
- 21           • Class Outreach and Contact: 794.05 hours
- 22           • Communications with Opposing Counsel: 28.6 hours

23  
 24 <sup>5</sup> The lodestar amounts presented here do not include any billing or hours for attorneys or staff from  
 25 Lawyers for Justice, PC, who filed the *Crummie* action and who have contributed to the combined  
 litigation efforts.

26 <sup>6</sup> These hourly rates were recently found to be reasonable for purposes of a lodestar crosscheck by  
 27 Judge Vince Chhabria in *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-  
 28 VC, ECF 304, 305 (N.D. Cal. Oct. 23, 2019) (“The Court finds the fee award is further supported  
 by a lodestar crosscheck, whereby it finds that the hourly rates of Schneider Wallace Cottrell  
 Konecky Wotkyns LLP ... are reasonable, and that the estimated hours expended are  
 reasonable.”).

- 1 • Depositions: 90.11 hours
- 2 • Discovery (Non-Deposition): 64.82 hours
- 3 • Pleadings and Motions: 749.37 hours
- 4 • Miscellaneous Research: 68.6 hours
- 5 • Settlement: 235.9 hours
- 6 • Miscellaneous: 37.6 hours

7 Cottrell Decl., ¶ 29.

8 Based on the current SWCKW aggregate lodestar of \$1,664,322, Plaintiffs' counsel requests  
9 a multiplier of 1.26 with the requested fee award of \$2,100,000. *Id.*, ¶ 30. The SWCKW lodestar  
10 will increase as a result of arguing the preliminary approval motion, overseeing the notice of  
11 settlement process, drafting final approval papers, arguing the final approval motion, overseeing  
12 settlement administration, and fielding inquiries from Safety Attendants. *Id.*, ¶ 31. As the SWCKW  
13 lodestar increases, the multiplier amount will decrease. *Id.*

14 **6. The parties shall review the District's Procedural Guidance for Class Action**  
15 **Settlements, available at [https://cand.uscourts.gov/forms/procedural-guidance-](https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/)**  
16 **for-class-action-settlements/. The parties shall provide all information required**  
17 **by the Procedural Guidance, not already included in their motion.**

18 The Parties provide the following additional information arranged in the order that the issues  
19 are presented in the Northern District's Procedural Guidance.

20 1) *Information about the Settlement.* The Settlement classes mirror the putative Class  
21 definitions in the respective operative complaints in the consolidated and related actions. The  
22 Settlement Class for California is coextensive with the California Training Class and the California  
23 CertifiedSafety Class in the *Jones* Third Amended Complaint (the Settlement Class for California  
24 combines the two putative California Classes into a single class). *See* Settlement Agreement, ¶  
25 2.46.2; ECF 176, ¶¶ 68-69. The Settlement Class for Washington is coextensive with the  
26 Washington CertifiedSafety Class in the *Jones* Third Amended Complaint. *See* Settlement  
27 Agreement, ¶ 2.46.6; ECF 176, ¶ 70. The Settlement Class for Minnesota is coextensive with the  
28 Minnesota CertifiedSafety Class in the *Jones II* Complaint. *See* Settlement Agreement, ¶ 2.46.4,

1 *Jones II* ECF 1, ¶ 88. The Settlement Class for Illinois is coextensive with the Illinois  
2 CertifiedSafety Class in the *Jones IV* Complaint. *See* Settlement Agreement, ¶ 2.46.3, *Jones IV* ECF  
3 1, ¶ 86.

4 The Settlement Classes for Alaska and Ohio are coextensive with the Alaska CertifiedSafety  
5 Class and the Ohio CertifiedSafety Class alleged in the *Jones* proposed Fourth Amended  
6 Complaint, to which the Parties have stipulated for leave to file. *See* Settlement Agreement, ¶¶  
7 2.46.1, 2.46.5; ECF 204-1, ¶¶ 72-73. To the extent that Plaintiffs assert other putative classes in  
8 their pleadings, these classes represent subsets of the putative Classes identified above.

9 Under the Settlement Agreement, the Parties have agreed to release all wage and hour  
10 claims based on the same factual predicates in the Actions, under the substantive law (i.e., FLSA  
11 and/or California, Washington, Illinois, Minnesota, Alaska, and Ohio state law) at issue for each  
12 Safety Attendant. Thus, Opt In Plaintiffs release any and all claims under the FLSA based on the  
13 same factual predicates of the Actions. California Rule 23 Class Members release all California law  
14 wage and hour claims based on the same factual predicates of the Actions, and additionally release  
15 their redundant FLSA claims for their work in California if they negotiate their Rule 23 Settlement  
16 Checks. This holds true for the other Rule 23 Classes. A release of all possible wage and hour  
17 claims under the applicable substantive law for each Safety Attendant is appropriate because  
18 Plaintiffs have long attempted to assert all possible wage and hour claims on their behalf against  
19 CertifiedSafety, as evidenced by the multitude of actions, claims, and classes in their lengthy  
20 complaints.

21 2) *Settlement Administration*. The Parties have agreed to use Heffler Claims Group  
22 (“Heffler”) to administer the Settlement, for total fees and costs currently estimated at \$66,000.  
23 Cottrell Decl., ¶ 32. Plaintiffs’ counsel solicited quotes from three settlement administrators, setting  
24 forth the parameters and requirements for administration: the number of Safety Attendants in the  
25 case, the allocation and weighting scheme, dissemination of notice via U.S. Mail and email,  
26 creation of a settlement website, establishment of a toll-free call center to field Class Member  
27 inquiries, and tax reporting in an estimated 20 states. *Id.*, ¶ 33.

28 Plaintiffs’ counsel requested settlement administration estimates from Heffler, ILYM

1 Group, Inc. (“ILYM”), and JND Legal Administration (“JND”). Cottrell Decl., ¶ 34. ILYM  
2 provided the lowest estimate, at \$45,000, and JND’s estimate was \$46,238.00. Heffler’s estimate  
3 was \$66,000. *Id.*

4 Lead attorney Carolyn Hunt Cottrell and SWCKW have worked with virtually all of the  
5 major settlement administration firms throughout their history. *Id.*, ¶ 35. In particular, attorney  
6 Cottrell used Heffler for administration of a \$5 million wage and hour class action settlement in  
7 *Asalati v. Intel Corp.* (Santa Clara Superior Court. Case No. 16cv302615), which was paid in  
8 December 2018. *Id.*, ¶ 36. Attorney Cottrell is also currently working with Heffler on a large FLSA  
9 notice and opt-in administration project for a FLSA action against a major retailer. *Id.* SWKCW is  
10 working with Heffler on settlement administration for *Hose v. Washington Inventory Settlement, et*  
11 *al.* (S.D. Cal., Case No 3:14-cv-02869-WQH-AGS) (FLSA collective action), and worked with  
12 Heffler previously this year for settlement administration for *Shaw, et al. v. AMN Services, LLC, et*  
13 *al.* (N.D. Cal., Case No. 3:16-cv-02816-JCS) (California Labor Code class action). Additionally,  
14 SWCKW previously worked with Heffler approximately two years ago for FLSA notice and opt-in  
15 administration for *Julian v. Swift Transportation Company Incorporated, et al.* (D. Ariz., Case No.  
16 2:16-cv-00576-ROS). *Id.* Based on their experience working with numerous settlement  
17 administrators, Plaintiffs’ counsel have found Heffler to be the most proficient. *Id.* In the experience  
18 of Plaintiffs’ counsel, many settlement administrators regularly make errors and are not properly  
19 resourced to handle a large influx of class member inquiries. *Id.*, ¶ 37. However, Plaintiffs’ counsel  
20 recognized that Heffler has consistently performed its duties at a high level with minimal errors. *Id.*

21 Because the instant Settlement is complex, involving detailed calculations of workweeks  
22 across multiple jurisdictions that are highly individualized to each Safety Attendant and a complex  
23 weighting formula, Plaintiffs’ counsel selected Heffler because, in their experience and opinion, it  
24 is most likely to successfully perform the administration duties. *Id.*, ¶ 38.

25 10) *Class Action Fairness Act (CAFA)*. The Parties agree that CAFA notice is required here,  
26 and that the notices will be made by CertifiedSafety after the Court grants preliminary approval.  
27 Cottrell Decl., ¶ 39. The notices will include the contents required by 28 U.S.C. § 1715(b), and will  
28 be made to the Unites States Attorney General and the Labor Commissioners and/or Attorneys

1 General for each state in which the Rule 23 Class Members reside. *Id.*

2 11) *Past Distributions*. Plaintiffs have referred to a recent hybrid FLSA/Rule 23 settlement  
3 in their preliminary approval motion, *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No.  
4 3:17-cv-00251-VC (N.D. Cal. Oct. 23, 2019). That action involved technicians who install cable  
5 television services, and like the instant case, it involved FLSA claims, state law claims and classes  
6 for various states, and claims of joint employer liability against the entity that contracted with the  
7 “direct” employer to obtain the services of the technicians. Cottrell Decl., ¶ 40. The settlement in  
8 *Soto* was finally approved by Judge Vince Chhabria on October 23, 2019.

9 *Soto* involved approximately 4,508 settlement class members, and there were no opt-outs or  
10 objections to the settlement. Cottrell Decl., ¶ 41. The notice of settlement was disseminated via U.S.  
11 Mail and email, and the Parties created a settlement website. *Id.* Class members did not have to  
12 submit a claim form to participate in the settlement. *Id.* The average payment to each settlement  
13 class member was approximately \$1,027 and the highest payment was approximately \$8,273. *Id.* In  
14 *Soto*, the 180-day cash cashing deadline has not yet arrived, but Plaintiffs’ counsel do not anticipate  
15 that there will be a significant amount of uncashed check funds, due to high interest in the case and  
16 class member satisfaction with the recovery. In the event that uncashed check funds are less than  
17 \$75,000, these monies will revert as cy pres to the University of California at Berkeley’s Institute  
18 for Research on Labor and Employment. If the funds exceed \$75,000, there will be a second  
19 distribution where the uncashed check funds will be distributed on a pro rata basis to those class  
20 members who cashed their checks. Cottrell Decl., ¶ 42.

21 Plaintiffs’ counsel in *Soto* were awarded \$2,500,000 (one-third of the gross settlement  
22 amount) in attorney’s fees, which were split between SWCKW and co-counsel Berger Montague  
23 PC. *Id.*, ¶ 43. The settlement administration costs to settlement administrator CPT Group, Inc. were  
24 \$40,000. The administration costs were significantly less than those in the instant case primarily  
25 because the *Soto* class members worked in approximately six states, while the Safety Attendants at  
26 issue here have worked for CertifiedSafety in an estimated 20 states. *Id.* As tax reporting is  
27 completed by the settlement administrator and required for each state where Class Members  
28 worked, the tax reporting costs are much higher in the instant case. Additionally, the *Soto*

1 settlement involved two Rule 23 classes (in addition to the FLSA collective) while the instant  
2 settlement involves six Rule 23 classes (in addition to the FLSA collective), resulting in a more  
3 complex weighting formula and calculation requirements. *Id.*

4 **7. Changes to the Class and Collective Notices**

5 Plaintiffs have incorporated the Court's suggested changes to the Class and Collective  
6 Notices. Revised notices are attached to the Cottrell Decl. as Exhibits 4-6 (in clean format) and 7-9  
7 (in redline format).

8  
9  
10  
11 Date: December 19, 2019

Respectfully submitted,

12  
13 /s/ Carolyn Hunt Cottrell  
14 Carolyn Hunt Cottrell  
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