District Court Arapahoe County, Colorado 7325 South Potomac Street Centennial, CO 80112	
Plaintiffs: CHARLENE TILTON, OLLIS KNAULS, PATRICE HUNTER, ALFRED HUNTER, ESTATE OF DESHAWN HUNTER, TANYA SAMUEL, KEVIN GOLDSBY, BRYAN HULL, ASHLEY REED, JACQUELINE BOWEN, ESTATE OF NORMA SAMUELS, CHRISTY WHETSTONE, DAVID DAVIDSON, LOUIS SANTIAGO, TIERRA ALLRED, KEENA HILL, MARKIA RHODES, and MICHAEL LUNSFORD, on their own behalf and on behalf of those similarly situated, v. **Defendants:** AMEN CORNER, LLC d/b/a THE VARECO, 11800 E COLFAX OZB, LLC d/b/a SUMMIT VIEW INN, and 11800 E COLFAX OZB LLC MANAGER LLC	DATE FILED March 6, 2026 6:16 PM FILING ID: BE515893FDCD3 CASE NUMBER: 2022CV32318 ▲ COURT USE ONLY ▲
Attorneys for the Represented Plaintiffs Rebecca Cohn, #56289, Burton Nadler, #54984 & Zachary W. Neumann, #54231 **Community Economic Defense Project / CED Law** 1600 North Downing St., Ste. 500, Denver, CO 80218 (720) 343-5941 rebecca.cohn@cedlaw.org; burt.nadler@cedlaw.org; zach.neumann@cedlaw.org David H. Seligman, #49394; Brianne Power, #53730 & Juno Turner, NY #4491890 *admitted pro hac vice* **Towards Justice** P.O. Box 371680, PMB 44465, Denver, CO 80237-5680 (720) 441-2236 david@towardsjustice.org; brianne@towardsjustice.org; juno@towardsjustice.org Benjamin DeGolia, #55737 **DeGolia Law P.C.** 2701 Lawrence St., Ste 1600, Denver, CO 80205 (303) 210-3334 benjamin@degolialaw.com	Case Number: 22CV32318 Div: 204
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT PURSUANT TO C.R.C.P. 23(e)	

CERTIFICATE OF CONFERRAL

Plaintiffs' counsel[1] certifies that they have conferred with Defendants' counsel regarding the relief sought herein. Defendants do not oppose this Motion.

s/ Brianne Power
Brianne Power

Attorney for Plaintiffs

[1] Throughout this Motion, counsel from CED Law, Towards Justice, and DeGolia Law are referred to as "Plaintiffs' Counsel" or "Class Counsel" because they are putative Class Counsel and counsel for all the named Plaintiffs except Markia Rhodes, who they no longer represent.

I. INTRODUCTION

With the help of the Honorable David Goldberg (ret.) of the Judicial Arbiter Group, Inc., as a mediator, Defendants Amen Corner, LLC d/b/a the Vareco, 11800 E Collfax OZB, LLC d/b/a Summit View Inn, and 11800 E Colfax OZB LLC Manager LLC ("Defendants" or "SVI") and proposed class representatives Tanya Samuel, Kevin Goldsby, and Bryan Hull ("Class Representatives") (together, the "Parties") reached a settlement for $750,000.00 to settle all claims in this action on behalf of themselves and the settlement class and subclasses they seek to represent. *See generally* Ex. 1, Executed Settlement Agreement (the "Settlement"); Ex. 2, Notice.

The proposed Settlement meets all the criteria for preliminary approval pursuant to Rule 23(e), *i.e.*, the proposed Settlement is within the range of reasonableness and warrants notifying the class and setting a final approval hearing. *See Lucas v. Kmart Corp.,* 234 F.R.D. 688, 693 (D. Colo. 2006). The Settlement should be preliminarily approved pursuant to Rule 23(e), and the proposed notice should be served on the class.

II. PROPOSED SETTLEMENT CLASS

The Settlement defines the following class for settlement purposes only (the "Class" or the "Settlement Class")[2]:

> ALL INDIVIDUALS THAT OCCUPIED A UNIT AT THE SUMMIT VIEW INN BETWEEN FEBRUARY 14, 2020, AND OCTOBER 31, 2021

Ex. 1, Settlement at ¶ I.3 (defining "Settlement Class"). Pursuant to the Settlement, Plaintiffs seek certification of the Class for settlement purposes and simultaneously seek certification for

[2] The "Settlement Class" has the same definition as the "Occupant Class" proposed in the Motion for Class Certification. *See* Settlement at ¶ 3, n.2; Certification Motion at 6.

settlement purposes of four subclasses (the "Subclasses")[3]:

> **The Occupant Late Fee Subclass:** ALL INDIVIDUALS THAT OCCUPIED A UNIT AT THE SUMMIT VIEW INN AND WERE CHARGED LATE FEES AND LOCKED OUT OF THEIR UNIT FOR A PERIOD OF TIME BETWEEN FEBRUARY 14, 2020, AND OCTOBER 31, 2021
>
> **The Tenant Subclass:** ALL INDIVIDUALS THAT OCCUPIED A UNIT AT THE SUMMIT VIEW INN BETWEEN FEBRUARY 14, 2020, AND OCTOBER 31, 2021, AND RESIDED AT THE SUMMIT VIEW INN FOR AT LEAST 30 CONSECUTIVE DAYS
>
> **The Tenant Lockout Subclass:** ALL INDIVIDUALS THAT OCCUPIED A UNIT AT THE SUMMIT VIEW INN BETWEEN FEBRUARY 14, 2020, AND OCTOBER 31, 2021, RESIDED AT THE SUMMIT VIEW INN FOR AT LEAST 30 CONSECUTIVE DAYS, AND WERE LOCKED OUT OF THEIR UNIT
>
> **The Tenant Closure Subclass:** ALL INDIVIDUALS THAT OCCUPIED A UNIT AT THE SUMMIT VIEW INN BETWEEN SEPTEMBER 12, 2021, AND OCTOBER 31, 2021, AND RESIDED AT THE SUMMIT VIEW INN FOR AT LEAST 30 CONSECUTIVE DAYS

See Settlement at ¶ 3, n.2; *infra* at Part V (seeking certification for settlement purposes).

III. THE SETTLEMENT

As required by the Settlement, SVI has already paid a gross settlement amount of $750,000.00 into SVI's counsel's escrow account to be held until its transfer into a qualified settlement account following final approval. *See* Settlement at ¶¶ 11, 27. All required payments will be made from the $750,000.00, including all payments to members of the Class ("Class Members"), attorneys' fees, litigation expenses, settlement administration costs, and any service payments. *Id.* at ¶¶ 11, 29-33. The Settlement is non-reversionary. *See id.* at ¶ 32. The gross settlement amount is in consideration for a waiver and release by Class Members of all claims arising out of, based on, or encompassed by the facts that were asserted in any civil complaint filed in this Action. *Id.* at ¶ 40. The Settlement also includes a general mutual release between SVI and

[3] The Subclasses are defined consistently with the "Occupant Late Fee Subclass," "Tenant Class," "Tenant Lockout Subclass," and "Tenant Closure Subclass" proposed in the Motion for Class Certification. *See* Settlement at ¶ 3, n.2; Certification Motion at 6.

the Class Representatives, as well as any other Plaintiffs named in this Action ("Named Plaintiffs") that sign the general release and receive a service payment. *Id*. at ¶ 42.

Class Counsel has agreed to seek no more than 20% of the Gross Settlement Amount for attorneys' fees, plus reimbursement of reasonable costs and expenses. *Id.* at ¶ 29; *infra* at Part IX. Subject to Court approval, the Settlement allows each of the three Class Representatives, and any other Named Plaintiffs that sign a general release of claims, to seek service payments in the amount of $5,000 for each of the three Class Representatives, $3,500 for each of the other Named Plaintiffs that were deposed in this Action, and $2,500 for the remaining Named Plaintiffs for their efforts in pursuing this Action (up to $55,500 total depending on the number of Named Plaintiffs that sign the general release). *See* Settlement at ¶ 30; *infra* at Part X (service payments).

The portion of the gross settlement amount allocated to Class Member payments will be distributed among Class Members who complete the claims process and provide the information necessary to verify their claims and facilitate payment on a pro rata basis pursuant to a formula designed by Class Counsel to account for each individual's membership in the Subclasses (accounting for their claims in this Action, as well as Class Counsel's assessment of the potential damages and risks of recovery), as well as their length of occupancy and number of late fees charged. *See* Settlement at ¶ 32; Ex. 5, Declaration of Brianne Power ("Power Decl."), at ¶ 11. Class Counsel propose the following formula:

Class Member Individual Point Total = (100 points for **settlement class members**)

+ (1000 points for **occupant late fee subclass members**)

+ (1500 points for **tenant subclass members**)

+ (500 for **tenant lockout subclass members**)

+ (2000 for **tenant closure subclass members**)

+ (0 to 2000 points based on **length of occupancy**)

+ (0 to 1000 points based on **number of late fees**)

Class Member Pro Rata Share =

$$\left(\frac{\text{Class Member Individual Point Total}}{\text{Sum of All Participating Class Member Point Totals}}\right) * (\text{Distribution Amount})$$

The settlement administrator will determine each claimant's pro rata share of the settlement funds based on the ratio of their individual formula total to the combined amount of all eligible claimants' formula totals. *See* Settlement at ¶ 32.

Although claims processes aren't generally necessary in the administration of an opt-out class action settlement under C.R.C.P. 23, Class Counsel has concluded that a claims process is necessary in this case. Given the data available and the transient nature of the Class, additional information is necessary in order to facilitate payment to Class Members, and to verify claims by any individuals who may not be on the class list (for example, individuals who occupied a unit at SVI as a guest of the individual that made the reservation). *See* Ex. 5, Power Decl. at ¶¶ 7-8; Ex. 3, Claim Form. Here, the claims process proposed by Class Counsel has been thoughtfully designed to ensure that Class Members who wish to receive settlement payments have the opportunity to provide updated contact information, provide information that may be relevant to verify their claim or the claims of individuals they shared a reservation with at SVI, select and arrange a feasible payment method, and provide any information necessary to facilitate payment (such as an IRS Form W-9 if applicable). *See* Ex. 3, Claim Form; Settlement at 32(c) (tax treatment). The Claim Form provides the opportunity for Class Members to provide updated contact information, instructions for how they would like to receive their settlement payment, and information relevant to verifying claims and distributing payments. *See* Ex. 3, Claim Form.

In order to facilitate the calculation of each Class Member's pro rata share of the net

settlement fund and provide the information necessary to distribute settlement payments, Class Members must submit a completed Claim Form (Ex. 3) by the claim deadline in order to be eligible to receive payment in the first distribution. *See* Ex. 2, Notice at 1, 2; Ex. 3, Claim Form at 1. However, in recognition of the fact that all Class Members that do not opt out of the Settlement will be bound by its terms, late claimants may be eligible for payment in the second distribution of settlement payments if economically and practically feasible. In an effort to distribute settlement payments to as many Class Members that can be located before the funds are fully distributed, the administrator shall withhold $100,000 of the net settlement fund from the first distribution of settlement payments as an "Errors and Omissions Fund" to be distributed as part of a second distribution if economically feasible.

Within 14 days of preliminary approval, Class Counsel will provide a spreadsheet to the settlement administrator containing the data provided by SVI, the class list created based on Class Counsel's analysis of the data, and current formula calculations to the settlement administrator, *see* Settlement at ¶ 36(a); Ex. 5, Power Decl., at ¶ 9, and the settlement administrator shall then send notice of the proposed Settlement to the Class upon the Court's preliminary approval of the Settlement by text message linking to a settlement website displaying the full Notice (Ex. 2), Claim Form (Ex. 3), and Exclusion Form (Ex. 4), *see* Settlement at ¶ 36(b);[4] *infra* Part VII (notice plan). Class Counsel will also distribute the Notice by publication through the distribution of flyers in the East Colfax area, including to service-providers such as community kitchens and an advertisement in the monthly street newspaper the Denver VOICE. *See* Settlement at ¶ 36(b); *infra*

[4] Upon analysis of the available contact information for the Class, Class Counsel has determined that text messages would be more effective than mailed notice. *See* Ex. 5, Power Decl. at ¶ 6; *infra* Part VII (notice plan).

Part VII. The text messages, flyers, and advertisement will direct individuals to the settlement website containing the full notice. *See infra* Part VII.

Class Members will have 45 days after distribution of the notice by text message to file a timely claim, opt out of the Settlement, or file objections with the Court. *See* Settlement at ¶¶ 37-38; Ex. 2, Notice at 1-2, 3; Ex. 3 Claim Form; Ex. 4, Exclusion Form. Class Members will also have the opportunity to appear at a final approval hearing set by the Court in response to this Motion. *See* Settlement at ¶¶ 38-39; Ex. 2, Notice at 2, 3.

Within 7 days of the effective date following final approval,[5] the settlement administrator shall establish a qualified settlement fund, and Defendants' counsel shall transfer the total amount of the Gross Settlement Amount from their escrow account to the settlement fund. *See* Settlement at ¶ 39(e). The settlement administrator shall set aside $100,000.00 of the net settlement fund (the portion of the fund allocated to settlement payments for Class Members) for the "Errors and Omissions Fund."

Within 21 days of the effective date, the settlement administrator shall issue the first distribution of payments to participating Class Members that submitted a timely and completed Claim Form with the information necessary to verify the individual's claim and facilitate a settlement payment, as well as the approved payments to Class Counsel, Class Representatives, and Named Plaintiffs that receive service payments. *Id.* at ¶ 39(f).

If economically feasible, the settlement administrator may disburse a second round of payments with any remaining funds—including any uncashed checks and the $100,000 Errors and

[5] The Settlement's effective date occurs after the Court grants final approval and either (a) the applicable date for seeking appellate review of the Court's approval has passed without a timely appeal; (b) an appellate court has reached a final decision affirming final approval without modification and the time for any further appeal has expired; or (c) any timely filed appeal has been dismissed. *See* Settlement at ¶ 8.

Omissions Fund. *See* Settlement at ¶ 32(b) (allowing for second distribution). Class Members that submit a complete and valid Claim Form *after* the claims deadline but *within* 90 days after the issuance of the first distribution of settlement payments will be eligible to receive payment in the second distribution if economically and practically feasible. If the remaining funds exceed the amount of funds necessary to distribute shares (on the same pro rata basis as the first distribution) to participating Class Members that did not receive payment in the first distribution, the remaining amount will be allocated amongst all participating claimants.

To the extent any amount remains in the settlement fund following disbursements of settlement payments, the settlement administrator shall disburse the remaining amount to a *cy pres* organization recommended by Class Counsel and approved by the Court at final approval pursuant to C.R.C.P. 23(g). *See id.*

IV. RELIANCE ON FEDERAL AUTHORITY

Colorado authority on class action settlement approval is scant and therefore Class Counsel rely on federal authority to interpret the requirements of C.R.C.P. 23. *See Warne v. Hall*, 2016 CO 50, ¶ 12, 373 P.3d 588, 592 (federal cases interpreting federal rules provide "highly persuasive guidance" when interpreting identical state rules) (citing *Leaffer v. Zarlengo*, 44 P.3d 1072, 1080 (Colo. 2002)*; Helen G. Bonfils Found. v. Denver Post Emps. Stock Tr.*, 674 P.2d 997, 998 (Colo. App. 1983) (recognizing lack of state authority and applying "universally applied" federal standard in evaluating proposed settlement pursuant to C.R.C.P. 23(e)); *cf. Thomas v. Rahmani-Azar*, 217 P.3d 945, 947-48 (Colo. App. 2009) (citing federal standard and noting that trial court's approval of class settlement is "a discretionary determination" and will be overturned only upon showing of abuse of discretion).

V. THE COURT SHOULD CERTIFY THE CLASS AND SUBCLASSES FOR SETTLEMENT PURPOSES ONLY

For settlement purposes only,[6] the Court should certify the Class and Subclasses because they meet the requirements of Rule 23(a) and Rule 23(b)(3). *See generally* Plaintiffs' Motion for Class Certification (Aug. 7, 2025) ("Certification Motion").

A. The Settlement Class and Subclasses Should Be Certified Pursuant to Rule 23(a)

1. *Numerosity*

The proposed Class and Subclasses are so "numerous that joinder of all members is impracticable." *See* C.R.C. P. 23(a)(1). Based on the data regarding known Class Members, the putative Settlement Class includes approximately 1150 Class Members; the putative Occupant Late Fee and Tenant Subclasses include over 200 Class Members; the putative Tenant Lockout Subclass includes approximately 100 Class Members; and the putative Tenant Closure Subclass includes at least 16 Class Members. *See* Ex. 5, Power Decl. at ¶ 10.[7] This is sufficient to satisfy numerosity for settlement purposes. *See* Certification Motion at 7-8.

2. *Commonality*

The proposed Class and Subclasses also meet Rule 23's commonality requirement, which requires a showing that "there are questions of law or fact common to the class." *See* C.R.C.P. 23(a)(2); Certification Motion at 8-12. "This does not mean, however, that every issue must be common to the class." *LaBerenz v. Am.Family Mut. Ins. Co.*, 181 P.3d 328, 338 (Colo. App. 2007).

---

[6] There is a lower standard for Rule 23 certification in the settlement context. *See* Fed. R. Civ. P. 23(e)(1) advisory committee note to 2018 amendment (acknowledging the different standards in noting that "[a]lthough the standards for certification differ for settlement and litigation purposes…"); *see also In re Hyundai & Kia Fuel Econ. Litig.,* 926 F.3d 539, 556–57 (9th Cir. 2019) (class certification concerns about "manageability at trial" do not exist in the settlement context).

[7] These estimates have been updated by Class Counsel upon analysis of additional class member data exchanged between the Parties to facilitate settlement. *See* Ex. 5, Power Decl. at ¶ 10.

Here, there are sufficient common questions of law and fact regarding the policies of SVI supporting commonality for settlement purposes. *See* Certification Motion at 8-12.

3. *Typicality*

Class Representatives Goldsby, Hull, and Samuel have claims "typical of the claims . . . of the class." C.R.C.P. 23(a)(3); *see* Certification Motion at 12-13. Specifically, Plaintiffs Goldsby and Hull satisfy typicality with respect to the Tenant Closure Subclass, and Plaintiffs Goldsby, Hull, and Samuel all satisfy typicality with respect to the Class and the other Subclasses. *See* Certification Motion at 12-13.

4. *Adequacy*

The proposed Class Representatives, and proposed Class Counsel, can "fairly and adequately protect the interests of the class." C.R.C.P. 23(a)(4); *see* Certification Motion at 13. Class Representatives' incentives are aligned with the Class, and Class Counsel—Towards Justice, CED Law, and DeGolia Law—are qualified to prosecute a class action on behalf of marginalized tenants. Certification Motion at 13 (citing counsel declarations attached as Exhibits 6-8 to the Certification Motion). Plaintiffs' counsel have also committed to advancing all costs of this litigation. *Id.*

B. The Class and Subclasses Meet the Requirements of Rule 23(b)(3) for Settlement Purposes.

The Class and Subclasses should be certified under Rule 23(b)(3) because "questions of law or fact common to the class predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *See also* Certification Motion at 14-15.

1. *Predominance*

For common questions of law or fact to predominate under Rule 23(b)(3), "[i]t is not

necessary that all of the elements of the claim entail questions of fact and law that are common to the class, nor that answers to those common questions" be dispositive of the plaintiff's claims. *See CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). Here, the primary questions for the proposed classes are common questions that can be answered based on common evidence, reasonable classwide inferences, and representative circumstantial evidence. *See* Certification Motion at 14-15. Accordingly, class certification for settlement purposes to effectuate the Settlement Agreement is proper.

2. *Superiority*

A class action is also the superior method of resolving this controversy. *See* Certification Motion at 15. To the knowledge of Class Counsel, no other potential Class Members other than the Named Plaintiffs have current claims against Defendants in any court or administrative proceeding related to the practices at issue. Certification Motion at 15 (citing counsel declarations attached as Exhibits 6-8 to the Certification Motion). Thus, no other potential Class Member has demonstrated an interest in controlling this litigation. *See* C.R.C.P. 23(b)(3)(A)-(B). Furthermore, this Court is ideal for the concentration of this litigation, *see* C.R.C.P. 23(b)(3)(C); Certification Motion at 15, and the putative class action is unlikely to be difficult to manage, *see* C.R.C.P. 23(b)(3)(D); Certification Motion at 15. Finally, "[c]ertifying the Class is also 'fundamentally consistent with the purpose of [Rule] 23.'" Certification Motion at 15 (quoting *Hicks*, 2022 COA 149, ¶ 47).

VI. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.

Pursuant to Rule 23(e), court approval of a class action settlement takes place in a two-step process. The court first decides whether to give notice to the Class of the proposed settlement and second decides whether to finally approve the settlement as "fair, adequate, and reasonable." *See* Rule 23(e); *Bruce W. Higley, D.D.S., M.S., P.A. Defined Ben. Annuity Plan v. Kidder, Peabody &*

Co., 920 P.2d 884, 891 (Colo. App. 1996). This Motion asks the Court to undertake the first step of the analysis, *i.e.*, whether notice of the Settlement should be provided to Class Members. *See* Rule 23(e).

At the preliminary approval stage, the Court determines only whether there is "any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing." *See Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). That requires a court to consider whether the settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *In re Motor Fuel Temp. Sales Practices Litig.*, 286 F.R.D. 488, 492 (D. Kan. 2012) (citation omitted).

Here, the proposed Settlement warrants notice to Class Members.

A. The Proposed Settlement Was Fairly and Honestly Negotiated

The fairness of the settlement negotiation should be examined "in light of the experience of counsel, the vigor with which the case was prosecuted, and [any] coercion or collusion that may have marred the negotiations themselves." *Ashley v. Reg'l Transp. Dist.,* No. 05-cv-01567-WYD-BNB, 2008 WL 384579, at *5 (D. Colo. Feb. 11, 2008) (citation omitted); *see also In re Penthouse Executive Club Compensation Litig.*, 2013 WL 1828598, at *2 (S.D.N.Y. 2013) (granting preliminary approval of proposed settlement reached through negotiations that involved formal mediation, finding that the proposed settlement is non-collusive, as a settlement "reached with the help of third-party neutrals enjoys a 'presumption that the settlement achieved meets the requirements of due process'" (quoting *Johnson v. Brennan*, 2011 WL 4357376, at *8 (S.D.N.Y. 2011))). The primary concern is "the protection of class members whose rights may not have been given adequate consideration during" settlement negotiations. *Wilkerson*, 171 F.R.D. at 283 (quoting *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 546 (D. Colo. 1989)).

Here, the Parties are represented by experienced counsel who completed formal discovery related to class certification, and the Settlement resulted from an arm's length mediation held before Hon. Judge David Goldberg (ret.), who spent ten years presiding over complex civil and criminal disputes in the Second Judicial District Court, including numerous class actions. *See generally* Judicial Arbiter Group, *Hon. David Goldberg Bio*, available from https://jaginc.com/goldberg-david/. Through the completion of the first phase of discovery, including SVI providing reservation and audit records, and complete briefing of Plaintiffs' Motion for Class Certification in advance of mediation, the Parties gained ample information to fully evaluate the strengths and weaknesses of their claims and defenses, as well as the fairness of the Settlement. The Parties' counsel vigorously negotiated the settlement terms, such that there can be no doubt that the settlement was honestly and fairly negotiated, and was not the product of collusion. *See Lucas*, 234 F.R.D. at 693 (settlement presumed to be fair and reasonable where it is the result of "arm's length negotiations between experienced counsel after significant discovery").

B. The Settlement Is Non-Collusive

This lawsuit was originally filed on December 16, 2022. This dispute involves a bona fide dispute between adversarial parties. Settlement of this matter, as reflected in this motion and by the settlement agreement, was born of an adversarial process with all involved advocating for their clients. To continue through trial would expose the Parties to significant risks. *See Wilkerson*, 171 F.R.D. at 285-86 ("Indeed, the one constant about litigation, based on my experiences as a trial attorney and now as a judge, is that the ultimate jury result is uncertain, unknown and unpredictable."). Because there are several important questions of law and fact regarding class certification, liability, and damages that remain unresolved, this factor also weighs in favor of approval of the Settlement.

C. Immediate Recovery Outweighs the Possibility of Any Future Relief

The "value of an immediate recovery" means the "monetary worth of the settlement." *Gottlieb v. Wiles*, 11 F.3d 1004, 1015 (10th Cir. 1993), abrogated on other grounds by *Devlin v. Scardelletti*, 536 U.S. 1 (2002). This value should be measured against "the possibility of some greater relief at a later time, taking into consideration the additional risks and costs that go hand in hand with protracted litigation." *Id.* at 1015.

Here, $750,000.00 is an exceptional result given the significant risks and costs to all Parties of continued litigation. The settlement amount represents—by current calculations—an average value of approximately $650 per Class Member, minus fees and costs. *See* Ex. 5, Power Decl., at ¶ 10 (estimating approximately 1150 Class Members). Litigation risk—the pending class certification decision, merits discovery, dispositive motions, eventual trial on behalf of over 1,000 Class Members, and then collection on any judgment—made this significant recovery now outweigh the uncertainty of any future relief. *See Pliego v. Los Arcos Mexican Restaurants, Inc.*, 313 F.R.D. 117, 130-31 (D. Colo. 2016) ("The proposed settlement reflects a reasonable compromise of the risk Plaintiff and the Class faced had they proceeded to trial.").

D. The Settlement Does Not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class

SVI has provided Class Counsel with extensive records of Class Members' reservations at the Summit View Inn, as well as payments and charges, throughout the class period, which Class Counsel have extensively analyzed. *See generally* Ex. 5, Power Decl. This allowed Class Counsel to create a formula for allocation to each Class Member. *See id.* at ¶¶ 4, 11; *infra* at pp. 3-4 (describing formula). Class Counsel has also carefully designed a claims process in order to verify claims, fill in any gaps in the available records (for example, instances in which multiple individuals occupied a unit at SVI but not all were named on the reservation), and obtain

information necessary to distribute payments. *See* Ex. 5, Power Decl. at ¶¶ 4, 7-9; *infra* at pp. 4-5 (describing claims process); Ex. 3, Claim Form.

This formula and claims process ensures that each Class Member receives a share of the settlement fund proportional to their claims in the case, length of occupancy, and number of late fee charges, and, thus, proportional to Class Counsel's assessment of the strength of their claims and their opportunities for damages. The proposed notice informs Class Members of this proportionate distribution, and each Class Member can obtain information regarding their estimated allocation amount by calling the settlement administrator. *See* Ex. 2, Notice at 1, 2; *see also infra* at Part VII (notice plan).

E. Plaintiffs Are Represented by Competent and Experienced Counsel Who Believe This Settlement Is Fair and Reasonable

Class Counsel is experienced in complex litigation and this area of the law. *See generally See* Exs. 6-8 to Certification Motion. Counsel for both sides fully support the Settlement Agreement, and "[c]ounsels' judgment as to the fairness of the agreement is entitled to considerable weight." *Lucas*, 234 F.R.D. at 695 (finding that this factor favored preliminary approval where "the parties' counsel—among whom are attorneys with substantial experience in complex class action litigation and disability class actions—unanimously support this settlement") (citation omitted); *see also Rhodes v. Olson Associates, P.C.*, 308 F.R.D. 664, 667 (D. Colo. 2015) ("Class Counsel are experienced in consumer class actions, and weight is given to their favorable judgment as to the merits, fairness, and reasonableness of the settlement."); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 548 (D. Colo. 1989) ("Courts have consistently refused to substitute their business judgment for that of counsel and the parties."); *Wilkerson*, 171 F.R.D. at 288-89.

VII. THE COURT SHOULD APPROVE THE PROPOSED NOTICE

Pursuant to Rule 23(e), the Court must direct reasonable notice to all Class Members of the proposed compromise. Courts have broad discretion to approve the specific form and content of notice so long as the notice meets the requirements of constitutional due process. *See In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1110-11 (10th Cir. 2001). These requirements are met if the notice is reasonably calculated to apprise interested parties of the pendency of the proposed settlement and afford them an opportunity to present objections. *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

A. The Court Should Approve the Content of the Proposed Notice

The content of the proposed notice meets this standard. *See generally* Ex. 2, Notice. First, the Notice defines the proposed Class covered by the settlement. *See* Ex. 2, Notice at 1. Second, the Notice thoroughly notifies Class Members of the proposed compromise, *see id.* at 2-3, and provides Class Members with contact information they can utilize if they have additional questions—such as the calculation of their initial pro rata share of the settlement fund, *id.* at 2, 4.

Finally, the Notice explains the options available to Class Members. *See* Ex. 2, Notice at 1-2, 3-4. The Notice and Exclusion Form explain that the Court will exclude members from the Class if the member so requests by a specified date. *See* Ex. 2, Notice at 1-2. 3; Ex. 4, Exclusion Form. The Notice also explains that, if a Class Member doesn't think the Settlement is fair and reasonable, they can submit a written objection to the Court by a specified date and attend the final fairness hearing. *See* Ex. 2, Notice at 2, 3. The Notice explains that the Settlement and judgment will include all Class Members who do not request exclusion and that any Class Member who does not request exclusion may, if the member desires, enter an appearance through counsel. *Id.* The Notice and Claim Form explain the claims process, including an advisement that settlement

payments may be considered income affecting Class Members' eligibility for certain public benefits programs. *See id.*; Ex. 3, Claim Form. The Claim Form is designed to collect both (1) required information necessary to process claims and distribute settlement payments and (2) optional information that may be helpful to the settlement administrator's efforts to verify claims and/or make corrections to the class list or allocation calculations. *See* Ex. 3, Claim Form.

In an effort to ensure that the Notice, claims process, and exclusion process are as accessible as possible under the circumstances, the settlement administrator will establish and maintain a settlement website, which will provide access to the Notice, Claim Form, and Exclusion Form. The settlement website will provide Class Members with the ability to fill out the Claim Form (Ex. 3) and/or Exclusion Form (Ex. 4) through an online portal on the website or print out a paper version of either form for submission to the settlement administrator by mail.

B. The Court Should Approve the Plan for Distribution of Notice to Class Members

Plaintiffs propose that notice shall be distributed to Class Members by text message, for those of whom had phone numbers listed in SVI's reservation system, and by publication through the distribution of flyers in the East Colfax area and an advertisement in the monthly street newspaper the Denver VOICE. Given the majority of class members lived at SVI or were otherwise transient and housing insecure, Class Counsel believes that the limited mailing addresses listed in SVI's reservation system are likely stale, and that mailing address searches are unlikely to be fruitful. *See* Ex. 5, Power Decl. at ¶ 6. However, SVI's reservation system has records of phone numbers for many, but not all, potential Class Members. *See id.* Class Counsel believe that distributing the Notice by both text message and publication through the distribution of flyers in the East Colfax area and advertisement(s) in the Denver VOICE will help reach as many Class Members as possible, including individuals with no recorded phone number and any Class Members that have not had access to a consistent mobile phone number. *See id.*

First, Plaintiffs propose that the settlement administrator send notice by text message to the valid phone numbers listed in SVI's reservation system. The text message would inform recipients that, based on SVI's records, they may be a Class Member in a class action settlement and provide a link to the settlement website where they can view the full Notice. The cost of this distribution is reflected in the quote provided by the Settlement Administrator. *See* Ex. 6, Administrator Quote.

Second, Plaintiffs propose notice by publication through the distribution of flyers in the East Colfax neighborhood by local service providers, including current and former volunteer "street pastors" at Jesus-on-Colfax, a nonprofit organization that offers ministering services and other support to individuals in the East Colfax area, including residents of long-term motels. Two of these current and former street pastors provided affidavits in support of Plaintiffs' Motion for Class Certification regarding their experience ministering to Class Members. *See* Exs. 4-5 to Certification Motion. The flyers would be distributed to other social-service providers, such as community kitchens, and posted in local businesses such as coffee shops where the social service providers believe Class Members are likely to frequent. The flyers would inform viewers that individuals that stayed at the Summit View Inn between February 14, 2020 and October 31, 2021 are part of a proposed class action settlement and may be eligible to receive payment, and that they can find more information on the settlement website. The flyer would also provide the URL and a QR code for the settlement website. Class Counsel would cover the cost of printing such flyers (an estimated $200), which may be reimbursed from the common fund subject to the Court's review at final approval.

Third, Plaintiffs propose notice by publication through an advertisement placed in the Denver VOICE, a monthly street newspaper. *See* Denver VOICE, https://www.denvervoice.org/. Like the flyers, the advertisement would inform viewers that individuals that stayed at the Summit

View Inn between February 14, 2020 and October 31, 2021 are part of a proposed class action settlement and may be eligible to receive payment, and that they can find more information on the settlement website. Class Counsel would cover the cost of placing such advertisements (an estimated $350), which may be reimbursed from the common fund subject to the Court's review at final approval.

VIII. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATOR

Class Counsel propose appointing RG/2 Claims Administration LLC to administer the settlement. RG/2 Claims Administration LLC has the experience necessary to administer the settlement, *see About Us*, RG/2 CLAIMS ADMINISTRATION LLC, https://www.rg2claims.com/about.html, and has provided a reasonable estimate to do so, *see generally* Ex. 6, Administrator Quote. RG/2 Claims Administration LLC should be appointed as the settlement administrator.

IX. THE PROPOSED AWARD OF FEES AND COSTS TO CLASS COUNSEL SHOULD BE PRELIMINARILY APPROVED

Class Counsel request 20% of the Gross Settlement Amount for attorneys' fees plus reimbursement of reasonable costs and expenses subject to the Court's final approval. The proposed Notice informs the Class of this request. *See* Ex. 2, Notice at 2-3. The Court can make a final determination on this request at the final approval hearing. However, for now, the Court should preliminarily approve the request and allow the Class to be notified of the request.

Colorado Courts apply the percentage of the fund method to award fees and expenses in class actions that generate "common fund" recoveries for Class Members.[8] *Brody*, 167 P.3d at 201

[8] "'[A] litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.... The [common fund] doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over

("[T]he more recent trend has been toward using the percentage method in common fund cases."). Similarly, the Tenth Circuit has expressed "a preference for the percentage of the fund method." *See Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994). Awarding fees as a percentage of the fund is customary because it reflects the inherent risk of contingency fee litigation where lawyers may invest large amounts of money and labor over months or years with no guarantee of any payment at all. *In re Qwest*, 625 F. Supp. 2d at 1151 ("A contingent fee, and the potential for a relatively high fee, is designed to reward counsel for taking the risk of prosecuting a case without payment during the litigation, and the risk that the litigation may be unsuccessful."). Percentage fees offset some of this risk by rewarding counsel who perform well, *id*., and, moreover, align counsel's interests with the interests of the Class in recovering the largest possible verdict or settlement. *Brody*, 167 P.3d at 198 (An award of attorney fees from a common fund also 'serves to reward counsel for creativity and skill in enlarging a settlement fund beyond what was thought possible or likely at the inception of the case'" (citing *In re HPL Techs., Inc. Sec. Litig*., 366 F.Supp.2d 912, 919 (N.D. Cal. 2005))).

Here, Class Counsel's request for 20% of the common fund for fees ($150,000) plus reimbursement of reasonable costs and expenses is modest compared to the customary fee awarded to class counsel in common fund settlements. *See, e.g., Davis v. Crilly*, 292 F. Supp. 3d 1167, 1174 (D. Colo. 2018) (approving 37% in fees and expenses which was "well within the normal range for a contingent fee award"); *Whittington v. Taco Bell of Am., Inc*., No. 10-cv-01884-KMT-MEH, 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (awarding 39%); *Cimarron Pipeline Constr.,*

---

the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Brody v. Hellman,* 167 P.3d 192, 198 (Colo. App. 2007) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 749, 62 L.Ed.2d 676 (1980)).

Inc. v. Nat'l Council on Compensation Ins., Nos. civ 89–822–T & 1186–T, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993) ("Fees in the range of 30–40% of any amount recovered are common in complex and other cases taken on a contingent fee basis."); *Chieftain Royalty Co. v. Laredo Petroleum, Inc*., No. civ-12-1319-D, 2015 WL 2254606, at *3 (W.D. Okla. May 13, 2015) ("An award of forty percent (40%) of the settlement value is well within the range of acceptable fee awards in common fund cases"), vacated on other grounds, 888 F.3d 455 (10th Cir. 2017).

Although the percentage fee requested here is well below the customary range, if the Court has doubt as to its reasonableness, it also may be guided by the so-called "*Johnson* factors." *Brody*, 167 P.3d 200 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)). "[R]arely are all of the *Johnson* factors applicable," *Uselton v. Commercial Lovelace Motor Freight, Inc*., 9 F.3d 849, 854 (10th Cir. 1993), but they can serve as a guide in certain situations. *See, e.g., Brody*, 167 P.3d 200 (using *Johnson* factors to uphold a $15 million fee after class members objected to the award.).[9]

In order to ensure that Class Members benefit from class litigation, the "most critical [*Johnson*] factor . . . is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (quotations omitted). Here, Class Counsel recovered $750,000.00 on behalf of the Class. Such an outstanding result warrants the requested percentage fee, which, as mentioned, also is well below the customary range for risky, contingent fee litigation. *Shaw*, 2015 WL 1867861, at *7 (noting that substantial fee awards are appropriate in cases such as this, where class counsel must "advance

[9] "The *Johnson* factors are: (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases."

large amounts of time, money, and other resources to determine if any recovery might be had"—something "[m]ost attorneys" cannot do); *see also In re Thornburg Mortg. Inc. Sec. Litig*., 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012) ("Such a large investment of money [and time] place[s] incredible burdens upon . . . law practices." (alteration in original, quotations omitted)).

Moreover, much of Class Counsel's time and labor were dedicated to difficult and novel questions of state law—including the question of whether long-term residents of SVI were "tenants" under Colorado law. *See* Amended Complaint (May 26, 2023); Response to Motion to Dismiss (Aug. 11, 2023); Order Denying Motion to Dismiss (Dec. 19, 2023); Certification Motion; *see also Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1265 (10th Cir. 2023) (novelty and difficult legal and factual issues evidenced by the briefing and order on the motion to dismiss). Class Counsel are uniquely well-qualified to litigate these novel and complex legal issues as specialists in the areas of class action litigation and the representation of marginalized tenants. *See* Exs. 6-8 to Certification Motion (Class Counsel declarations); *see also In re Crocs, Inc. Sec. Litig.,* No. 07-cv-02351-PAB-KLM, 2014 WL 4670886, at *2 (D. Colo. Sept. 18, 2014) ("[T]he complexity of the legal issues involved . . . justifies the time spent"). Such efforts entailed significant risk and, of course, precluded counsel from other work. *Shaw v. Interthinx, Inc.*, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) ("There is an inherent preclusion of other work in litigating a complex case . . . on a contingency fee basis.").

Finally, the Court should note that, absent the possibility of significant percentage fee recoveries, it is highly likely that cases like this one, with low income, marginalized plaintiffs, would never see the inside of a courtroom. *See Shaw*, 2015 WL 1867861, at *7 ("[C]ontingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation . . . and transfer a significant portion of the risk of loss to the attorneys taking a

case. . . . Access to the courts would be difficult to achieve without compensating attorneys for that risk." (citations and quotations omitted)).

X. THE SERVICE PAYMENTS SHOULD BE PRELIMINARILY APPROVED.

"[C]ourts regularly give incentive awards [(also known as service payments)] to compensate named plaintiffs for the work they performed—their time and effort invested in the case." *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2017) (citations omitted); *Thompson v. Qwest Corp.*, No. 17-CV-1745-WJM-KMT, 2018 WL 2183988, at *3 (D. Colo. May 11, 2018) (finding that "'reasonable incentive payments' have become common for class representatives," and that a "$5,000 incentive award is comparatively on the lower end of awards deemed reasonable"). "[I]ncentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class." *Lucken Fam. Ltd. P'ship, LLLP v. Ultra Res., Inc.*, No. 09-CV-01543-REB-KMT, 2010 WL 5387559, at *6 (D. Colo. Dec. 22, 2010).

In cases where people other than class representatives contribute to the prosecution of the litigation, such individuals are also eligible to receive service payments. *See, e.g.*, Ex. 7, Order Granting Unopposed Motion Seeking Final Approval of Stipulated Judgment and Settlement, *Pilmenstein v. Devereux Cleo Wallace*, Case No. 2017CV30319, at ¶ 3 (Jefferson Co. Dist. Ct. April 28, 2022) (approving service payments of $15,000 to named plaintiff and $5,000 to non-party witness); *Irvine v. Destination Wild Dunes Mgmt., Inc.*, 204 F. Supp. 3d 846, 851 (D.S.C. 2016) (in case involving $179,000 distributed to plaintiffs, class representatives received $5,000 each, named plaintiffs received $2,500, and each of the 10 individuals who participated in depositions and written discovery received $1,000 because "[w]ithout their actions, this settlement may not have been achieved").

When evaluating the reasonableness of a service payment, courts may consider factors such

as "'the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.'" *Staton*, 327 F.3d at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Here, Plaintiffs request that the Court preliminarily approve an enhancement or "service/incentive payment" to the Named Plaintiffs for their efforts in pursuing this Action. First, Plaintiffs request that the Court approve a service payment for each of the three Class Representatives in the amount of $5,000. Plaintiffs also request that the Court preliminarily approve service payments to any of the other fifteen living Named Plaintiffs that sign the general release of claims attached to the Settlement as Exhibit A—$3,500 for those that were deposed in this Action and $2,500 for those that were not deposed. This request amounts to up to $55,500 in service payments (depending on the number of Named Plaintiffs that sign the general release). The proposed Notice informs the Class of this request. *See* Ex. 2, Notice at 2-3. All of the Named Plaintiffs have prosecuted this action for over three years, in addition to the significant time and effort put into the development of this case pre-filing. Without their contributions, the Settlement may not have been achieved.

While ultimately any service payment will be decided on final approval, the proposed amounts of $5,000, $3,500, and $2,500 (depending on the level of contributions made by the Named Plaintiffs) are at least within the bounds of reasonableness for preliminary approval purposes. *See Suaverdez v. Circle K Stores, Inc.*, 1:20-cv-01035, Doc. 81 (D. Colo. June 21, 2022) (awarding $30,000 to a single class representative); *Bagoue v. Developmental Pathways, Inc.*, 16-cv-01804, Doc. 149 (D. Colo. Oct. 28, 2020) (same); *Valverde v. Xclusive Staffing, Inc.,* 16-cv-00671*,* Doc. 322 (D. Colo. July 20, 2020) (awarding $20,000 to each of the five class

representatives); Ex. 7, *Pilmenstein* Order. For now, the Court should preliminarily approve the request and allow the Class to be notified of the request.

XI. CONCLUSION

For the forgoing reasons, this Motion should be granted.

Respectfully submitted this 6th day of March 2026,

/s/ Brianne Power

Rebecca Cohn, #56289
Burton Nadler, #54984
Zachary W. Neumann, #54231
COMMUNITY ECONOMIC DEFENSE PROJECT / CED LAW
1600 North Downing St., Ste. 500, Denver, CO 80218
(720) 343-5941
rebecca.cohn@cedlaw.org
burt.nadler@cedlaw.org
zach.neumann@cedlaw.org

David H. Seligman, #49394
Brianne Power, #53730
Juno Turner, NY #4491890 *admitted pro hac vice*
TOWARDS JUSTICE
P.O. Box 371680, PMB 44465,
Denver, CO 80237-5680
(720) 441-2236
david@towardsjustice.org;
brianne@towardsjustice.org;
juno@towardsjustice.org

Benjamin DeGolia, #55737
DEGOLIA LAW P.C.
2701 Lawrence St.,
Denver, CO 80205
(303) 210-3334
benjamin@degolialaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2026, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send notification of such filing to all parties that have appeared. This filing has also been sent to Plaintiff Markia Rhodes via electronic mail (markiarhodes7@gmail.com) and by First Class Mail at 2320 Glenarm Place #101, Denver, CO., 80205.

s/Brianne Power
Plaintiffs' Counsel