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Superior Court of California
County of Los Angeles

FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

AUG 11 2022
Clerk of Court
By: Roxanne Arraiga, Deputy

Marroquin v. Food Castle Inc., et al., Case No.: 21STCV22582

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$575,000. The Settlement is based on 180 Settlement Class Members during the Class Period. Should the number of such Settlement Class Members or the number of shifts as of the end of the Class Period exceed such stated number by more than 10% Plaintiff will have the right to abrogate this agreement, and the parties shall return to status quo ante.

B. The Net Settlement Amount ("Net") \$332,000 is the GSA minus the following:

Up to \$201,250 (35%) for attorney fees;
Up to \$8,500 for litigation costs;
Up to \$7,500 for Incentive Award to the class representative;
Up to \$7,000 for settlement administration costs;
\$18,750 (75% of the \$25,000 PAGA penalty) to the LWDA.

C. All Employer Taxes shall be paid by Defendants separately.

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **February 15, 2023**. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Non-Appearance Case Review is set for February 22, 2023,
8:30 a.m., Department 9.

I.
BACKGROUND

On June 15, 2021, Plaintiff Flor De Maria Marroquin filed her Class Action Complaint alleging causes of action for: (1) Failure To Pay Overtime (Cal. Labor Code §§200, 510, 1194, 1198, et seq.); (2) Failure To Issue Accurate Itemized Wage Statements (Cal. Labor Code §§ 226); (3) Failure to Pay For Rest Periods Not Provided (Cal. Labor Code §226.7); (4) Failure to Pay Minimum Wage (Cal. Labor Code §1197); (5) (Failure To Pay All Wages Due Upon Separation of Employment (Cal. Labor Code §§ 201 -203); and (6) Unfair/Unlawful Business Practices (Cal. Bus. And Prof. Code §§ 17200 et seq.)

On August 19, 2021, Plaintiff filed her First Amended Class Action Complaint adding a claim pursuant to the Private Attorney General Act of 2004, Cal. Lab. Code §§2699, et seq. ("PAGA").

On March 29, 2022, Plaintiff filed her Second Amended Class Action Complaint revising the claim for minimum wage.

On November 11, 2021, the parties virtually attended an all-day mediation with mediator Nikki Toll. With Ms. Toll's help, we negotiated a class-wide resolution at the mediation. The Parties executed a Memorandum of Understanding on or about January 22, 2022, and negotiated a long-form agreement for a couple of more months before executing the Settlement Agreement, a copy of which was filed with the Court.

On May 31, 2022, the Court issued a "checklist" to the parties pertaining to deficiencies with the proposed settlement. In response, the parties filed further briefing, including the revised Settlement Agreement attached to the Supplemental Declaration of Kevin Lipeles ("Lipeles Decl.") as Exhibit A.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

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II.
SETTLEMENT AGREEMENT

A. Definitions

"Settlement Class" or "Settlement Class Members": all non-exempt persons employed by Defendant in the State of California at any time during the Class Period or PAGA Period.

"Class Period": June 15, 2017 through the date of Preliminary Approval.

"PAGA Employees": all non-exempt employees who were food packers and warehouse shippers who were employed by Defendant in the State of California during the PAGA Period.

"PAGA Period": June 15, 2020 through the date of Preliminary Approval.

The Parties stipulate to class certification for settlement purposes only.

B. Terms of Settlement Agreement

The essential terms are:

- The Maximum Settlement Amount ("MSA") is \$575,000, non-reversionary. (¶4.)
 - The Settlement is based on 180 Settlement Class Members during the Class Period. Should the number of such Settlement Class Members or the number of shifts as of the end of the Class Period exceed such stated number by more than 10% Plaintiff will have the right to abrogate this agreement, and the parties shall return to status quo ante. (¶4.)
- The Net Settlement Amount (\$332,000) is the MSA minus the following:
 - Up to \$201,250 (35%) for attorney fees (¶III.L.10);
 - Up to \$8,500 for litigation costs (Ibid.)
 - Up to \$7,500 for a service award (¶5.a);
 - Up to \$7,000 for class administration (¶7.1); and
 - \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA (¶8.a).
- All Employer Taxes shall be paid by Defendants separately. (¶4.)
- There is no claims process. (¶2.18.)

- "Response Deadline" means the last date for Settlement Class Members to postmark, for return to the Settlement Administrator, Requests for Exclusion or Objections. The Response Deadline shall be forty-five (45) days after the Settlement Administrator has postmarked the Class Notice for mailing to Settlement Class Members, subject to adjustment in the case of re-mailings. (§2.23.) Settlement Class Members who receive a re-mailed Class Notice shall have their Response Deadline extended fifteen (15) calendar days from the original Response Deadline. (§16.1.b.)

- o If ten percent (10%) or more of the Settlement Class Members submit complete and timely Requests for Exclusion, either Party shall have, in their sole and absolute discretion, the option to terminate this Joint Stipulation of Settlement. Plaintiff or Defendant shall be entitled to exercise these termination rights by providing written notice to Class Counsel at any time within fifteen (15) calendar days of learning of the condition triggering termination. (§18.)

- Funding: Defendant shall electronically wire 1 payment and then 12 equal monthly installment payments thereafter. Defendant shall electronically wire fifty (50%) percent of the Maximum Settlement Amount (\$575,000.00), or \$287,500.00, and an amount sufficient to pay the employer's share of taxes on the wage portion of the Individual Settlement Payments to the Settlement Administrator within thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement ("First Payment"). Within thirty (30) calendar days after the First Payment Defendant shall begin electronically wiring the remaining fifty (50%) percent of the Maximum Settlement Amount, or \$287,500.00 ("Final Payment"). Defendant shall wire twelve equal monthly installments of \$23,958.33 into an escrow account (administered by the Settlement Administrator). The last monthly installment payment shall be due within one (1) year of the First Payment. If the Court does not approve the foregoing payment plan, Defendant agrees to pay the full Maximum Settlement Amount pursuant to the Court's ordering of an alternative/revised payment plan (or no payment plan, if the Court so orders). (§10(a) - (b).)

- Individual Settlement Payments: The Individual Settlement Payment for each Settlement Class Member who does not Opt Out and is deemed a Participating Class Member shall be calculated as follows: (a) the number of WW each Participating Class Member worked as a non-exempt employee for Defendant in California during the Class Period; divided by (b) the aggregate number of WW for all Participating Class Members as calculated under subparagraph (a); and then multiplied by (c) the Net Settlement Amount. The Shifts worked shall be calculated using Defendant's

payroll records. Because PAGA Employees cannot opt out of the PAGA claims, each PAGA Employee, whether or not a Participating Class Member, shall also receive his or her Individual PAGA Payment calculated as follows: (a) the number of WW each PAGA Employee worked as a non-exempt employee for Defendant in California during the PAGA Period; divided by (b) the aggregate number of WW worked by all PAGA Employees during the PAGA Period; and then multiplied by (c) the PAGA Employees Portion. (§9.2.)

o Tax Allocation: 25% wages and 75% as interest and penalties. The PAGA Payments shall be 100% penalties. (§9.3.)

• Uncashed Checks: Participating Class Members and PAGA Employees will have one hundred eighty (180) calendar days from the date of issuance of the check to cash or otherwise deposit their check. For any check not cashed after 180 calendar days, the Settlement Administrator shall cancel the check and remit the funds to the California State Controller's Office, Unclaimed Property Division in the name of the Participating Class Member who failed to cash their check (§10(d))

• The claims administrator will be Phoenix Class Action Administration Solutions ("Phoenix"). (§2.26.)

• Notice of final judgment will be posted on the administrator's website. (Notice pg. 7)

• The LWDA was provided notice of the Settlement on July 21, 2022 (Supp. Lipeles Decl., Exhibit D.)

• Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On November 11, 2021, the parties virtually attended an all-day mediation with mediator Nikki Toll. With Ms. Toll's help, we negotiated a class-wide resolution at the mediation. The Parties executed a Memorandum of Understanding on or about January 22, 2022, and negotiated a long-form agreement for a couple of more months before executing the Settlement Agreement. (Lipeles Decl., §§ 16-19.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that in preparing for the mediation, he reviewed

various information and data produced by Defendant, including, inter alia,: (1) extensive review and analysis of relevant documents, including but not limited to, documents demonstrating Defendant's overtime, minimum wage and rest break policies and procedures; (2) detailed examination and analysis of documents relating to Defendant's workweek and compensation data, including combined redacted paystubs and combined redacted time samples; (3) review of relevant data regarding the size of the putative class; (4) detailed examination of data related to Food Castle's PAGA exposure; and (5) research with respect to the applicable law and the potential defenses thereto. (Id. at ¶7.) Counsel further represents that Defendant provided the following documents which Plaintiff reviewed: a chart of all of the food packer employees including their hire and termination dates, paystubs relating to putative class members and copies of checks paid to Plaintiff by Defendant. Defendant also provided information concerning the total number of Class Members (139), number of workweeks, number of wage statements issued, the average hourly rate, and the applicable policies concerning overtime, minimum wage, and rest breaks. Further, Food Castle informally produced to Plaintiff's counsel anonymized time records and wage statements for a random sampling of 10% of the packers (14 individuals total). (Supp. Lipeles Decl. ¶2.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (Lipeles Decl., ¶¶ 38-42.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."] .)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

CLAIM	MAXIMUM EXPOSURE
Overtime Claim	\$259,911.18
Rest Periods	\$519,430.34
Wage Statement Violations	\$278,000.00
Waiting Time Penalties	\$168,540.00
Minimum Wage Claim	\$156,809.16
PAGA	\$2,623,300.00
TOTAL	\$4,005,990.68

(Lipeles Decl., ¶¶ 13-14; Supp. Brief at 1:24-2:3.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$575,000 non-reversionary settlement which is approximately 14.3% of the maximum estimated exposure in this matter, which is within the "ballpark of reasonableness. The \$575,000 settlement amount, after reduced by the requested deductions, leaves approximately \$332,000 to be divided among approximately 139 class members. Assuming full participation, the resulting payments will average approximately \$2,388.49 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated

above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

C. Scope of the Release

As of the Effective Date and full funding of the Maximum Settlement Amount by Defendant to the Settlement Administrator, each Participating Class Member hereby fully, finally, and forever releases and discharges each and every one of the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked, failure to provide rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements including claims derivative and/or related to these claims during the class period ("Released Class Claims"). This Release shall include all claims and theories arising under the California Labor Code, wage orders, and applicable regulations, including Labor Code Sections 201, 202, 203, 226, 226.7, 512, 1194, 1197, and 1198, as well as claims under Business and Professions Code section 17200 et seq., and/or Labor Code Section 2698 et seq. based on alleged violations of the above Labor Code provisions, as alleged in the Action. The release shall run through the date of Preliminary Approval. (§12.1.)

As of the Effective Date and full funding of the Maximum Settlement Amount by Defendant to the Settlement Administrator, each PAGA Employee and the State of California hereby fully, finally, and forever releases and discharges each and every one of the Released Parties from all claims, demands, rights, liabilities, and causes of action: (a) arising in whole or in

part, during the PAGA Period, for any of the following: any alleged or actual unfair business practices or any alleged or actual violations of the Private Attorneys General Act, Labor Code section 2699 et seq. ("PAGA") which derive from the foregoing Released Class Claims; or (b) in any manner arising out of any of the other facts or legal theories alleged or asserted in the Action, whether formally raised in the operative complaint in this Action, the June 10, 2021 letter to the LWDA, or otherwise (collectively, the "Released PAGA Claims") (together the Released Class Claims and Released PAGA Claims are the "Released Claims"). (§12.2.)

"Released Parties" means: (a) Food Castle, Inc., and each and all past or present partners, parents, subsidiaries, or affiliates (regardless whether such partners, parents, subsidiaries, or affiliates are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity) of Defendant; (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, including but not limited to any payroll companies, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, integrated enterprise, or any other theory) for any violations described in the releases below and occurring as a result of employment; and (d) all past and present directors, officers, owners, representatives, insurers, agents, shareholders, partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c). (§2.21.)

The Class Representative will also provide a general release and CC 1542 waiver. (§13.)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied.

(Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 139 class members. (Lipeless Decl., ¶30.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) Defendant has already identified the class, and will identify any additional Class Members. (MPA at p. 16; Supp. Lipeles Decl. ¶5.)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Counsel contends that for the purposes of this settlement only, the Class is subject to common compensation policies and challenges to those policies that are certifiable for settlement purposes. (Motion, pgs. 16-17.)

As to typicality, counsel contends that for purposes of settlement, the parties agree that Plaintiff asserts claims regarding Food Castle's compensation and rest break practices that are at the core of the action. (Motion, pg. 17.)

Finally, Plaintiff does not have any conflicts with the class and is represented by adequate counsel. (Motion, pg. 17; Declaration of Flor De Maria Marroquin ("Marroquin Decl."), ¶5.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

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E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

2. Method of class notice. Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Data. Within fifteen (15) calendar days of receipt of the Class Data from Defendant, the Settlement Administrator shall mail the Class Notice to all Settlement Class Members via first-class U.S. mail. Prior to mailing the Class Notice, the Settlement Administrator shall run a check of the addresses in the Class Data against the United States Postal Service National Change of Address Database ("NCOA") to update for any reported address changes. If any Class Notice is returned as undeliverable without a forwarding address, the Settlement Administrator shall take appropriate steps to identify a current proper address for that Settlement Class Member, including conducting a "standard search," also known as a "skip trace" or "credit header" search. The Settlement Administrator shall then re-mail the Class Notice to the updated address. If a Class Notice is returned to the Settlement Administrator as undeliverable with a forwarding address, the Settlement Administrator will promptly forward the Class Notice to the address. Class Notices returned to the claims administrator as undeliverable will be re-mailed to Settlement Class Members throughout the entire 45-day response period. (§§16.1(a)-(b).)

The Class Notice will be in both English and Spanish.
(§2.4.)

3. Cost of class notice. As indicated above, claims administration costs are estimated not to exceed \$7,000. Prior to the time of the final fairness hearing, the claims administrator

must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$201,250 (35%) in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought (capped at \$8,500) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$7,500 for the class representative. In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with

"nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit'" (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$575,000. The Settlement is based on 180 Settlement Class Members during the Class Period. Should the number of such Settlement Class Members or the number of shifts as of the end of the Class Period exceed such stated number by more than 10% Plaintiff will have the right to abrogate this agreement, and the parties shall return to status quo ante.

B. The Net Settlement Amount ("Net") \$332,000 is the GSA minus the following:

Up to \$201,250 (35%) for attorney fees;
Up to \$8,500 for litigation costs;
Up to \$7,500 for Incentive Award to the class representative;
Up to \$7,000 for settlement administration costs;
\$18,750 (75% of the \$25,000 PAGA penalty) to the LWDA.

C. All Employer Taxes shall be paid by Defendants separately.

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 15, 2023. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Non-Appearance Case Review is set for February 22, 2023, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: August 11, 2022

YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT