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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**  
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12 ADAM D.K. ABELKOP, an individual;  
13 KATHERINE G. MACDONALD, an individual,

14 Plaintiffs,

15 vs.

16 THE SOBRATO ORGANIZATION, a California  
17 business form unknown; SI VI, LLC, a California  
18 limited liability company; and DOES 1 through  
19 200, inclusive,

20 Defendants.

Case No. 19CV355487

**ORDER RE: CONTINUED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

21 The above-entitled matter came on for hearing on Wednesday, September 14, 2022, at  
22 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and  
23 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,  
24 September 13, 2022. No party contested the tentative ruling; therefore, the court orders that the  
tentative ruling be adopted as the order of the court, as follows:

25 **I. INTRODUCTION**

26 This putative class action arises out of allegations that defendants The Sobrato  
27 Organization, SI VI, LLC, and Alliance Communities Inc. (collectively, "Defendants") made  
28 unlawful deductions to departing tenants' security deposits in bad faith, in violation of Code of

1 Civil Procedure section 1950.5, and in violation of Business and Professions Code section  
2 17200, et seq. The operative Third Amended Complaint (“TAC”), filed on February 17, 2022,  
3 sets forth causes of action for: (1) Violation of Civ. Code § 1950.5; (2) Violation of Bus. & Prof.  
4 Code § 17200, et seq.; (3) Fraud; and (4) Declaratory Relief.

5 The parties have reached a settlement. Plaintiffs Adam D.K. Abelkop (“Abelkop”) and  
6 Katherine G. MacDonald (“MacDonald”) (collectively, “Plaintiffs”) moved for preliminary  
7 approval of the settlement. Defendants did not oppose the motion.

8 On August 8, 2022, the court entered an order continuing the motion to provide Plaintiffs  
9 an opportunity to address several deficiencies. First, the court directed the parties to amend the  
10 terms of the settlement to clarify that checks will remain valid for 120 days from the date of their  
11 mailing and, thereafter, any uncashed checks will be void and the funds will be distributed to the  
12 other class members, and to provide evidence of the amended settlement agreement. The court  
13 also noted that iterative redistribution until every dollar is distributed might become unduly  
14 expensive, and the parties might wish to provide for a *cy pres* recipient to receive undistributed  
15 funds after a stated number of rounds of distribution.

16 Second, the court explained that required information was missing as Plaintiffs did not  
17 provide an estimate of the maximum amount of Defendants’ potential liability for each of  
18 Plaintiffs’ claims or explain why, or how much, the value of those claims was discounted for  
19 settlement purposes. The court instructed Plaintiffs to submit evidence regarding Defendants’  
20 potential liability so the court can evaluate each of Plaintiffs’ claims and discern the potential  
21 cash value of the claims and how much the case was discounted for settlement purposes.

22 Third, the court further explained that the release of claims, as drafted, was overbroad as  
23 it was not tied to the factual allegations in the TAC. The court ordered the parties to meet and  
24 confer about whether they could amend the class release to conform to *Amaro v. Anaheim Arena*  
25 *Management, LLC* (2021) 69 Cal.App.5th 521, and file a supplemental declaration addressing  
26 the parties’ efforts and, if possible, attach a modified settlement agreement.

27 Fourth, the court ordered Plaintiffs’ counsel to submit lodestar information, evidence of  
28 actual costs incurred, and an amended class notice.

1 On August 29 2022, Plaintiffs submitted a further memorandum of points and authorities  
2 in support of the motion for preliminary approval and a supplemental declaration from attorney  
3 Joshua H. Haffner. On September 7, 2022, Plaintiffs submitted a supplemental declaration from  
4 attorney Alexander J. Perez.

## 5 **II. LEGAL STANDARD**

6 Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
7 class was adequate, whether certification of the class was proper, and whether the attorney fee  
8 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*  
9 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*  
10 (1996) 48 Cal.App.4th 1794 (*Dunk*).

11 In determining whether a class settlement is fair, adequate and reasonable, the  
12 trial court should consider relevant factors, such as “the strength of plaintiffs’  
13 case, the risk, expense, complexity and likely duration of further litigation, the  
14 risk of maintaining class action status through trial, the amount offered in  
15 settlement, the extent of discovery completed and the stage of the proceedings, the  
16 experience and views of counsel, the presence of a governmental participant, and  
17 the reaction of the class members to the proposed settlement.”  
18 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801  
19 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624  
20 (*Officers*).

21 “The list of factors is not exclusive and the court is free to engage in a balancing and  
22 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91  
23 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the  
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
26 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48  
27 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 The burden is on the proponent of the settlement to show that it is fair and  
reasonable. However “a presumption of fairness exists where: (1) the settlement  
is reached through arm’s-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small.”  
(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

1 **III. DISCUSSION**

2 **A. Provisions of the Settlement**

3 The case has been settled on behalf of the following class:

4 All tenants who terminated the lease of their residential unit at any of the Subject  
5 Properties and moved out of their residential units from September 23, 2015  
6 through December 31, 2020, and who had charges deducted from their security  
7 deposit and/or were invoiced for charges as part of the move-out process other  
8 than for rent or utilities, but including utility portal charges.

9 (Plaintiffs’ Notice of Motion and Motion for Preliminary Approval of Class Action Settlement  
10 (“Ps Mtn.”), Ex. 1 (“Settlement Agreement”), Definitions, ¶¶ 3, 8, & 33-34, & Agreements, ¶ 1.)  
11 The “Subject Properties” are defined as 599 Castro, Bridgepointe, Central Park at Whisman  
12 Station, City Place, Domicilio, Elements, The Montecito, La Terraza, Mosaic Apts., Naya,  
13 Tamarind Square, and The Standard. (Settlement Agreement, Definitions, ¶ 35.)

14 According to the terms of settlement, Defendants will pay a gross settlement amount of  
15 \$1,000,000. (Settlement Agreement, Definitions, ¶ 18, & Agreements, ¶ 8.) This amount  
16 includes attorney fees and costs up to 25 percent of the gross settlement fund (i.e., \$250,000), a  
17 service award up to \$2,500 (to be paid to Plaintiffs collectively), and reasonable fees and costs  
18 incurred by the settlement administrator (estimated to be \$70,413). (Settlement Agreement,  
19 Definitions, ¶¶ 5, 15, 21, & 31, & Agreements, ¶¶ 8, 15-16, & 41.) The net settlement amount  
20 will be distributed to class members pro rata based on the percentage the applicable deductions  
21 from each class member’s security deposit represents of the total amount of the applicable  
22 deductions made from all class members’ security deposits. (Settlement Agreement,  
23 Agreements, ¶ 9.) The terms of the settlement further provide that the settlement administrator  
24 will reconcile and handle uncashed checks by attempting to locate the settlement class member  
25 households via skip trace and, if unsuccessful, thereafter redistributing the residual funds (on the  
26 same pro rata basis) to the other settlement class member households. (Settlement Agreement,  
27 Agreements, ¶ 11(xiv).)

28 Notably, the settlement originally did not contain any terms regarding the amount of time  
that class members have to cash their checks before they are voided and the funds are  
redistributed to other class members. The class notice provided that checks that remain uncashed

1 for 120 days after the date of issuance will be voided and the funds will be remitted pro rata to  
2 the remaining class members. (Ps Mtn., Ex. 2, p. 10.)

3 The parties subsequently agreed to modify the settlement agreement to clarify that checks  
4 will remain valid for 120 days from the date of their mailing. (Further Memorandum of Points  
5 and Authorities in Support of Preliminary Approval of Class Action Settlement Per Court’s  
6 Order of August 3, 2022 (“Fur. Mem. Ps. & As.”), Ex. 1, Agreements, ¶ 9, & Ex. 2, Agreements,  
7 ¶ 9.) The parties further agreed to amend the settlement agreement to provide for one round of  
8 re-distribution of uncashed checks to class members and, thereafter, any residual, unclaimed,  
9 and/or abandoned class member funds shall be distributed to Tenants Together (a California  
10 tenant advocacy organization) as a *cy pres* recipient. (Fur. Mem. Ps. & As., Ex. 1, Agreements,  
11 ¶ 9, & Ex. 2, Agreements, ¶ 9.)

12 The settlement also states that Defendants shall provide a form letter to collections  
13 agencies to whom Defendants referred class members for charges in excess of the class  
14 members’ security deposits, instructing those collections agencies to cease any ongoing  
15 collection efforts and/or to cease otherwise impacting credit information of all such individuals  
16 who shall be listed in an attachment to the letter. (Settlement Agreement, Agreements, ¶ 10.)

17 The settlement originally provided that the class members agreed to release:  
18 [A]ny and all actions, claims, demands, rights, suits, and causes of action or  
19 [(sic)] whatever kind or nature whatsoever against the Defendant Released Parties  
20 or any of them, including without limitation any and all claims for damages,  
21 restitution, loss, statutory relief, bad faith claims, costs, expenses, penalties,  
22 attorneys’ fees, expert fees, and interest, whether known or unknown, suspected  
23 or unsuspected, assigned or unassigned, asserted or unasserted, whether as  
24 individual claims or claims asserted on a class basis or on behalf of the general  
25 public, in law or equity, including without limitation any claim for defamation,  
26 libel or slander, arising out of or relating to any claim or allegation made, or  
27 which could have been made, in the Action, including, without limitation, any and  
28 all claims or allegations relating to: (i) any breach of lease; (ii) any withholding of

1 tenant security; (iii) any charges for apartment cleaning, painting, carpet cleaning,  
2 carpet replacement, accelerated rent, rent concession or other charges assessed;  
3 (iv) any report, publication or other statement made to any person or entity  
4 concerning amounts alleged owed under a lease at one of the Subject Properties;  
5 (v) any alleged non-compliance with Civil Code § 1950.5, Bus. & Prof. Code  
6 §§ 17200 et seq., 17500; (vi) any claims for fraud or declaratory relief; and/or  
7 (vii) other claims which were raised or could have been raised related to the  
8 Action.

9 (Settlement Agreement, Definitions, ¶¶ 13 & 26, & Agreements, ¶ 12.) The release of claims  
10 emphasized that it included a release of any claims “which were raised or could have been raised  
11 related to the Action.” (Settlement Agreement, & Agreements, ¶ 12.) “Defendant Released  
12 Parties” are defined as Defendants and related persons and entities. (Settlement Agreement,  
13 Definitions, ¶¶ 12-13.) Plaintiffs also agreed to a general release of claims and a Civil Code  
14 section 1542 waiver. (Settlement Agreement, Agreements, ¶ 14.)

15 Subsequently, the parties agreed to modify the class release. The amended class release  
16 provides that class members agree to release the Defendant Released Parties from “claims  
17 asserted in the original Complaint and any amended Complaints, and potential claims reasonably  
18 arising out of the same set of operative facts pled in the original complaint and any amended  
19 complaint.” (Fur. Mem. Ps. & As., Ex. 1, Definitions, ¶ 26, & Agreements, ¶ 12, & Ex. 2,  
20 Definitions, ¶ 26, & Agreements, ¶ 12.) This modification adequately addresses the court’s  
21 concerns regarding the scope of the class release.

22 Plaintiffs advise that the parties were unsure whether they should also remove the Civil  
23 Code section 1542 waiver by the named plaintiffs from the agreement. As a result, the parties  
24 submitted two versions of the amended settlement agreement, one which contains the Civil Code  
25 section 1542 waiver by Plaintiffs (Fur. Mem. Ps. & As., Ex. 1) and one that does not contain the  
26 Civil Code section 1542 waiver (Fur. Mem. Ps. & As., Ex. 2). The parties contend that the  
27 inclusion of the Civil Code section 1542 waiver by Plaintiffs is appropriate. Plaintiffs state that  
28

1 after receiving clarification from the court, the parties will file a signed copy of the amended  
2 settlement agreement.

3 The prior court order on the motion for preliminary approval did not take issue with the  
4 Civil Code section 1542 waiver by Plaintiffs and, consequently, the version of the amended  
5 settlement agreement that includes the waiver (i.e., Fur. Mem. Ps. & As., Ex. 1) is appropriate.  
6 Plaintiffs are instructed to file within five days a signed copy of that version of the amended  
7 settlement agreement.

### 8 **B. Fairness of the Settlement**

9 Plaintiffs assert that the settlement is fair and reasonable given the strength of Plaintiffs'  
10 claims and the risks of continued litigation. Plaintiffs state that the settlement was reached  
11 following discovery efforts, arm's-length negotiations, and mediation with the Honorable  
12 Dickran Tevrizian (Ret.). (Declaration of Alexander J. Perez in Support of Plaintiff's Motion for  
13 Preliminary Approval of Class Action Settlement, ¶¶ 5-6.) Plaintiffs state that the total amount  
14 of deductions by Defendants from the security deposits of the 5602 class members is \$2,519,634.  
15 (*Ibid.*) The gross settlement amount of \$1,000,000 results in an expected gross recovery of \$0.39  
16 for every dollar deducted by Defendants. (*Ibid.*)

17 Additionally, Plaintiffs have now provided supplemental information regarding the  
18 maximum amount of Defendants' potential liability. Plaintiffs state that based on the high  
19 percentage of tenants who had deductions made from their security deposits, they will most  
20 likely prevail on the claim for recovery of deductions in violation of Civil Code section 1950.5.  
21 (Fur. Mem. Ps. & As., p. 4:3-20.) Plaintiffs further state that it is unlikely that they would be  
22 awarded punitive damages. (*Id.* at p. 5:1-7.) Plaintiffs estimate Defendant's total liability to be  
23 \$2,519,634. (*Id.* at p. 5:8.) Plaintiffs state that the settlement is within the realistic range of  
24 outcomes of litigation because it is approximately 39.6 percent of Defendants' total liability. (*Id.*  
25 at p. 5:8-10.) Plaintiffs conclude that the recovery is a good result in light of the substantial  
26 uncertainty and additional cost associated with continuing this litigation. (*Id.* at p. 5:22-23.)  
27 This showing addresses the court's concern. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168  
28 Cal.App.4th 116, 130.)

1           **C.     Incentive Award, Attorney Fees, and Costs**

2           Plaintiffs request an incentive award of \$2,500 (to be paid to Plaintiffs collectively). In  
3 its prior order on the motion for preliminary approval of settlement, the court approved the  
4 incentive award.

5           The court also has an independent right and responsibility to review the requested  
6 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
7 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel will  
8 seek a single award for attorney fees and costs up to \$250,000 (25 percent of the total settlement  
9 fund). Plaintiffs’ counsel provide evidence of incurred costs in the amount of \$5,984.36.  
10 (Declaration of Joshua H. Haffner in Support of Plaintiffs’ Motion for Preliminary Approval of  
11 Class Action Settlement (“Haffner Dec.”), ¶ 7 & Ex. B.) Plaintiffs’ counsel also provide  
12 evidence demonstrating a total combined lodestar of \$105,730. (Haffner Dec., ¶¶ 5-6 & Ex. A;  
13 Declaration of Alexander J. Perez in Support of Plaintiffs’ Motion for Preliminary Approval of  
14 Class Action Settlement and Pursuant to the Court’s Order of August 8, 2022, ¶ 4.) This results  
15 in a multiplier of approximately 2.31. This multiplier is somewhat high, but the court will  
16 approve a single award for attorney fees and costs of \$250,000 (25 percent of the total  
17 settlement), which is reasonable as a percentage of the common fund.

18           As explained in the prior order on the motion for preliminary approval, the amount  
19 requested for settlement administration is considerably higher than is normally requested or  
20 awarded, but the court will consider on final approval evidence presented concerning the efforts  
21 expended and costs incurred by the settlement administrator.

22           **D.     Conditional Certification of Class**

23           In its prior order on the motion for preliminary approval of settlement, the court  
24 conditionally certified the proposed class for purposes of settlement.

25           **E.     Class Notice**

26           The content of a class notice is subject to court approval. “If the court has certified the  
27 action as a class action, notice of the final approval hearing must be given to the class members  
28 in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)



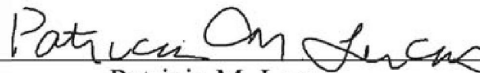
1 Here, the amended notice includes the all of the modifications discussed in the prior court  
2 order on the motion for preliminary approval of settlement and the amended notice is approved.  
3 (Fur. Mem. Ps. & As., Ex. 4.)

4 **IV. CONCLUSION**

5 The motion for preliminary approval of the class action settlement is GRANTED. The  
6 final approval hearing is set for January 18, 2023, at 1:30 pm. in Department 3.

7 The Case Management Conference set for September 14, 2022 is vacated.

8  
9 Dated: September 14, 2022

  
Patricia M. Lucas  
Judge of the Superior Court