IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

MARTA VALENTINA RIVERA MADERA, on behalf of herself and all others similarly situated; FAITH IN FLORIDA, HISPANIC FEDERATION, MI FAMILIA VOTA EDUCATION FUND, UNIDOSUS, and VAMOS4PR, PLAINTIFFS, v. KEN DETZNER, in his official capacity as Secretary of State for the State of Florida; and KIM A. BARTON, in her official capacity as Alachua County Supervisor of Elections, on behalf of herself and similarly-situated County Supervisors of Elections, DEFENDANTS.	Case No. 1:18-cv-00152

PLAINTIFFS' MOTION FOR CERTIFICATION OF PLAINTIFF CLASS

RELIEF REQUESTED CONCURRENTLY WITH PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs move for certification of a plaintiff class represented by Plaintif Marta Valentina Rivera Madera and defined as:

> American citizens who attended some school in Puerto Rico, who have no or limited proficiency in English, and who are eligible to vote in any of the following Florida counties: Alachua, Bay, Brevard,

Charlotte, Citrus, Clay, Columbia, Duval, Escambia, Flagler, Hernando, Highlands, Indian River, Jackson, Lake, Leon, Levy, Manatee, Marion, Martin, Monroe, Okaloosa, Okeechobee, Pasco, Putnam, St. Johns, St. Lucie, Santa Rosa, Sarasota, Sumter, Taylor, and Wakulla Counties.

Certification is appropriate because the proposed plaintiff class is adequately defined, satisfies each of the four requirements of Rule 23(a), and satisfies the requirements of Rule 23(b)(2) because by authorizing and conducting English-only elections in the counties where class members reside, Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

Plaintiffs respectfully request the prompt resolution of this motion at the same time that the Court resolves Plaintiffs' concurrently filed motion for preliminary injunction, so that any potential injunctive relief will benefit all members of the proposed plaintiff class and ensure that they are able to effectively exercise their right to vote in the upcoming November 6, 2018 general election.

Plaintiffs' motion is based on this motion, the attached memorandum, the accompanying declarations of Marta Valentina Rivera Madera, Dr. Daniel A. Smith, Stephen Berzon, Stuart Naifeh, Kira Romero-Craft, Ahren Lahvis, and Peter Mason, and the accompanying Proposed Order.

MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION OF PLAINTIFF CLASS

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I. INTRODUCTION

Plaintiff Rivera seeks to represent a prospective class of over 30,000 Spanish-speaking American citizens who attended school in Puerto Rico and are eligible to vote in Florida, but who, without this Court's intervention, will have their fundamental right to cast an effective vote denied by Defendants' failure to ensure that Spanish-language ballots, election materials, and assistance are provided in 32 of Florida's counties. Plaintiffs move for an order certifying a plaintiff class pursuant to Rule 23 of the Federal Rules of Civil Procedure.[1]

Plaintiffs seek declaratory and injunctive relief to enforce the requirements of Section 4(e) of the federal Voting Rights Act, which protects the voting rights of persons educated in Puerto Rican schools who are unable to vote effectively in English. 52 U.S.C. §10303(e). *See* Mot. for Prelim. Inj. (filed concurrently). The proposed plaintiff class set forth in this Motion is adequately defined and meets all the requirements of Federal Rule of Civil Procedure 23(a). Because Defendants have "acted or refused to act on grounds generally applicable to the class," such that final injunctive and declaratory relief is appropriate with respect to the whole

[1] In addition to pursuing claims against Defendant Florida Secretary of State Ken Detzner, plaintiffs are concurrently filing a separate motion requesting certification of a defendant class composed of the Supervisors of Elections of the 32 Florida counties in which proposed plaintiff class members reside, represented by named Defendant Alachua County Supervisor of Elections Kim A. Barton. *See* Mot. for Cert. of Def. Class (filed concurrently).

class, certification should be granted pursuant to Federal Rule of Civil Procedure 23(b)(2).

II. FACTS

Plaintiff Rivera is an individual residing in Alachua County who attended a Spanish-language school in Puerto Rico and is eligible to vote in Florida. *See* Declaration of Marta Valentina Rivera Madera ("Rivera Decl.") ¶¶1-2. Her primary language is Spanish, and she finds it difficult to read, understand, or vote in English. *Id.* ¶¶4-5. She wants and intends to vote in Florida's November 6, 2018 general election, but will be unable to do so effectively absent Spanish-language election materials and assistance. *Id.* ¶8.

The proposed plaintiff class consists of similarly-situated Spanish-speaking Puerto Ricans who are eligible to vote in the 32 Florida counties listed in this Motion (the "Counties"). Those Counties provide little to no Spanish-language election materials or assistance. *See* Declaration of Ahren Lahvis ("Lahvis Decl.") ¶¶5, 8-13, 15-30; Declaration of Peter Mason ("Mason Decl.") ¶¶5, 8-16, 18. None of the Counties will provide official Spanish-language ballots for the November 2018 election. Lahvis Dec. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. None of the Counties have provided Spanish-language ballots for recent past

elections. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18.[2] None of the Counties provide information on their websites about bilingual election personnel, and twenty-nine of the Counties do not provide information about the option to bring someone to assist in voting if a voter is unable to read English. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. At least twenty-eight Counties will not provide Spanish-language sample ballots for the November 2018 election. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. Twenty-seven of the Counties do not provide Spanish-language voter guides. The Counties will not provide sufficient trained, bilingual poll workers for the November 2018 election, and have not done so in the past. *See* Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. Many of the Counties also fail to provide Spanish-language absentee ballots and information, provisional ballots and information, and/or translations of important election information on their websites, including election dates and times and polling locations. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18.[3]

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[2] Although Monroe County was at one point required by another provision of the VRA to provide Spanish-language ballots, it no longer does so. Mason Decl. ¶9.

[3] Although a few counties have stated a nonbinding intent to make available some Spanish materials or assistance for the upcoming election, *see* Declaration of Stuart Naifeh ("Naifeh Decl.") ¶¶5-6, Exs. OO, NN, they have not yet provided sufficient materials or assistance to enable Spanish-language voters to vote effectively. Lahvis Decl. ¶¶24, 28. Because plaintiffs seek relief establishing a legal obligation for those counties to make available *all* materials and assistance necessary for

The proposed class includes more than 30,000 members. Data from the U.S. Census Bureau's 2011-2015 American Community Survey (ACS) reflects that the 32 counties in which proposed class members reside are home to more than 30,000 adults of Puerto Rican heritage who speak Spanish at home and have limited English proficiency, as defined by the Census Bureau. Declaration of Dr. Daniel A. Smith ("Smith Decl.") ¶13, Tbl. 1. These individuals are highly likely to have attended at least some school in Puerto Rico in which the primary language of instruction was not English, because "[t]he primary language of classroom instruction in Puerto Rico is Spanish." *United States v. Berks Cty.*, 277 F.Supp.2d 570, 574 ("*Berks II*") (E.D. Pa. 2003); *see* P.R. Regs. DE REG. 8115, Art. III, §B;[4] *cf.* Smith Decl. ¶15.

In addition, data from the Florida Division of Elections reflects that more than 36,500 registered voters in the 32 counties in which proposed class members reside identified their place of birth on their voter registration forms as Puerto Rico. Smith Decl. ¶19, Tbl. 2. These counties likely include many more adults

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limited-English proficient Puerto Ricans to vote effectively, affected individuals who reside in those counties are included among the proposed plaintiff class.

[4] The cited regulation of the Department of Education of Puerto Rico is in Spanish. Translated to English, the regulation provides: "Every student in the schools of the Public Education System has the right to: ... B. Receive an education taught in our vernacular language, Spanish. English will be taught as a second language, with the exception of Specialized Language Schools."

who were born in Puerto Rico and are registered to vote but did not list a place of birth on their voter registration forms, or are eligible to vote but who have not yet registered. *Id* ¶18, 21. Many of these individuals likely have limited English proficiency. *Id*. ¶9.

The total numbers discussed above of limited English proficient Puerto Ricans, and of registered voters who were born in Puerto Rico, in the Counties in which proposed class members reside are conservative estimates, for multiple reasons. *Id*. ¶¶18, 22-23. In particular, the available data from both the U.S. Census Bureau and the Florida Division of Elections do not include the substantial numbers of Spanish-speaking Puerto Ricans, including Plaintiff Rivera, who moved to Florida following Hurricane Maria in September 2017. *Id*. ¶¶22-23; Rivera Decl. ¶3. Taking into account that recent influx, the proposed class likely includes many more than the thousands of members suggested by the 2011-2015 ACS and voter registration data.

III. ARGUMENT

"Class actions serve an important function in our system of civil justice." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). "[Federal Rule of Civil Procedure] 23(b)(2) allows class treatment when 'the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the

class as a whole.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). "'[C]ivil rights cases'" like this one "'against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture." *Id.* at 361 (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614 (1997)).

Class certification is proper if the proposed class is "adequately defined," *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012), the four requirements of Federal Rule of Civil Procedure 23(a) are satisfied, and the requirements of any one of the subparts of Rule 23(b) are satisfied.

The four requirements of Rule 23(a) are:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Here, Plaintiffs move to certify a plaintiff class under Rule 23(b)(2), which requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As shown below, Plaintiffs satisfy each of these requirements.

A. The Class Is Adequately Defined

The proposed plaintiff class is "adequately defined." *Little*, 691 F.3d at 1304. A class definition need not identify every class member, but it must "establish that the class does, in fact, exist …." *Neumont v. Monroe County*, 198 F.R.D. 554, 558 (S.D. Fla. 2000). Membership in the proposed class is defined by objective criteria: lack of English proficiency, attendance of any school in Puerto Rico, and eligibility to vote in Florida elections in one of the 32 counties listed in the class definition. These criteria are not vague, ambiguous, or amorphous.[5]

Near-identical classes (differing only in geographic location) have been certified in other cases challenging the failure to provide Spanish-language voting materials and assistance in violation of Section 4(e) of the Voting Rights Act. *See, e.g.*, *Arroyo v. Tucker*, 372 F.Supp. 764, 766 (E.D. Pa. 1974) (certifying class of "Puerto Rican persons residing in Philadelphia who speak, read, write and comprehend only Spanish, and who are eligible to vote"); *Torres v. Sachs*, 381 F.Supp. 309, 311 n.1 (S.D.N.Y. 1974) (certified class consisted of "all persons eligible to vote who are of Puerto Rican birth or descent residing in the City of New York, who speak, read, write and understand Spanish, but who speak, read,

[5] In particular, limited English proficiency is defined by the Voting Rights Act, and the Census Bureau collects data in accordance with this definition. *See* 52 U.S.C. §10503(3)(B); H.R. Rep. No. 102-655 (1992), at 8.

write and understand English with severe difficulty or not at all"). Nothing more is required of the class definition here.

Some district courts in this Circuit, in deciding whether to certify a proposed Rule 23(b)***(3)*** class, have required not only that the class definition be clear and definite, but also that the class be "clearly ascertainable," which they have construed to mean that it must be possible to identify individual class members "in an administratively feasible way." *Ocwen Loan Servicing, LLC v. Belcher*, 2018 WL 3198552, at *3 (11th Cir. June 29, 2018) (unpublished). Whether or not any "administrative feasibility" requirement might apply in other cases,[6] it is established in this Circuit that no such requirement applies to proposed classes like this one seeking purely injunctive and declaratory relief under Rule 23(b)***(2)***. *See Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975) (for certification under Rule 23(b)(2), "it is not necessary that the members of the class be so clearly identified that any member can be presently ascertained") (citing *Carpenter v.*

[6] The Eleventh Circuit has never applied this extra "administrative feasibility" requirement (which has no basis in the text of Rule 23) in a published opinion, *Ocwen Loan Servicing*, 2018 WL 3198552, at *3, and at least four other Circuits have expressly rejected such a requirement for all class actions. *See In re Petrobras Securities*, 862 F.3d 250, 265 (2d Cir. 2017); *Rikos v. Procter & Gamble Co.*, 799 F.3d 497, 525 (6th Cir. 2015); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657–58 (7th Cir. 2015); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1126-27 (9th Cir. 2017).

Davis, 424 F.2d 257, 260 (5th Cir. 1970)).[7] Unlike a class seeking damages that would need to be distributed to idenitifiable, individual members under Rule 23(b)*(3)*, in a Rule 23(b)*(2)* class seeking only injunctive and declaratory relief, "a remedy obtained by one member will naturally affect the others," and thus "the identities of individual class members are less critical in a (b)(2) action than in a (b)(3) action." *Shelton v. Bledsoe*, 775 F.3d 554, 561 (3d Cir. 2015).

Indeed, civil rights actions on behalf of groups "whose members are incapable of specific enumeration" are "illustrative" examples of Rule 23(b)(2) classes. Advisory Committee's Notes to Revised Rule 23, subd. (b)(2) (1966). And even those Circuits that have adopted an "administrative feasibility" or "ascertainability" requirement for Rule 23(b)*(3)* classes have made clear that no such requirement applies to Rule 23(b)*(2)* classes. *See Yaffe v. Powers*, 454 F.2d 1362, 1366 (1st Cir. 1972) ("[T]he actual membership of the [23(b)(2)] class need not therefore be precisely delimited."); *Shelton*, 775 F.3d at 561 ("a judicially-created implied requirement of ascertainability … is inappropriate for (b)(2) classes"); *Shook v. El Paso County*, 386 F.3d 963, 972 (10th Cir. 2004) (Rule

[7] Former Fifth Circuit decisions handed down prior to the close of business on September 30, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

23(b)(2) is "well suited for cases where the composition of a class is not readily ascertainable").[8]

B. This Case Meets The Requirements For Class Certification Under Rule 23(a)

1. The class is sufficiently numerous

The plaintiff class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "'While there is no fixed numerosity rule, generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors.'" *Hoffer v. Jones*, 323 F.R.D. 694, 697 (N.D. Fla. 2017) (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)) (brackets and internal quotation marks omitted); *accord*

[8] Although no showing that it is administratively feasible to identify individual class members is required, the proposed plaintiff class would meet that standard. "Affidavits, in combination with records or other reliable and administratively feasible means, can meet the ascertainability standard," where that standard applies. *City Select Auto Sales Inc. v. BMW Bank of North America Inc.*, 867 F.3d 434, 441 (3d Cir. 2017). Whether an individual was educated in Puerto Rico, whether he or she is a United States citizen, and whether he or she is eligible to vote are established by such objective records as birth certificates, voter registration data, U.S. Passports, and school records. Individuals can readily attest to their limited English proficiency by affidavit. *Compare Braggs v. Dunn*, 317 F.R.D. 634, 673 (M.D. Ala. 2016) (certifying a class of prisoners with "serious mental illness" over objections that the term was undefined); *cf. Ocwen Loan Servicing*, 2018 WL 3198552, at *5 (district court did not abuse its discretion in relying on class members' self-identification in certifying (b)(3) class). Thus, even though it is not necessary to support certification here, determining whether any individual is a member of the proposed class would be a "manageable process that does not require much … individual inquiry." *Navelski v. Int'l Paper Company*, 244 F.Supp.3d 1275, 1305 (N.D. Fla. 2017) (quotation omitted).

Ibrahim v. Acosta, 17-CV-24574-GAYLES, 2018 WL 3069242, at *2 (S.D. Fla. June 21, 2018). "[A] plaintiff need not show the precise number of members in the class," *Manno v. Healthcare Revenue Recovery Grp., LLC,* 289 F.R.D. 674, 684 (S.D. Fla. 2013), but simply "must make reasonable estimates with support as to the size of the proposed class." *Fuller v. Becker & Poliakoff*, 197 F.R.D. 697, 699 (M.D. Fla. 2000); *see Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529, 536 (S.D. Fla. 2015) (numerosity satisfied where exact number of class members was "unknown" but defendant admitted there were at least 40).

The class here numbers in the tens of thousands, with members in each separate county listed in the class definition. *See* Smith Decl. ¶¶13, 19, Tbl. 1, Tbl. 2. That is more than sufficient to satisfy the numerosity requirement. *See Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (putative class of 31 satisfied numerosity).

2. There are questions of law or fact common to the class

The proposed plaintiff class satisfies the commonality requirement because "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "There is no requirement as to the number of common questions—even a single common question will do." *Hoffer*, 323 F.R.D. at 697 (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011)); *see County of Monroe v. Priceline.com, Inc.*, 265 F.R.D. 659, 667 (S.D. Fla. 2010) (establishing commonality is a

"relatively light burden") (quotation omitted). A question is "common" if it "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores*, 564 U.S. at 350; *see Garcia-Celestino v. Ruiz Harvesting, Inc.*, 280 F.R.D. 640, 646 (M.D. Fla. 2012) (commonality satisfied if case "involve[s] issues that are susceptible to class wide proof").

"The commonality element is generally satisfied when a plaintiff alleges that defendants have engaged in a standardized course of conduct that affects all class members." *Sanchez-Knutson*, 310 F.R.D. at 536 (brackets and internal quotation marks omitted). That is precisely what Plaintiffs allege here: Defendant Secretary of State Detzner and the proposed defendant class of County Supervisors of Elections in the 32 counties at issue have engaged in a standardized course of conduct (conducting English-only elections without ensuring the provision of sufficient Spanish-language election materials and assistance) that affects all class members by making voting more difficult or effectively impossible.

There are several questions of law or fact common to the class, including but not limited to:

a. Whether Plaintiffs are entitledto relief under Section 4(e) of the VRA requiring Defendant Secretary of State Detzner ("Secretary") to take action, including but not limited to issuing directives and other orders,

to ensure that the Florida counties in which class members reside will provide Spanish-language election materials, including but not limited to ballots, sample ballots, voting guides, and registration materials, and will make available bilingual assistance with absentee voting, for voter registration, and bilingual poll workers to assist voters at early voting sites and on election day;

b. Whether Plaintiffs are entitled to relief under Section 4(e) of the VRA requiring Supervisors of Elections in Florida counties in which class members reside to provide Spanish-language election materials, including but not limited to ballots, sample ballots, voting guides, and registration materials, and to make available bilingual assistance for voter registration and bilingual poll workers to assist voters with absentee voting, at early voting sites, and on election day;

c. Whether the Court should provide declaratory relief holding that Section 4(e) of the VRA requires the provision of Spanish-language ballots, registration and other election materials to Spanish-speaking Puerto Rican voters and requires that bilingual assistance with voter registration and bilingual assistance during early voting, with absentee voting, and on election day be provided in the Florida counties in which class members reside; and

d. Whether the Court should enter preliminary and permanent injunctive relief requiring the Secretary and the Supervisors of Elections in the counties in which class members reside to ensure the provision of Spanish-language election materials, including but not limited to ballots, sample ballots, voter guides, and registration materials, and to ensure the provision of bilingual Spanish-language assistance with voter registration, with absentee voting, and at the polls.

Any one of these common issues is sufficient to satisfy the commonality requirement.

3. Plaintiff Rivera's claims are typical

Plaintiff Rivera's "claims or defenses … are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Claims are typical of each other if they 'arise from the same event or pattern or practice and are based on the same legal theory.'" *Hoffer*, 323 F.R.D. at 698 (quoting *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984)). "[T]he typicality requirement may be satisfied despite substantial factual differences when there is a strong similarity of legal theories." *Id.* at 699 (ellipsis, quotation marks, and citations omitted). In other words, "the typicality requirement is permissive: representative claims are 'typical' if they are reasonably co-extensive with those of absent class

members; they need not be substantially identical." *Sanchez-Knutson*, 310 F.R.D. at 539 (citations and internal quotation marks omitted).

Here, Plaintiff Rivera's claims arise from the same "pattern or practice" of Defendants and defendant class members failing to ensure the provision of sufficient Spanish-language election materials and assistance, and Plaintiff Rivera's claims that Defendants are violating Section 4(e) of the VRA are based on the exact same legal theory as the class's claims. That is more than enough to establish typicality.

4. Plaintiff Rivera will adequately protect the interests of the class

Plaintiff Rivera "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy analysis encompasses two inquiries: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (quotation omitted); *see Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985) (determining adequacy "involves questions of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation, and of whether plaintiffs have interests antagonistic to the rest of the class"). "[T]he existence of minor conflicts alone will not defeat a party's claim to class certification: the conflict must be a fundamental one going to the specific issues in

controversy." *Valley Drug Co.*, 350 F.3d at 1189 (quotation omitted). "As to the adequacy of counsel for the class representative, '[a]bsent specific proof to the contrary, the adequacy of class counsel is presumed.'" *Sanchez-Knutson*, 310 F.R.D. at 540 (quoting *In re Seitel, Inc. Securities*, 245 F.R.D. 263, 271 (S.D. Tex. 2007)).

Plaintiff Rivera easily satisfies the adequacy requirement because she has no conflicts with the rest of the class, Rivera Decl. ¶¶12-13, and Plaintiff Rivera's counsel are qualified and experienced class action and voting rights litigators. *See* Declaration of Stephen P. Berzon ("Berzon Decl.") ¶¶2-11; Declaration of Kira Romero-Craft ("Romero-Craft Decl.") ¶¶2-6; Naifeh Decl. ¶¶13-18.

C. This Case Meets the Requirements for Certification Under Rule 23(b)(2)

Certification of the proposed plaintiff class is appropriate under Federal Rule of Civil Procedure 23(b)(2), because "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "'Generally applicable' means the party opposing the class 'has acted in a consistent manner towards members of the class so that his actions may be viewed as part of a pattern of activity ... [directed] to all members.'" *Sanchez-Knutson*, 310 F.R.D. at 541 (quoting *Leszczynski, et al. v. Allianz Insurance*, 176 F.R.D. 659, 673 (S.D. Fla. 1997)). "The key to the (b)(2)

class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (internal quotation marks omitted). "In other words, Rule 23(b)(2) applies … when a single injunction or declaratory judgment would provide relief to each member of the class." *Id.*

Here, "certification under Rule 23(b)(2) is appropriate because a single injunction or declaratory judgment *would* provide relief to each member of the proposed class." *Hoffer*, 323 F.R.D. at 699 (emphasis in original); *see Ibrahim*, 2018 WL 3069242, at *4 (granting Rule 23(b)(2) certification where "the class-wide injunctive relief that may potentially be awarded in this action would address the common injuries shared by the class members"). If the Court grants Plaintiffs' requested relief and orders Defendants to ensure that sufficient Spanish-language election materials and assistance are provided in the counties where class members reside, that order would provide relief to every class member and eliminate a barrier to each class member's ability to effectively exercise his or her right to vote.

Not surprisingly, as previously noted, other courts have certified similar classes under Rule 23(b)(2) where plaintiffs brought similar claims under Section

4(e) of the VRA. *See Arroyo*, 372 F.Supp. at 766; *Torres*, 381 F.Supp. at 311 n.1. This Court should certify an analogous class here.

D. Plaintiff Rivera's Counsel Should Be Appointed as Class Counsel

Under Rule 23, the Court must appoint class counsel upon certifying a class. Fed. R. Civ. P. 23(g)(1). The Court considers four factors in appointing class counsel:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

Appointment of Plaintiff Rivera's counsel as class counsel is appropriate because Plaintiff Rivera's counsel are experienced in handling both class actions and voting rights claims, are knowledgeable of the relevant law, have investigated and prepared a strong evidentiary record to support the class's claims, and will commit the resources necessary to represent the class. *See* Berzon Decl. ¶¶2-11; Romero-Craft Decl. ¶¶2-6; Naifeh Decl. ¶¶13-18; *see also* Mot. for Prelim. Inj. and supporting papers (filed concurrently).

E. This Court Should Resolve This Motion for Certification of the Plaintiff Class Along with Plaintiffs' Motion for Preliminary Injunctive Relief

Certification of the plaintiff class in connection with Plaintiffs' concurrently filed motion for a preliminary injunction is appropriate so that the injunction can provide meaningful and uniform relief for Spanish-speaking, Puerto Rican-educated voters across the 32 Florida counties at issue in this action during the upcoming November 2018 election. The Court is not required to order any notice to class members prior to certifying a class under Rule 23(b)(2). *See* Fed. R. Civ. P. 23(c)(2)(A).

IV. REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(K), Plaintiffs hereby respectfully request oral argument on their motion for certification of a plaintiff class. This case raises important questions of law under the VRA. The issues raised in this motion are related to those raised in Plaintiffs' concurrently filed motion for preliminary injunction, which seeks immediate preliminary injunctive relief. Plaintiffs therefore believe that the Court's decision-making process would be significantly aided by oral argument. Plaintiffs estimate two hours total will be necessary for argument on this motion and Plaintiffs' concurrently filed motions for preliminary injunction and certification of a defendant class.

V. CONCLUSION

For all the reasons above, the Court should certify the plaintiff class

proposed in plaintiffs' Motion under Federal Rule of Civil Procedure 23(b)(2) at the same time that the Court resolves Plaintiffs' concurrently filed Motion for Preliminary Injunction.

Dated: August 16, 2018

Respectfully submitted,

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of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).

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CERTIFICATE OF WORD COUNT

Pursuant to Northern District of Florida Local Rule 7.1(F), I certify that, according to the word count of the word processing system used to prepare this document, the foregoing motion contains 286 words and the foregoing memorandum contains 4479 words.

/s/ Kira Romero-Craft
Kira Romero-Craft

CERTIFICATE OF ATTORNEY CONFERENCE

Pursuant to Northern District of Florida Local Rule 7.1(C), I certify that, prior to filing this motion, counsel for Plaintiffs conferred with counsel for Defendants in a good faith attempt to resolve the matters raised herein, both in writing and by telephone. Plaintiffs' counsel explained that a coalition of organizations previously sent letters to Defendant Alachua County Supervisor of Elections Kim Barton, other county Supervisors of Elections, and copied to Defendant Secretary of State Ken Detzner, demanding the provision of Spanish-language ballots, election materials, and voting assistance for the upcoming 2018 election. Plaintiffs' counsel further summarized the relief that plaintiffs seek in this motion, the need to file this motion promptly given the upcoming November election, and Plaintiffs' intention to file this motion immediately upon filing the complaint. Counsel for Defendant Secretary Detzner indicated that Defendant Detzner would not take a position on this motion without seeing a copy of the motion. Counsel for Defendant Supervisor Barton indicated that Defendant Barton would not take a position on this motion without seeing a draft or copy of the complaint or motion.

/s/ Kira Romero-Craft
Kira Romero-Craft