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13 **SUPERIOR COURT OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 EDDIE MCKINNIE, as an individual and
16 on behalf of all others similarly situated and
17 aggrieved

18 Plaintiff,

19 v.

20 IRON MOUNTAIN SECURE SHREDDING,
21 INC., a Delaware corporation; IRON
22 MOUNTAIN MANAGEMENT SERVICES,
23 INC., a Delaware corporation; IRON
24 MOUNTAIN INCORPORATED, a Delaware
25 corporation; IRON MOUNTAIN
26 FULFILLMENT SERVICES, INC., a
27 Delaware corporation; IRON MOUNTAIN
28 INFORMATION MANAGEMENT
SERVICES, INC., a Delaware corporation;
IRON MOUNTAIN DATA CENTERS, LLC,
a Delaware limited liability company; IRON
MOUNTAIN INFORMATION
MANAGEMENT, LLC, a Delaware limited
liability company; IRON MOUNTAIN
DATA CENTERS SERVICES, LLC, a
Delaware limited liability company; and
DOES 1-50, inclusive,

Defendants.

Case No.: 21STCV05707

Assigned for All Purposes to:
Hon. David C. Cunningham
Dept. SSC-11

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUEST FOR ATTORNEY'S FEES AND
COSTS**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Chad Saunders and
Markus Balthuis; [Proposed] Order]

Date: October 5, 2022
Time: 9:00 a.m.
Dept. SSC-11

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Eddie McKinnie seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 2,048
4 individuals who worked for defendants Iron Mountain Secure Shredding, Inc., Iron Mountain
5 Incorporated, Iron Mountain Fulfillment Services, Inc., Iron Mountain Information Management
6 Services, Inc., Iron Mountain Data Centers, LLC, Iron Mountain Information Management, LLC,
7 Iron Mountain Data Centers Services, LLC (together “Iron Mountain” or “Defendants”) in the
8 State of California as “all current and former non-exempt employees hourly paid of Defendants
9 employed in California at any time from October 1, 2017 to September 1, 2022.” The proposed
10 \$1,500,000 total settlement provides about \$865,182 in cash payments to the Class, with an
11 average award of about \$429, plus additional amounts payable under PAGA. The remaining
12 balance will cover a modest service award to Plaintiff, settlement administration costs, civil
13 penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
14 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
15 experienced and highly-regarded mediator. The Court conditionally certified the Class and
16 preliminarily approved the settlement on May 26, 2023. Since then, the Court-approved notice
17 form was mailed to the Class Members on July 17, 2023, and they reacted very favorably to the
18 settlement. As of the filing of this motion, there are no objections, and only one class member
19 has requested exclusion.

20 Class Counsel secured an excellent settlement with Defendant after some two
21 years of investigation, litigation, and settlement negotiation and administration, all
22 without any compensation for services rendered or costs expended. The class notice duly
23 informed the class members that Class Counsel would request attorney’s fees not to
24 exceed 1/3 of the Gross Settlement Amount, along with reimbursement of no more than
25 \$15,000 for actual costs incurred litigating this matter. As of the filing of this motion,
26 *not one Class Member objected* to the proposed fee award. Consistent with the
27 Settlement and notice, Plaintiff now respectfully requests the Court award Class
28 Counsel's fees in the amount of \$500,000 and costs in the amount of \$13,818.28, as

1 described in the Declaration of Chad Saunders (“Saunders Decl.”) filed herewith. The
2 requested attorney’s fees are well within the range of reasonableness, especially
3 considering the complex and risky nature of this litigation, the contingent risk assumed,
4 the two-plus year delay in payment and, when subjected to a lodestar crosscheck, result
5 in a fee request with a modest 1.82 multiplier.

6 Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully
7 requests the Court grant this motion, give full and final approval to the settlement, grant
8 Class Counsel’s request for attorney’s fees and costs, and enter judgment accordingly.

9 **II. BACKGROUND/LITIGATION HISTORY**

10 The details of the procedural and factual background of this matter were outlined in
11 the Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (filed on or about
12 October 19, 2022). To re-familiarize the Court with this litigation, the Iron Mountain
13 Defendants operate under the Iron Mountain Incorporated corporate structure, and offer a variety
14 of document and data management and storage services. Plaintiff McKinnie worked for Iron
15 Mountain as a non-exempt warehouse worker and “hiker” from approximately December 2018 to
16 July 2020.¹ [Saunders Decl., ¶ 2.]

17 Plaintiff contends the Class Members were not paid all minimum or overtime wages, not
18 provided with legally compliant meal and rest periods, did not receive compliant wage
19 statements, and did not receive all wages due on separation of employment. Based on those
20 allegations, on February 16, 2021, Plaintiff filed a class action complaint against Iron Mountain,
21 and then filed an amended complaint adding claims under PAGA. The operative Complaint
22 alleges claims for minimum and overtime wages, meal and rest break violations, inaccurate wage
23 statements, waiting time penalties, unfair competition, and penalties under PAGA, failure to pay
24 accrued vacation wages, and expense reimbursement. [Saunders Decl., ¶ 3.]

25 Prior to the mediation, Defendants provided Plaintiff with extensive informal discovery,
26

27 ¹ Plaintiff filed an individual case against Iron Mountain, LASC Case No. 21STCV06585, alleging disability
28 discrimination, failure to accommodate, failure to engage in the interactive process, and retaliation. Plaintiff is
entering into a separate and confidential settlement of these claims, the terms of which will be made available to the
Court for *in camera* review as necessary. [Saunders Decl., ¶ 3.]

1 including Plaintiff's personnel, time, and payroll records, time and payroll records for a randomly
2 selected sampling of Class Members, wage statement exemplars, Defendants' employee
3 handbooks, including Defendants' policies and procedures regarding the payment of wages, the
4 provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of
5 wage statements, and termination wages, as well as information regarding the number of putative
6 Class Members who are current and former employees, the number of PAGA Members, the
7 number of workweeks throughout the Class Period, and the number of pay periods throughout the
8 PAGA Period. From this information, Plaintiff was able to analyze Defendants' liability for the
9 claims asserted in this case and, with the assistance of Plaintiff's experts at Berger Consulting
10 Group, the potential exposure and damages. [Saunders Decl., ¶ 4.]

11 On February 14, 2022, the Parties participated in mediation with Gig Kyriacou, Esq., a
12 respected wage and hour class action mediator. The mediation lasted a full day and with the
13 mediator's assistance the Parties reached agreement on all major issues and ultimately the
14 Settlement Agreement now before the Court for final approval. [Saunders Decl., ¶ 5]

15 Class Notices were mailed to class members on July 17, 2023, and Class Members
16 had until August 31, 2023 to opt out or object to the proposed settlement. [Declaration of
17 Markus Balthuis ("Balthuis Decl."), ¶¶ 8, 12-14.]

18 **III. TERMS OF THE PROPOSED SETTLEMENT**

19 Under the settlement, Iron Mountain will pay \$1,500,000.00 into a common fund, the
20 Gross Settlement Amount or GSA. Attorney's fees of up to 1/3 of the GSA (500,000), litigation
21 costs of up to \$15,000 (only \$13,818.28 is requested), an enhancement award of \$5,000 for the
22 plaintiff, settlement administration costs of \$16,000, and a payment of \$100,000 for PAGA civil
23 penalties (of which \$75,000 (75%) will go to the Labor & Workforce Development Agency for
24 its share of the PAGA penalties and \$25,000 (25%) will be paid to PAGA Employees²), all will
25 be paid from the GSA. The remainder of approximately \$865,182 will be allocated to the
26 Participating Class Members based on their total weeks worked during the Class Period. No

27
28 ² "PAGA Employees" means all current and former non-exempt employees of Defendant from August 14, 2018 through September 22, 2022 (the "PAGA Period").

1 portion of the GSA will revert to Iron Mountain. [Saunders Decl., ¶ 6.]

2 **A. Certification of the Settlement Class**

3 The Court conditionally certified a settlement class including all current and former non-
4 exempt employees of Defendants in California during the Class Period, which runs from October
5 1, 2017 to September 1, 2022. The Settlement Administrator ultimately mailed class notices
6 to 2,048 individuals identified as members of the Class. [Balthuis Decl., ¶ 8.] Nothing has
7 changed to require reconsideration of the Court's certification of the Settlement Class.

8 **B. The Benefit Conferred on the Settlement Class**

9 As noted, the settlement obligates Iron Mountain to pay \$1,500,000 to resolve the claims
10 of the Settlement Class, inclusive of attorney's fees and costs. Approximately \$865,182 from the
11 GSA will be distributed to the Participating Class Members, with additional amounts going to
12 PAGA Employees for their portion of the PAGA payment. This is a cash settlement that does not
13 require Participating Class Members to submit a claim form to receive their settlement share.
14 Participating Class Members will receive their settlement checks automatically via First Class
15 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
16 eighty percent will be allocated to penalties and interest. Iron Mounain will pay any and all
17 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
18 Court's approval, any amounts not cashed, will be forwarded to the State Controller's Unclaimed
19 Property Fund. [Saunders Decl., ¶ 7.]

20 Each Participating Class Member will receive a share of the Net Settlement Amount based
21 on his or her total weeks worked for Iron Mountain in California during the Class Period while
22 employed in a non-exempt position. Thus, each Class Member's Individual Settlement Share will
23 be calculated using criteria typically used in determining appropriate amounts of unpaid wages,
24 unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable
25 law. These methods are intended to ensure each Class Member receives a portion of the available
26 settlement funds corresponding to the relative value of his or her potential claims. The proposed
27 allocation provides a reasonable way to compensate Class Members based on the amount of time
28 they worked for Iron Mountain and the number of instances they missed a meal break, were not

1 provided compensation in lieu of such missed breaks, or lost wages due to rounding or a regular
2 rate miscalculation, etc. [Saunders Decl., ¶ 8.]

3 The average class payment will be about \$429, and the maximum class payment will be
4 about \$1,070. The average PAGA payment will be about \$12. [Balthuis, Decl., ¶ 11.]

5 **C. Settlement Administration**

6 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
7 Packet to the Class members after making all reasonable effort to ascertain the best mailing
8 address, including running each address through the National Change of Address database
9 and "skip-tracing" any Notice Packets returned as undeliverable. [Balthuis Decl., ¶¶ 3-9.]
10 The Class Notice, previously approved by the Court, duly informed Class Members of the
11 settlement terms, including the estimated relief each Class Member will receive, the amounts
12 to be requested for attorney's fees and the class representative enhancement awards, and the
13 right to opt out of or object to the settlement. [Balthuis Decl., Exh. A.] Simpluris mailed
14 2,048 Notice Packets on July 17, 2023. [Balthuis Decl., ¶ 8.] Ultimately, only 15 Notice
15 Packets were deemed undeliverable, representing a 99.4% success rate. [Balthuis Decl., ¶ 9.]
16 The response window for opting out of or objecting to the settlement will expired on August
17 31, 2023. [Balthuis Decl., ¶¶ 12-14.] As of the filing of this motion, Simpluris has received
18 one request for exclusion (for a 99.95% participation rate), and zero objections to the
19 settlement. No disputes have been submitted regarding the information used to calculate
20 class member settlement shares. [Balthuis Decl., ¶¶ 12-14.]

21 **D. Release of Claims**

22 All Participating Class Members will release Defendants from all claims alleged in the
23 operative complaint, or that could have been brought based on the factual allegations in the
24 operative complaint, including PAGA claims, during the Class Period. The release is limited to
25 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
26 operative complaint. [Saunders Decl., ¶ 9.]

27 **E. PAGA Claims and Notice to the LWDA**

28 The Parties allocated \$100,000 from the settlement to civil penalties under PAGA, and

1 Plaintiff respectfully requests that the Court approve this amount as fair, reasonable and adequate.
2 Consistent with PAGA, \$75,000 from this amount will be paid to the LWDA as the state's
3 share of the civil penalties, and the remaining \$25,000 will be distributed to the 1,549
4 individuals eligible to receive a PAGA payment. [Balthuis Decl., ¶ 6.] As required by Labor
5 Code section 2699(l)(2), Plaintiff gave notice of the settlement and the final approval hearing to
6 the LWDA via its online portal. [Saunders Decl., ¶ 10; Exh. 1.]

7 **IV. ARGUMENT**

8 The law favors settlement, particularly in class actions where substantial resources
9 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
10 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
11 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
12 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37
13 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
14 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
15 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
16 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
17 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
18 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
19 two-step process intended to determine whether, under the totality of circumstances, the
20 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
21 Cal.App.4th at 245.

22 On a motion for final approval, the trial court is charged with determining whether, in
23 light of the total circumstances of the action and the response of the class members to the
24 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
25 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
26 determination and may consider a number of relevant factors, including: the strength of
27 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
28 further litigation; the amount offered in settlement; the extent of discovery and stage of the

proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. Id. In light of the strong judicial policy favoring the settlement of class actions, courts generally apply a presumption of fairness to a proposed class action settlement when: (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. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

A. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members, as there were no objections and no class members opted out.

The Settlement Is the Product of Arm's-Length, Informed Negotiations

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Gig Kyriacou, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Saunders Decl., ¶ 5.] Moreover, Plaintiff and her counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Chad Saunders have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Saunders Decl., ¶¶ 25-33.] Defendant likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and only one Class Member requested exclusion. [Balthuis Decl., ¶¶ 12-13.] As many courts recognize, class member reaction to the settlement is one of the most

important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy”) (internal quotation marks omitted).

3. The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks

The proposed settlement involves a substantial sum of money that, when distributed, will confer meaningful monetary benefits on the Class Members. As described above, each individual award will be based on an allocation consistent with the nature of the claims asserted and will fairly and equitably allocate the available funds in relation to the degree of damage each Class member incurred. While Class members who worked for only a short period of time will receive relatively small sums, those with longer tenures and who worked more hours and shifts throughout the class period will receive appropriately larger awards.

Prior to settlement, the parties engaged in extensive formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed payroll records, personnel policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and time records produced by Iron Mountain. Defendant provided documents and information reflecting the estimated total number of workweeks and pay periods they worked, and average hourly pay rates, among other relevant data. Plaintiff also had that information reviewed by a consulting expert to assist with calculating potential violation rates and potential damages. Plaintiff’s counsel is confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Saunders Decl., ¶¶ 4, 11.]

Using that data, Plaintiff ran various calculations and estimated Iron Mountains’s likely maximum exposure on the class claims at approximately \$19,493,000, including \$288,600 on the rounding claim and about \$4,000 on the regular rate claim, approximately \$11,665,500 on the meal and rest break claims, about \$3,587,000 on the inaccurate wage statement claims, and

1 waiting time penalties of about \$4,047,360. However, in light of the multiple and considerable
2 risks posed by proceeding with the litigation, Plaintiff and Plaintiff's counsel substantially
3 discounted the value of these claims. [Saunders Decl., ¶ 12.]

4 Plaintiff contends Defendants failed to provide legally compliant meal and rest breaks.
5 Specifically, as to meal breaks, Plaintiff contends Defendants routinely failed to provide second
6 meal periods on shifts lasting over 10 hours, and further that the Class Members frequently were
7 unable to start their first meal period until after the fifth hour work. Plaintiff claims this violates
8 Labor Code sections 512, 226.7, the applicable IWC Wage Orders, and Brinker Restaurant Corp.
9 v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security Serv., Inc. (2016) 2
10 Cal.5th 257 for failure to provide all required meal periods and within the required time frames.
11 On the rest break claims, Plaintiff primarily contends Defendants failed to provide required third
12 rest periods on shifts over 10 hours. [Saunders Decl., ¶ 13.]

13 Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks
14 available to Class Members in compliance with California law. Defendants contend their meal
15 and rest break policies are lawful and that Class Members were frequently reminded they were
16 required to take all meal and rest breaks. Defendants also contend that time records demonstrate
17 that Class Members took duty-free, timely meal and rest breaks, and further that Defendants paid
18 meal premiums. Defendants contend their meal and rest break policies and practices comported
19 with the flexibility the *Brinker* court held was integral to California's meal and rest period
20 requirements. Finally, Defendants argue that Plaintiff's meal and rest break claims are not
21 susceptible to common proof, as the claims would require individualized inquiry, including
22 whether there was an unlawful companywide policy, whether employees had the opportunity to
23 take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods,
24 and whether Defendants ever prevented them from taking meal and rest periods. Accordingly,
25 Defendants contend these claims are vulnerable to a ruling that class treatment is not appropriate.
26 [Saunders Decl., ¶ 14.]

27 Plaintiff also asserts Defendants' rounding of time entries deprived employees of earned
28 wages and, coupled with the allegations that Class Members performed off the clock work prior

1 to their shifts, give rise to unpaid minimum wages. In response, Iron Mountain argued any
2 rounding was entirely neutral in its overall effect on employee time and compensation, and
3 therefore did not result in any violation. See's Candy Shops, Inc. v. Superior Court (2012) 210
4 Cal.App.4th 889. Plaintiff further contends Defendants failed to pay all overtime wages at the
5 regular rate of pay, as Defendants failed to incorporate non-discretionary bonuses paid during the
6 same pay periods that overtime wages were earned, in violation of Alvarado v. Dart Container
7 Corp. (2018) 4 Cal.5th 542. [Saunders Decl., ¶ 15.]

8 Plaintiff's claims for inaccurate wage statements and waiting time penalties are
9 derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate
10 wage statements and waiting time penalties would also fail. Defendants also contend they would
11 not be liable for waiting time penalties because a "good faith dispute" exists over the payment of
12 past wages. Cal. Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163
13 Cal.App.4th 1157, 1201. Further, Defendants contend Plaintiff would have to prove that
14 Defendants "willfully" failed to pay Class Members appropriate wages due upon separation of
15 employment. Defendants contend that any failure to pay wages upon separation was not willful.
16 [Saunders Decl., ¶ 16.]

17 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$25 million
18 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
19 at issue. [Saunders Decl., ¶ 17.] As with the class claims, Plaintiff discounted the potential
20 PAGA penalties based on Defendants' various defenses on the merits and also accounted for the
21 Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor
22 Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
23 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re
24 Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557
25 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$40,000 to PAGA
26 penalties.

27 Plaintiff submits this amount is reasonable under the circumstances and in line with
28 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*

1 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
2 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
3 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
4 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
5 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
6 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
7 settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D.
8 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
9 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
10 and the LWDA has not objected to the settlement.

11 Plaintiff and counsel discounted the value of the class claims consistent with the risks
12 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
13 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real
14 and substantial risks – settlement on the proposed terms and without prolonged and costly
15 litigation was in the best interests of the class. The overall \$1,500,000 recovery represents a
16 significant percentage of Defendants' potential exposure and, given Defendants' multi-layered
17 defenses and all other potential risks of continued litigation, a total recovery for the class of
18 \$1,500,000, which will result in average award of some \$429 per class member, plus additional
19 sums under PAGA, is a significant result well within the range of reasonableness considering all
20 potential outcomes, and it will provide direct monetary awards to all Class Members without
21 further delay. [Saunders Decl., ¶¶ 18-20.]

22 Importantly, the mere fact that a settlement does not provide the same recovery as might
23 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
24 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
25 settlement process...even if the relief afforded by the proposed settlement is substantially
26 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
27 settlement because the public interest may indeed be served by a voluntary settlement in which
28 each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair

1 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
2 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
3 that the proposed settlement is grossly inadequate and should be disapproved”); White v.
4 Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
5 contention settlement was not fair and reasonable even though it represented 99% discount off the
6 maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he
7 question whether a settlement is fundamentally fair . . . is different from the question whether the
8 settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed
9 settlement is non-reversionary and will provide immediate benefits to the Class Members without
10 a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class
11 Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
12 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
13 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
14 within the “range of reasonableness,” and is fair and adequate for the Class.

15 **V. PLAINTIFF’S ENHANCEMENT AWARD**

16 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
17 \$5,000 for his service in bringing these claims on behalf of the Class. Plaintiff respectfully
18 submits the request is reasonable given the risks he undertook on behalf of the Class Members.
19 By contacting and retaining counsel to pursue these claims, Plaintiff helped make this
20 settlement possible for the absent Class Members, while shouldering the risk of being liable for
21 Defendants’ litigation costs. Plaintiff also exposed himself to unwanted notoriety related to
22 filing a public lawsuit (discoverable even through a simple google search) for the benefit of
23 other employees, placing himself at risk of discrimination by future prospective employers. As
24 set forth in more detail in his declaration submitted with the preliminary approval motion,
25 among taking many other actions assisting in the successful litigation of this case, Plaintiff
26 provided substantial factual information and documents to counsel, attended numerous
27 meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant
28 developments. [Declaration of Eddie McKinnie, ¶¶ 2-10; Saunders Decl., ¶ 21.]

1 Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified
2 as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases
3 awarding class representatives service and incentive payments ranging from \$2,000 to \$25,000).

4 **VI. SETTLEMENT ADMINISTRATION COSTS**

5 The settlement provides for a payment to Simpluris, Inc. for its services as the Settlement
6 Administrator. Per the Balthuis Declaration, Simpluris has performed and will continue to
7 perform its required duties through final distribution of the settlement funds and incurred \$16,000
8 in fees and expenses. [Balthuis Decl., ¶ 15; Exh. B.] Plaintiff accordingly requests the Court
9 approve payment of \$16,000 to Simpluris from the GSA. [Saunders Decl., ¶ 22.]

10 **VII. ATTORNEY'S FEES AND COSTS**

11 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be**
12 **Approved**

13 This Court has discretion over the amount of attorneys' fees awarded and court
14 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
15 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
16 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
17 marketplace for cases involving significant contingent risk, such as this one. Deposit
18 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
19 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
20 private bargaining, if it were truly possible, might have reached" in determining a reasonable
21 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
22 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
23 justified by the work performed, the benefits obtained, and the contingent risk assumed.

24 As addressed in detail above, at the time the parties reached the tentative settlement
25 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
26 some or all the claims would not be certified for class treatment, as Defendants had strong
27 arguments that its compensation policies were legal and properly compensated the class
28 members. Even if Plaintiff certified some or all of the claims and prevailed on the merits, it

undoubtedly would have taken several years to realize any recovery while they pursued class certification, trial, and an almost certain appeal. [Saunders Decl., ¶¶ 15-17, 23.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about \$429, and with a maximum award of some \$1,070. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections and only one opt out to the settlement. [Balthuis Decl., ¶¶ 12-13.]

B. The Requested Fee Award Is Reasonable and Appropriate

The United States Supreme Court has ruled the parties to a class action properly may negotiate not only the settlement of the action itself but also the payment of attorney's fees. Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United States Supreme Court has reemphasized this policy and further stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Iron Mountain agreed not to object to an award of no more than 1/3 of the GSA for attorney's fees, or \$500,000, and up to \$15,000 in reimbursement for litigation costs and expenses (only \$13,818.28 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao, 82 Cal.App.4th at 47.

1 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
2 arms-length bargaining regarding relief to the Class was completed. [Saunders Decl.,
3 ¶ 24.] The requested fee and cost award was a product of these arms-length negotiations and
4 fairly reflects the marketplace value of the services rendered by Class Counsel in this case.
5 As a result, the fee agreed to by the parties should be approved.

6 C. **Class Counsel's Fees are Justified When Calculated as a Percentage of the**
7 **Common Fund**

8 In approving fee applications, courts typically apply either a percentage-of-recovery
9 method or the lodestar method. Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 489;
10 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
11 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
12 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
13 using the percentage-of-the-common-fund method in another wage-and-hour case:

14 The recognized advantages of the percentage method-including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better
16 approximation of market conditions in a contingency case, and the
17 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation convince us the percentage method is a
valuable tool that should not be denied our trial courts.

18 Laffitte, 1 Cal.5th at 503 (citations omitted).

19 Indeed, both California and federal courts have long recognized an appropriate
20 method for determining the award of attorney's fees is based on a percentage of the total
21 value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20
22 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air
23 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
24 common fund recovered operates to "spread litigation costs proportionately among all the
25 beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent,
26 557 F.2d at 769.

27 In determining a reasonable common fund fee award, courts should also consider the
28 fact that fees serve as an economic incentive for lawyers to bring class action litigation to

1 achieve increased access to the judicial system for meritorious claims and to enhance
2 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
3 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
4 would effectively be closed to most class members due to the relatively small size of their
5 individual claims versus to the enormous time and cost associated with class action litigation.

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution
7 of this action of 1/3 of the GSA, or \$500,000.00. The percentage requested is justified for
8 the reasons set forth further below, and comports with fee awards calculated on a
9 percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts
10 have historically awarded fees in the range of 20 to 50 percent, depending upon the
11 circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618
12 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20
13 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually
14 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to
15 assure that the fees do not consume a disproportionate part of the recovery obtained for the
16 class, although somewhat larger percentages are not unprecedented.").

17 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

18 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
19 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
20 bringing an objective measure of the work performed into the calculation of a reasonable
21 attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 333.0 hours of time on
22 this matter, resulting in a modest and very reasonable lodestar of \$273,990.

23 As is fully detailed in the Saunders Declaration, Class Counsel's efforts included: (1)
24 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
25 research, research into similar claims and claims against other employers in the same industry,
26 and attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice
27 letter; (3) drafting the initial complaint and related documents; (4) case management, including
28 communications with defense counsel, meeting and conferring/preparing case management

1 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
2 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
3 informal discovery, including propounding informal discovery “requests” and reviewing
4 documents and other information produced; (7) working with a consulting expert on the analysis
5 of Defendant’s production; (8) drafting a mediation brief and accompanying damages model after
6 review and analysis of defendant’s formal and informal discovery production; (9) attending an
7 all-day mediation; (10) negotiating and drafting the settlement agreement and related documents;
8 (11) drafting the motion for preliminary approval, and attending the hearing; (12) administration
9 of the settlement, including communications with the Settlement Administrator and settlement
10 class members; (13); and (14) extensive communications with the Plaintiff regarding case status,
11 case investigation and document review, mediation, and settlement terms. Additionally, Class
12 Counsel will incur additional time following final approval to, inter alia, respond to class member
13 inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on
14 the compliance hearing. [Saunders Decl., ¶ 24, Exh. 2.]

15 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$273,990, the
16 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
17 successful conclusion (333.0 attorney hours), and the requested attorney hourly rates are
18 reasonable and comport with hourly rates charged by other attorneys with similar experience in
19 this practice area in California. [Saunders Decl., ¶¶ 24-37.] On a lodestar basis, the fee request
20 of \$500,000 results in a multiplier of 1.82, which is a modest enhancement entirely in line
21 with California law. [Saunders Decl., ¶ 37.] Indeed, California courts routinely approve
22 multipliers in the in the 2-4 range to compensate for the time and risk of class action cases.
23 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award
24 including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can
25 range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d
26 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.82
27 multiplier effectively operates to show that the percentage fee request is reasonable
28 considering the challenges presented in this contingency fee matter, and appropriately

1 compensates Class Counsel for the contingent risk assumed and delay in payment during the
2 two plus years counsel has been representing Plaintiff. [Saunders Decl., ¶ 38.] Thus, the
3 multiplier results in a fee constituting a fair return on the contingency.

4 E. **The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill**
5 **Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar**
6 **Cases.**

7 What has now emerged in most fee award decisions is the recognition that fee
8 determinations in both common fund and statutory fee situations are incapable of
9 mathematical precision because of the intangible factors that must be resolved in the court's
10 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
11 determining an appropriate fee in a common fund case, a Court must decide, based on the
12 unique posture of each case, what percentage of the common fund would most reasonably
13 compensate Class Counsel given the nature of the litigation and the performance of counsel.
14 Paul, Johnson, Alston & Hunt v. Gaulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
percentage fee may be adjusted to account for the circumstances involved in a case).

15 Courts apply a five-part test in calculating a reasonable percentage fee in common
16 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
17 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
18 plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

19 **1. The Results Achieved.**

20 Class Counsel obtained an excellent result in this case for the Class Members. The
21 Settlement provides real monetary benefits to the Class Members, and the Settlement is
22 particularly advantageous to the Class Member because the proceeds will be distributed
23 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
24 Considering many individual claims would be very modest and would not be cost-effective
25 to pursue successfully, the Settlement provided them with fair compensation for their claims.
26 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
27 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
28 by the fact that not only one class member opted out. Additionally, the settlement amounts to

1 a substantial percentage of the maximum value of the amount the Class might have obtained
2 if it had tried the case and recovered on all theories seeking recovery of wages and penalties.
3 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
4 recovery does not per se render the settlement inadequate or unfair." In re Omnivision
5 Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

6 **2. Class Counsel Bore Considerable Risk.**

7 At the time of filing the complaint, Class Counsel recognized that they would have to
8 expend a substantial amount of time and advance significant costs to prosecute a statewide
9 class action suit with no guarantee of compensation or reimbursement, in the hope of
10 prevailing against a sophisticated company represented by first-rate attorneys. Despite
11 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
12 of class certification and the ability to prove class-wide and individual damages. In light of
13 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants
14 would dig in and attempt to bury their small firms in work. Given the small size of Class
15 Counsel's firm, not receiving any compensation for several years while simultaneously
16 advancing litigation costs posed considerable risk and difficulty. [Saunders Decl., ¶¶ 39-40.]

17 **3. The Skill Required and the Quality of Work.**

18 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
19 experience. The issues presented in this case required more than just a general appreciation
20 of wage and hour law and class action procedure. This Settlement was possible only
21 because counsel persuaded Defendants that Plaintiff and the putative class had a realistic
22 chance of prevailing on their claims despite Defendants' contrary arguments, and that
23 the case would be pursued through class certification and trial if necessary. In
24 successfully navigating these hurdles, Class Counsel displayed appropriate skill while
25 pursuing a risky and difficult case.

26 **4. The Contingent Nature of the Fee and Risk Assumed**

27 There is a substantial difference between the risk assumed by attorneys being paid
28 by the hour and attorneys working on a contingent fee basis. The attorney being paid by

1 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d
2 1249, 1256. The attorney working on a contingent basis can only log hours while
3 working without pay towards a result that will hopefully entitle him to a market fee
4 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
5 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
6 themselves to this risk in this all or nothing contingent fee case wherein the necessity
7 and financial burden of private enforcement makes the requested award appropriate.

8 Counsel retained on a contingency fee basis, whether in private matters or in class
9 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
10 fee schedule to compensate for both the contingent risk assumed and the delay in
11 payment. The simple fact is that despite the most vigorous and competent of efforts,
12 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
13 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
14 actions, competent attorneys will be discouraged from prosecuting similar cases.
15 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
16 Cal.App.3d 279, 287.

17 Here, the contingent fee practice of Plaintiff's counsel simply does not accommodate
18 the investment of unnecessary time in a case, and the adverse resolution of any one of several
19 difficult issues present in this matter could have doomed the entire effort. As discussed, the
20 attorney's fees in this case were not only contingent but fairly risky, and there was always a
21 very real chance Plaintiff's counsel would receive nothing for any number of reasons.
22 [Saunders Decl., ¶¶ 39-40.] Accordingly, the contingent nature of the fee and the financial
23 burdens on Class Counsel and Plaintiff also support the fee requested.

24 **5. Awards in Other Cases**

25 As discussed, the attorney's fees requested by Class Counsel are within the range of
26 fees awarded in comparable cases, as California courts regularly approve class action fee
27 awards amounting to 1/3 of a common fund. Additionally, review of class action settlements
28 over the past 10 years shows that the courts have historically awarded fees in the range of 20

1 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
2 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
3 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
4 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee
5 award from a common fund in order to assure that the fees do not consume a
6 disproportionate part of the recovery obtained for the class, although somewhat larger
7 percentages are not unprecedented."). Class Counsel's requested fees equal to 1/3 of the gross
8 amount recovered on behalf of the class and are well within the range of reasonableness
9 under either the percentage of the recovery or the lodestar method in light of the contingent
10 risk assumed, the delay in payment, the result achieved, and the overall quality of the
11 representation.

12 **F. Class Counsel's Costs and Expenses are Reasonable**

13 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
14 to prosecute this action. These expenses were incidental and necessary to the effective
15 representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs
16 and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d
17 at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County
18 of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund
19 "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of
20 attorneys' fees by ... [Plaintiffs'] attorneys"). Plaintiff's counsel also is entitled to recover "those
21 out-of-pocket expenses that would normally be charged to a fee-paying client." Harris v.
22 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

23 As explained in the Saunders Declaration, Class Counsel incurred a total of
24 \$13,818.28 in expenses incurred in connection with this litigation. These expenses
25 include the amounts paid for court filing fees, service of process, expert fees, Case
26 AnyWhere charges, LACC charges, postage, and mediation fees, all of which are costs
27 normally billed to and paid by the client. These costs were reasonably incurred in the
28 prosecution of this matter. These costs were necessary for the successful prosecution of

1 the case and are in reasonable in amount, and Class Counsel accordingly requests they
2 be reimbursed in full. [Saunders Decl., ¶¶ 41-42.]

3 **VIII. CONCLUSION**

4 For all the foregoing reasons, Plaintiff Eddie McKinnie respectfully requests that the
5 Court grant this motion and grant final approval of the proposed class action settlement and
6 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve
7 payment of the Settlement Administrator's fees and expenses, approve the requested class
8 representative enhancement payment, approve the award of attorney's fees and costs as requested,
9 and enter judgment in this action. Finally, Plaintiff request the Court set a final compliance
10 hearing for October 5, 2024, or a later date convenient for the Court.

11
12 Dated: September 11, 2023

CROSNER LEGAL, P.C.

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15 _____
16 Zachary Crosner
17 Jamie K. Serb
18 Chad Saunders

19 Attorneys for Plaintiff Eddie McKinnie
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