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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

EDGAR YUNUEN ESTRADA, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

ELKHORN PACKING CO., LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV004015

[*Assigned for All Purposes to the Honorable Thomas W. Wills, Department 15*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT

[*Filed with the Declaration of Kane Moon, the Declaration of Edgar Yunuen Estrada, the Declaration of Jodey Lawrence, [Proposed] Order, and [Proposed] Judgment*]

<u>PAGA APPROVAL HEARING</u>:
Dates: June 20, 2025, June 27, 2025, or July 28, 2025
Time: 8:30 a.m.
Dept.: 15

Complaint Filed: December 28, 2021
FAC Filed: March 21, 2022
Trial Date: September 3, 2025

TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 20, 2025 at 8:30 a.m., June 27, 2025 at 8:30 a.m., or July 28, 2025 at 8:30 a.m., in Department 15 of this Court located at the Monterey Courthouse at 1200 Aguajito Rd., Monterey, California 93940. Plaintiff Edgar Yunuen Estrada ("Plaintiff") will move the Court, pursuant to California Labor Code sections 2698, *et seq.,* for an Order:

1. Approving the settlement of this representative action in the form agreed to by Plaintiff and Defendant Elkhorn Packaging Co., LLC in the PAGA Settlement Agreement (the "PAGA Settlement");

2. Appointing Plaintiff's Counsel Moon Law Group, PC as PAGA Counsel, for settlement purposes only, and approving PAGA Counsel's application for attorneys' fees and litigation costs;

3. Appointing Phoenix Class Action Administration Solutions ("Phoenix") as the Administrator, and approving payment for administration costs;

4. Approving the release of PAGA claims by Plaintiff, PAGA Counsel, Aggrieved Employees, and the California Labor and Workforce Development Agency in exchange for the settlement payments;

5. Directing consummation of the PAGA Settlement pursuant to its terms and provisions;

6. Dismissing this action with prejudice;

7. Entering Judgment approving the PAGA Settlement;

8. Without affecting the finality of the Order and Judgment, reserving continued jurisdiction over the Parties, Action, and PAGA Settlement solely for purposes of (i) enforcing the PAGA Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law; and

9. Setting a Compliance Hearing re: Distribution.

This Motion will be based upon this notice, the attached Memorandum of Points and Authorities, the supporting declarations, and exhibits thereto filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Dated: May 30, 2025

Respectfully submitted,

MOON LAW GROUP, PC

By: ______________________________

Kane Moon
Lilit Ter-Astvatsatryan
Jamie Osganian

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Edgar Yunuen Estrada ("Plaintiff") seeks approval of a proposed non-reversionary $995,000.00 gross settlement of claims alleged against Defendant Elkhorn Packaging Co., LLC Defendant") (together with Plaintiff, the "Parties") for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq*. ("PAGA"). After two mediations and extensive settlement negotiations, the Parties reached a settlement and thereafter executed a PAGA Settlement Agreement (the "PAGA Settlement" or "Settlement"). (A true and correct copy of the PAGA Settlement is attached as Exhibit 1 to the Declaration of Kane Moon in Support of Plaintiff's Motion to Approve PAGA Settlement [hereinafter "Moon Decl."] submitted concurrently herewith.) Pursuant to Labor Code section 2699, subdivision (*l*)(2), Plaintiff now files this unopposed motion, seeking an order approving the proposed PAGA Settlement.

The proposed Settlement resolves the PAGA claim alleged in this action which was based on Defendant's alleged failure to pay all minimum and overtime wages, failure to provide meal and rest breaks, failure to indemnify necessary business expenses, failure to pay all wages owed at the time of termination, and failure to provide accurate wage statements. The Settlement resolves these claims on behalf of Plaintiff, the California Labor and Workforce Development Agency (the "LWDA"), and all non-exempt employees who worked for Defendant in California from December 28, 2020, to January 31, 2025. ("Aggrieved Employees").

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(*l*)(2).) In deciding whether to grant approval of the proposed Settlement, the primary issues to be decided is whether the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties to which the parties have agreed provide "genuine and meaningful" relief, "consistent with the underlying purpose of the statute to benefit the public," and whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sonrise Farm*

LP (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

The value achieved by the Settlement may be gleaned from the fact that the LWDA and estimated **7,762** Aggrieved Employees will receive no less than **$603,333.34**, which, pursuant to the operative statute, shall be allocated as "75% to the [LWDA] and 25% to the aggrieved employees." (Lab. Code § 2699(i).[1]) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and the current state of the law. For these reasons, as set forth more fully herein, Plaintiff respectfully requests this Court enter the proposed order and judgment submitted herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Defendant is a farm labor contractors in California and it sources laborers to growers in the Monterey area. (Moon Decl., ¶ 3.) Plaintiff is a Mexican national who worked for Defendant in California as a Field Worker from approximately March 2019 through September 2021 and was classified as non-exempt throughout his employment. (*Id.*) Plaintiff and Aggrieved Employees

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[1] On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024).) As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved employee split. (Lab. Code § 2699(m).) However, because Plaintiffs' respective PAGA matters were initiated prior to June 19, 2024, any civil penalties recovered in this action will be split 75% to the LWDA and 25% to Aggrieved Employees as the recent PAGA amendments do not apply retroactively. (Lab. Code § 2699(v)(1).)

secured their positions with Defendant through the H-2A visa program and worked for Defendant on a seasonal basis. (*Id.*) Plaintiff contends both he and Aggrieved Employees were subjected to the same unlawful labor practices during their employment by Defendant, including failure to pay wages for all hours worked. (*Id.*) Defendant provided Plaintiff and Aggrieved Employees with room and board as a part of their employment. (*Id.*)

Plaintiff alleges that Defendant engaged in multiple Labor Code violations affecting Plaintiff and other Aggrieved Employees. (*Id.* at ¶ 4.) First, Plaintiff claims that Defendant required off-the-clock work without compensation. (*Id.*) Specifically, Plaintiff and Aggrieved Employees were allegedly required to wait, off the clock and unpaid, for a bus to transport them from their lodging hotel to the worksite. (*Id.*) The employees spent approximately 5 to 10 minutes loading onto the bus prior to bus's departure. This waiting time was allegedly uncompensated. (*Id.*) Plaintiff also asserts that Defendant failed to provide compliant meal and rest periods. Plaintiff alleges that meal and rest breaks were frequently late because Supervisors determined when employees could take their meal and rest breaks. (*Id.*) Additionally, Plaintiff alleges that Defendant failed to reimburse employees for necessary business expenses, including the cost of face masks required to be worn during work. (*Id.*) Further, Plaintiff contends that Defendant failed to pay all wages owed at the time of termination, did not provide accurate itemized wage statements, and failed to pay wages in a timely manner, including earned wages not paid semi-monthly as required by law. (*Id.*) Based on these alleged violations, Plaintiff seeks civil penalties on behalf of himself and other Aggrieved Employees under the California Private Attorneys General Act, Labor Code §§ 2698 et seq. ("PAGA"). (*Id.*)

Plaintiff's claim for unpaid wages stems from allegations that Defendant required Plaintiff and Aggrieved Employees to work off-the-clock, without compensation. (*Id.* at ¶ 4.) Plaintiff's meal and rest period claims are based on allegations that due to the nature of their work and Defendant's employment practices, Plaintiff and other employees regularly experienced missed, untimely, or interrupted lunches and breaks and never received second meal breaks for shifts that lasted 10 hours or more. (*Id.*) Plaintiff alleges he and Aggrieved Employers spent time waiting, off the clock and unpaid, for a bus that would transport them to the work site. Plaintiff also alleges he and Aggrieved Employers received inconsistent rest breaks and that Defendant held meetings during rest break, this was especially common during the Covid-19 pandemic. (*Id.*) Plaintiff also alleges he and Aggrieved Employers were required to purchase face masks to be worn during work, without reimbursement. (*Id.*) Moreover, Plaintiff alleges he and Aggrieved Employees did not receive all wages owed at the time of termination, did not receive accurate itemized wage statements, and did not receive earned wages twice per month. (*Id.*) Accordingly, Plaintiff alleges Defendant is liable for civil penalties under PAGA. (*Id.*)

On December 24, 2021, Plaintiff submitted a PAGA notice of the alleged Labor Code violations to Defendant and the California Labor and Workforce Development Agency (the "LWDA"). (*Id.* at ¶ 5, Exh. 2.) Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on December 28, 2021, which alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

On March 21, 2022, Plaintiff filed a First Amended Representative Action Complaint (the "Operative Complaint"), adding a cause of action against Defendant for civil penalties pursuant under the PAGA. (*Id.* at ¶ 6.) Due to an arbitration agreement between Plaintiff and Defendant, which includes a class action waiver, the Parties stipulated to dismiss the class allegations against Defendant without prejudice. (*Id.*) The Parties disagreed regarding the agreement's enforceability and Defendant thereafter filed a motion to compel arbitration, which Plaintiff opposed. (*Id.*) On or about February 17, 2023, the Court granted Defendant's motion, compelled Plaintiff's individual claims to arbitration, and stayed the case pending arbitration. (*Id.*) The Court subsequently granted the Parties' request and dismissed the class allegations. (*Id.*) The Operative Complaint thus only alleges a cause of action for civil penalties. (*Id.*) On November 6, 2023, Plaintiff initiated arbitration of Plaintiff's individual claims under PAGA with the American Arbitration Association ("AAA"). (*Id.*) Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate Plaintiff's allegations. (*Id.*)

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies liability for any of the causes of action alleged. (*Id.* at ¶ 7.) Specifically, Defendant maintains that any and all actions it took with respect to Plaintiff's and Aggrieved Employees' employment were reasonable and made in good faith. Defendant also maintains its compliance with all meal and rest period obligations, and that Plaintiff and Aggrieved Employees were provided with the opportunity to take all meal and rest periods to which they were entitled and that any late meal or interrupted rest periods were on account of Plaintiff's and the Aggrieved Employees' own intentional or negligent acts. Defendant further asserts that Plaintiff and the Aggrieved Employees are not entitled to recover necessary business expenses because they did not incur any necessary business expenses. (*Id.*)

B. <u>Discovery and Investigation</u>

1. Following the dismissal of the class allegations, the Parties engaged in settlement negotiations and further agreed to a protocol for an informal exchange of documents and information. (*Id.* at ¶ 8.) Defendant provided the approximate number of Aggrieved Employees and pay periods within the relevant period, documents regarding Defendant's written employment policies, and Plaintiff's personnel file and his time and payroll records. (*Id.*) Defendant provided payroll and timekeeping records for the Aggrieved Employees and Plaintiff was able to review these before the mediation. (*Id.*) While we obtained and reviewed sample pay and time records for the aggrieved employees, we ultimately did not retain an expert to analyze he time and pay records in detail. (*Id.*) This is because the settlement is limited to claims under PAGA, which provides for penalties and not individualized damages, based on assumed violations calculated per pay period. (*Id.*; *see* Lab. Code § 2699(f)(1)(A) (creating a default civil penalty of $100 for each aggrieved employee per pay period); *id.*) Further, unlike the statutory penalties provided for under Labor Code §§ 203 and 226(e), the vast majority of civil penalties available under PAGA do not require

proof of intent or willfulness and give rise to strict liability. (Moon Decl., ¶ 8; *see, e.g.,* Lab. Code § 210 (no intent requirement for civil penalty attached to failures to timely pay wages earned during employment in violation of Labor Code § 204); *see, e.g*., Lab. Code § 558 (no intent requirement for civil penalty attached to failures to pay overtime wages and provide meal and rest periods); *see, e.g*., Lab. Code § 2699(f)(2) (no intent requirement for default civil penalty under the PAGA); *see Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 787 ("[W]e hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226€(1).").) As such, a forensic or expert wage-and-hour analysis was not necessary to evaluate the value of the claims or inform the settlement structure. (*Id.*)

After reviewing and analyzing documents regarding Defendant's wage and hour policies and practices and the sample time and pay records provided by Defendant and Plaintiff, Plaintiff's Counsel was able to evaluate the probability of success on the merits and Defendant's maximum and risk-adjusted monetary exposure. (*Id.* at ¶ 9.) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff's and Plaintiff's Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the PAGA Settlement. (*Id.*)

C. Settlement Negotiations

The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties attended two mediations. (*Id.* at ¶ 10.) The first was on February 8, 2024 with experienced wage and hour mediator Hon. Leo Wagner (Ret.). (*Id*.) The second was with experienced wage and hour mediator Brandon McKelvey, Esq. on November 18, 2024. (*Id.*) Although the first mediation was unsuccessful, the Parties reach an agreement after the November 18, 2024 mediation. (*Id.*) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) Each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) Specifically, Defendant asserted that it properly paid its employees for all wages and that it does not allow its employees to work off-the-clock, that many meal periods and rest breaks were taken, and where a violation appears, it was a result of an employee voluntarily choosing to forego a meal period or rest break, that it reimbursed its employees for all necessary business expenses incurred, and that Plaintiff's allegations are not representative but require individual proof. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement agreement. (*Id.*) The material terms of the agreement are encompassed within the PAGA Settlement. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and his counsel considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this PAGA Settlement was the correct option. (*Id.*)

D. <u>Key Terms of the Proposed PAGA Settlement</u>

Under the Settlement, Defendant agrees to pay a Gross Settlement Amount of $995,000.00. (PAGA Settlement, ¶ 3.1.) In compliance with California Labor Code section 2699, subdivision (*l*)(2), Plaintiff's Counsel submitted to the LWDA a notice of settlement, a copy of the proposed PAGA Settlement, and the instant moving papers. (*Id.* at ¶ 11, Exh. 3.) The Settlement's key terms include:

1. <u>Aggrieved Employee:</u> all non-exempt employees who worked for Defendant in California from December 28, 2020, to January 31, 2025. (*Id.* at ¶¶ 1.4; 1.21.)
2. <u>PAGA Period:</u> means the period from December 28, 2020, to January 31, 2025 (*Id.* at ¶ 1.21)
3. <u>PAGA Counsel Fees Payment</u>: 33.33% of the Gross Settlement Amount, the amount allocated to PAGA Counsel for their reasonable fees incurred to prosecute the Action (currently estimated to be $30,000.00). (*Id.* at ¶¶ 1.20, 3.2.1.)

4. PAGA Counsel Litigation Expenses Payment: not more than $25,000.00, the amount allocated to PAGA Counsel for reimbursement of their reasonable expenses incurred to prosecute the Action. (*Id.* at ¶ 1.19, 3.2.1.) At this time, Plaintiff's Counsel's costs are $19,685.00. (*Id.*; Moon Decl., ¶ 16, Exh. 4.)

5. PAGA Representative Service Payment: A PAGA Representative Service Payment to Plaintiff not more than $5,000.00. (*Id.* at ¶ 3.2.3; Moon Decl., ¶ 16.) Defendant will not oppose a request for this payment provided it does not exceed this amount. (*Id.*)

6. Administration Expenses Payment: not to exceed $30,000.00 the amount allocated to the Administrator from the Gross Settlement Amount for reimbursement of its reasonable fees and expenses, in accordance with the bid submitted to the Court in connection with the approval of this Settlement. (PAGA Settlement, ¶ 1.3, 3.2.2.) The Administrator, Phoenix provided an estimate of $22,500.00 for its costs. (Moon Decl., ¶ 17, Exh. 5.)

7. PAGA Penalties: PAGA Penalties in the amount of $995,000.00 less the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, a PAGA Representative Service Payment to Plaintiff, and Administration Expenses Payment as approved by the Court, are to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments. (PAGA Settlement, ¶¶ 3.1, 3.2, 3.2.4.)

8. Individual PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (*Id.* at ¶ 3.2.4.1.)

9. Tax Treatment: The Administrator will report the PAGA Representative Service Payment to Plaintiff and the Individual PAGA Payments on IRS 1099 Forms. (*Id.* at ¶¶ 3.2.3, 3.2.4.2.) Plaintiff and Aggrieved Employees assume full responsibility

and liability for any taxes owed on the PAGA Representative Service Payment to Plaintiff and on their Individual PAGA Payment. (*Id.* at ¶¶ 3.2.3, 3.2.4.1.)

10. Escalator Clause: Based on its records, Defendant estimates that, between December 28, 2020 and November 10, 2024, there are 7762 Aggrieved Employees who worked approximately 294,449 Pay Periods during the PAGA Period. (*Id.* at ¶ 8.) In the event that the number of pay periods being released through January 31, 2025 exceeds 338,612 (i.e., 15% more than 294,449), the Gross Settlement Amount shall be increased proportionally by the amount in excess of 338,612. (*Id.*) However, Defendant shall have sole discretion to, alternatively, terminate the PAGA Period (and hence the date through which the Released PAGA Claims end) as of the date that the number of workweeks released during the PAGA Period reaches 338,612 pay periods. (*Id.*)
11. Unclaimed Funds: For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and canceled after the void date (not less than 180 days after the date of mailing) the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (*Id.* at ¶ 4.4.1, 4.4.3.)
12. Funding: Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (*Id.* at ¶ 4.3.) "Effective Date" means the date when the Court signs the approval order and judgment. (*Id.* at ¶ 1.11.)
13. Defendant shall fully fund the Gross Settlement Amount over the course of 2025 by making four (4) separate equal payments to the Administrator as follows:
    i. (1) The first payment of $248,7500.00 will be made no later than April 30, 2025, assuming the Effective Date has already occurred by this date. If the Effective Date has not occurred by April 30, 2025, then the first payment shall be made within 10 days of the Effective Date;

ii. (2) The second payment of $248,7500.00 will be made no later than July 31, 2025, assuming the Effective Date has already occurred by this date. If the Effective Date has not occurred by July 31, 2025, then the second payment shall be made within 10 days of the Effective Date.

iii. (3) The third payment of $248,750.00 will be made no later than October 31, 2025, assuming the Effective Date has already occurred by this date. If the Effective Date has not occurred by October 31, 2025, then the third payment shall be made within 10 days of the Effective Date; and

iv. (4) The fourth and final payment of $248,750.00 will be made no later than December 31, 2025, assuming the Effective Date has already occurred by this date. If the Effective Date has not occurred by December 31, 2025, then the fourth payment shall be made within 10 days of the Effective Date.

(*Id.* at ¶ 4.3.) "Effective Date" means the date by when all of the following have occurred: (a) notice of this Settlement has been provided to the LWDA, and the LWDA has not objected to the Settlement; (b) the Court enters a Judgment on its Order Approving the PAGA Settlement; and (c) the later of the following events: (i) ten (10) court days after the period for filing any appeal, writ, or other appellate proceeding opposing the Order Approving PAGA Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed (i.e., 65 days from the date the Court enters Order Approving the PAGA Settlement); or (ii) if any appeal, writ, or other appellate proceeding opposing the Order Approving the PAGA Settlement has been filed within that timeframe, then ten (10) court days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief. (*Id.* at ¶ 1.10.)

After reviewing the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Plaintiff's Counsel's own prior litigation experience, Plaintiff's Counsel believe the proposed recovery for each Aggrieved Employee is fair, reasonable, and adequate, taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Aggrieved Employee's claim to the settlement award he or she will receive. (Moon Decl., ¶¶ 21–31.) Defendant vigorously contested liability and damages. (*Id.* at ¶¶ 7, 23.) Further, attended two mediations and engaged in settlement negotiations, which were hard-fought and conducted in good faith and at arms' length between attorneys with substantial experience litigating class and representative actions, the Settlement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.* at ¶ 10.)

III. DISCUSSION

A. Availability of Civil Penalties

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action "on behalf of himself or herself and other current or former employees . . ." (Lab. Code § 2699(a).) The penalties collected in these private civil actions are to be distributed 75 percent to the LWDA and 25 percent to the aggrieved employees. (*Id.* at § 2699(i).) However, before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code section 2699.3, Plaintiff provided notice to the LWDA on December 24, 2021. (Moon Decl., ¶ 5, Exh. 2.) Plaintiff's administrative exhaustion period has since expired, and the LWDA did not indicate its intent to investigate Plaintiff's allegations. (*Id.* at ¶ 6.) Accordingly, Plaintiff may proceed with his PAGA representative action.

B. <u>The Settlement Warrants Approval</u>

Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(l).) Here, the circumstances weigh heavily in favor of approval, as explained below.

1. The Dual Statutory Purposes of Deterrence and Punishment

As a result of this litigation, Defendant has had to hire legal counsel, brief a motion compel arbitration, attend two mediations, and engage in informal discovery. Defendant is also now having to pay civil penalties to the LWDA pursuant to the terms of the PAGA Settlement. Not including its own attorneys' fees and costs, Defendant is paying $995,000.00 to resolve this matter. (*See* PAGA Settlement, ¶ 5.1.)

2. The Relief is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public

The provisions of the California Labor Code triggering PAGA penalties in this case include Labor Code sections 203 and 226(a). (Moon Decl., ¶¶ 4–5, Exh. 2; Lab. Code §§ 203, 226(a).) PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e).) Labor Code section 2699(e)(2) states, "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) Accordingly, it is entirely possible that even if Plaintiff would be successful at trial, assuming she is able to defeat the manageability issues presented by the number of Aggrieved Employees in this action, Plaintiff may still be awarded less than what was obtained through this Settlement.

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case.

(*Id.* at ¶ 29.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the PAGA Settlement is in the best interests of the Aggrieved Employees. (*Id.*) The PAGA Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 31.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in depositions and expert discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties as well as the prospect of appeals. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

Based on Plaintiff's Counsel's analysis of the time, payroll, and additional records and information provided by Defendant and on information from Plaintiff, Plaintiff's Counsel evaluated Defendant's maximum and risk-adjusted potential exposure. (*Id.* at ¶ 21.)

Based on a review of its records to date, Defendant estimates that between December 28, 2020, to approximately November 10, 2024, there were approximately 7,762 Aggrieved Employees who approximately 294,449 pay periods during the PAGA Period. (*Id.* at ¶ 4.1.)

2. Assuming a $100 civil penalty per pay period and an estimated 294,449 pay periods, Defendant's maximum potential exposure in this Action for civil penalties under PAGA is estimated to be $29,444,900.00. (*See* Lab. Code § 2699(f)(1)(A) (creating a default civil penalty of $100 for each aggrieved employee per pay period); Moon Decl., ¶ 23.) However, this figure is based on an unrealistic assumption of a 100% violation rate, i.e., that Defendant committed every alleged violation in every single pay period for every Aggrieved Employee. (*Id*.) Such an assumption is not supported by the evidence or common sense. (*Id*.) Moreover, PAGA penalties cannot be stacked for multiple violations in a single pay period; therefore, for settlement purposes, the parties assumed a $100 penalty per pay period rather than per individual violation. (*Id*.) While Plaintiff's Counsel believes there is merit to the claims, we also recognize that a legitimate

controversy exists as to each allegation. (*Id.*) Defendant denies any liability and contends that it did not permit or suffer off-the-clock work, that all employees were properly compensated for time worked, and that necessary business expenses were never owned. (*Id.*) In addition, several of the allegations, including off-the-clock work, missed rest breaks, and expense reimbursement, would require individualized proof through declarations from Aggrieved Employees, which would likely demonstrate substantial variation in employee experiences. (*Id.*)

Based on the foregoing and in consideration of the Due Process concerns related to penalizing Defendant disproportionately to the amount of damages at issue, the risk of further delaying the resolution of this matter, and the discretionary nature of awarding penalties, it is reasonable to assume for resolution purposes, that a violation occurred in approximately 10% of all pay periods resulting in a **realistic (*risk-adjusted*) exposure of $2,944,490.00** ($29,444,900.00 x .1). (*Id.* at ¶ 26.)

The **$995,000.00** settlement is a good result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" **as it represents approximately 34% of Defendant's realistic recovery.** (*Id.* at ¶ 27; *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) The $995,000.00 settlement also represents approximately 4% of Defendant's *maximum* exposure, assuming a $100 civil penalty for each pay period. (Moon Decl., ¶ 27.) When considering both Defendant's realistic and maximum exposure, the Settlement is a good result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (*Id.*)

After the Administration Expenses Payment, PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment, the amount estimated as PAGA Penalties for the LWDA and Aggrieved Employees is at least **$603,333.34**.[2] (Moon Decl., ¶ 28.) The PAGA Penalties

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2 The PAGA Penalties amount is $995,000.00 minus: $25,000 for Plaintiff's Counsel's litigation costs, $331,666.66 for Plaintiff's Counsel's attorneys' fees, $5,000.00 for Plaintiff's will be split with 75% going to the LWDA and 25% going to Aggrieved Employees on a pro rata basis in Individual PAGA Payments. (PAGA Settlement, ¶ 3.2.4.) Each Aggrieved Employee will receive payment directly proportional to the number of PAGA Pay Periods the Aggrieved Employee worked within the PAGA Period. (*Id.* at ¶ 3.2.4.1.) Accordingly, at least **$452,500.00** (75% * $603,333.34) will be available to the LWDA and **$150,833.33** (25% * $603,333.34) will be available to the estimated 7,762 Aggrieved Employees, which results in an average Individual PAGA Payment of **$19.43** ($150,833.33 / 7,762 Aggrieved Employees) and a Pay Period value of **$0.51** ($150,833.33 / 294,449 Pay Periods) for each of the 294,449 estimated Pay Periods. (Moon Decl., ¶ 28.)

C. <u>The PAGA Representative Enhancement Payment Should Be Approved</u>

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . ." (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, PAGA representatives should be rewarded for assuming the risk of retaliation for the sake of aggrieved employees.

Under the PAGA Settlement here, subject to the Court's approval, Defendant agrees to pay a Representative Enhancement Payment in the amount of $5,000.00 to Plaintiff. (Settlement Agreement, ¶ 3.2.3.) This award is in recognition of Plaintiff's role, service, and risks undertaken as the PAGA Representative of the State of California. (*Id.*) Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation

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Representative Service Payment, and $30,000.00 for administration costs. (PAGA Settlement, ¶ 3.2.3.)

and to prepare for the mediation session, estimating she put in roughly 40 hours of his own time. (Moon Decl., ¶¶ 32–35; Declaration of Plaintiff Edgar Yunuen Estrada in Support of Plaintiff's Motion to Approve PAGA Settlement, ¶¶ 9–12.) The requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Aggrieved Employees. (Moon Decl., ¶ 35.)

D. **<u>The Requested Attorney's Fees and Cost Award Should Be Approved</u>**

The PAGA Settlement provides for a PAGA Counsel Fees Payment payable to Plaintiff's Counsel not to exceed 33.33% of the Gross Settlement Amount (currently estimated to be $331,666.66) for Plaintiff's Counsel's attorneys' fees, plus a PAGA Counsel Litigation Expenses Payment for reimbursement of out-of-pocket litigation costs not to exceed $25,000.00. (*Id.* at ¶ 3.2.1.) In the event the costs approved by the Court are less than the amounts requested, the difference will be added to the portion to be paid to the LWDA and the Aggrieved Employees. (*Id.*) At this time, Plaintiff's Counsel's has incurred $19,685.00 in actual litigation costs. (Moon Decl., ¶ 16, Exh. 4.)

1. Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

Plaintiff's Counsel seek an award of attorneys' fees based on the percentage method. (Moon Decl., ¶ 63.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying the common fund doctrine include:

> fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.):

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

> **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378–79.) California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

2. The Requested Fee Is in Line with Typical Cases

According to a leading treatise on class actions: "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys' fees that are 50% of the fund are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiff requests attorneys' fees equal to 33.33% of the Gross Settlement Amount, which is in line with the prevailing guidelines established under California case law and in academic literature and is consistent with awards in California. (*Compare* PAGA Settlement, ¶ 3.2.1, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve attorneys' fees as negotiated by the Parties.

3. The Matter Involves a Fee Shifting Provision

Labor Code section 2699 provides for the recovery reasonable attorney's fees as well as costs of suit. (Lab. Code § 2699(g)(1).) Under this provision, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total recovery for the Aggrieved Employees at the conclusion of this case. (*Id.*)

This PAGA Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (Moon Decl., ¶¶ 65–70.) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns. (*Id.* at ¶ 70.)

4. The Experience, Reputation, and Ability of Plaintiff's Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiff's Counsel possess considerable expertise in litigating class action and representative matters. (*Id*. at ¶¶ 36–61.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (*Id*.) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, Plaintiff's Counsel's requested fee award is supported here.

Plaintiff's Counsel's experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of this Settlement. (*Id.* at ¶ 60.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶¶ 58-59.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 40, 45, 51-52, 53.) Therefore, the requested fee award is reasonable and fair.

5. While the Lodestar Method is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].)

Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.*) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at pp. 556–57.) Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.)

Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Lab. Code § 2699(g)(1).) Although, PAGA does not provide a specific standard for evaluating attorneys' fees in connection with a settlement of PAGA claims, California Courts have employed a lodestar analysis and use of multipliers for this purpose. "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . . To guard against an unreasonable result, the Ninth Circuit encourages district courts to "cross-check[] their calculations against a second method. . . . Accordingly, the Court calculates attorneys' fees in the instant case using the percentage-of-recovery method and then cross-checks its calculations against the lodestar method." (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].)

Here, Plaintiff's Counsel's current lodestar is *no less than* **$131,225.00**, which is based on approximately **239.3 hours** of attorney time at their customary hourly rates. (Moon Decl., ¶ 63.) Accordingly, the fee request represents **a positive multiplier of approximately 1.77**. (*Id.* at ¶ 66(c).) Additionally, Plaintiff's Counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. (*Id.* at ¶ 64.) These additional hours will include time spent to obtain and monitor approval of the PAGA Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.*) The amount of fees requested under the Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel. Thus, the request for attorneys' fees satisfies a lodestar check.

6. Plaintiff's Counsel's Costs Are Reasonable

Plaintiff's Counsel are entitled to recover the out-of-pocket costs and litigation expenses they reasonably incurred in investigating, prosecuting, and settling this case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Under the proposed PAGA Settlement, Plaintiff's Counsel may request reimbursement of costs up to $25,000.00. (PAGA Settlement, ¶ 3.2.1.) As of the drafting of this motion, Plaintiff's Counsel has incurred $19,685.00 in actual costs. (Moon Decl., ¶ 70, Exh. 4.) These expenses were reasonably necessary to the litigation and were actually incurred by Plaintiff's Counsel. (*Id.* at ¶ 70.) Moreover, these expenses are below the maximum amount provided in the PAGA Settlement. (*Id.*) Therefore, they should be reimbursed in full. (*Id.*)

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant approval of the proposed settlement and sign the proposed order and proposed judgment submitted herewith.

Dated: May 30, 2025

Respectfully submitted,

MOON LAW GROUP, PC

By: ______________________

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