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Attorneys for Plaintiff(s),

LUIS LARRABURU, and all others similarly situated

(Additional attorneys for Plaintiff(s) on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)**

LUIS LARRABURU, on behalf of himself, all
others similarly situated, the general public,
and as an "aggrieved employee" on behalf of
other "aggrieved employees" under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

AMERICAN MERCHANDISING
SPECIALISTS, INC., a North Carolina
corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No.: 21STCV17704

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
SETTLEMENT**

Hearing Information

Action filed: 5/11/2021
Hearing Date: 5/21/2024
Hearing Time: 10:00 a.m.
Hearing Dept: SSC-9, The Hon. Elaine
Lu

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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LUIS LARRABURU, and all others similarly situated



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1 This matter came on for hearing on May 21, 2024 at 10:00 a.m. in Department 9 of the
2 above-captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement
3 pursuant to California Rules of Court, Rule 3.769, as set forth in the Second Amended Joint
4 Stipulation of Class Action Settlement and Release of Claims (the "Settlement") filed herewith
5 which provides for a Gross Settlement Amount ("GSA") of \$264,205.89 (updated amount after
6 triggering escalator) in compromise of all disputed claims on behalf of all current and former
7 non-exempt employees who are or were employed by Defendant American Merchandising
8 Specialists, Inc., ("Defendant") in the State of California at any time during the Class Period.
9 All capitalized terms used herein shall have the same meaning as defined in the Settlement.

10 In accordance with the Court's prior ruling granting Preliminary Approval of Class
11 Action Settlement, Class Members have been given notice of the terms of the Settlement and
12 the opportunity to request exclusion, comment upon or object to it or to any of its terms. Having
13 received and considered the Settlement, the supporting papers filed by the Parties, and the
14 evidence and argument received by the Court in conjunction with the motions for preliminary
15 and final approval of the Settlement, the Court grants final approval of the Settlement and
16 **HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING**
17 **DETERMINATIONS**¹:

18 1. The Court has jurisdiction over the subject matter of the Action and over all
19 Parties to the Action, including all Class Members who did not request to be excluded from the
20 Settlement. Pursuant to this Court's ruling granting the Motion for Preliminary Approval of
21 Class Action Settlement of November 21, 2023, the Class Notice was sent to each Class Member
22 by First Class U.S. mail. The Class Notice informed Class Members of the terms of the
23 Settlement, their right to receive their proportional share of the Settlement, their right to request
24 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
25 person or by counsel at the final approval hearing and be heard regarding final approval of the
26 Settlement. Adequate periods of time were provided by each of these procedures. No member

27
28 ¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action Settlement
entered on May 21, 2024, is attached hereto as **EXHIBIT A** and incorporated by reference. A true and correct
copy of the Court's Minute Order dated May 21, 2024, is attached as **EXHIBIT B** and incorporated by reference.



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1 of the Class presented written objections to the proposed Settlement as part of this notice
2 process, stated an intention to appear, or actually appeared at the final approval hearing.

3 2. For purposes of this Settlement, the “Class” means all current and former non-
4 exempt employees who are or were employed by Defendant in the State of California at any
5 time during the Class Period. The “Class Period” means the period of time from August 25,
6 2016, through March 15, 2022.

7 3. The Court finds and determines that the notice procedure afforded adequate
8 protections to Class Members and provides the basis for the Court to make an informed decision
9 regarding final approval of the Settlement based on the responses of Class Members. The Court
10 finds and determines that the notice provided in this case was the best notice practicable, which
11 satisfied the requirements of law and due process as to all persons entitled to such notice.

12 4. **Release by Plaintiff and Class Members.** Plaintiff and Class Members. The
13 Parties agree that it is their intent that the resolution set forth in this Settlement will release any
14 further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
15 of any kind by each and all of the Settlement Class Members (including participation to any
16 extent in any representative or collective action), against Defendant and all of those entities’ and
17 individual’s past, present and future agents, employees, servants, officers, directors, partners,
18 trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity
19 sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors,
20 service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans
21 and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in
22 concert with any of them, and each of them, arising during the period August 25, 2016 through
23 March 15, 2022, and arising from, could have been asserted, or related in any way to the claims
24 asserted in the Action against Defendant based on the facts pleaded in the Operative Complaint.
25 The Settlement Class Members will release and discharge Defendant, and any of its former and
26 present parents, subsidiaries, owners, shareholders, officers, directors, employees, affiliates,
27 successors, assigns, agents, attorneys, legal representatives (“Released Parties”). This release
28 will not take effect until Defendant has paid the Gross Settlement Amount in full per this



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1 Settlement Agreement.

2 Class Counsel. As of the date the Judgment becomes Final, and except as otherwise
3 provided by this Agreement, Class Counsel and any counsel associated with Class Counsel (The
4 Spivak Law Firm and United Employees Law Group), including without limitation David G.
5 Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees and
6 expenses against Defendant or the Releasees arising from or related to the Action, except those
7 incurred to enforce this Agreement and collect the Judgment, including but not limited to claims
8 based on the California Labor Code, the California Civil Code, the California Code of Civil
9 Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel
10 Released Claims").

11 Released Claims. Released Claims by the Participating Class Members include all claims
12 alleged in the operative First Amended Complaint along with related claims that could have
13 been alleged based on the facts alleged in the operative First Amended Complaint including: (1)
14 claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular
15 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
16 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
17 premiums in connection therewith, as well as any claims under the California Labor Code, any
18 applicable California Wage Order(s); (2) claims for failure to comply with the employee
19 itemized wage statement provision under California Labor Code section 226; (3) claims for
20 failure to provide or make available meal and rest periods as required under California Labor
21 Code §512 and IWC Wage Orders; (4) claims for failure to indemnify as required under
22 California Labor Code §§1198 and 2802); (5) penalties for violations of the California Labor
23 Code; (6) violation of California Business and Professions Code Section 17200, et seq.; and (7)
24 all other claims under California common law, the California Labor Code, California Wage
25 Orders, the California Business and Professions Code, set forth in the Complaint including
26 alleged violation of California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226,
27 226.3, 226.6, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698,
28 2699, 2699.3, 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California



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1 Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders
2 issued by the Industrial Welfare Commission, or any other claim for any statutory or civil
3 penalty that have been, or could have been, asserted based on the facts alleged in the First
4 Amended Complaint under California law that arise from the allegations as pled including
5 claims for damages, reimbursement, restitution, losses, penalties, fines, liens, attorney's fees,
6 costs, expenses, debts, interest, injunctive or declaratory relief, liquidated damages or similar
7 relief. The Final Judgment shall cover and bar each and every Participating Class Member from
8 asserting any Released Claims in the future. PAGA claims – include the underlying claims
9 alleged in the PAGA notice letter and Plaintiff's Operative Complaint - will be released, and
10 PAGA Members will be entitled to their portion of the PAGA Payment, regardless of whether
11 or not the Participating Class Member opts-out or excludes him or herself from the Class.

12 General Release by Plaintiff. As of the date Defendant funds the settlement (Section
13 4.J.), and for the consideration set forth in this Agreement, Plaintiff waives, releases, acquits
14 and forever discharges the Defendant from any and all claims, whether known or unknown,
15 which exist or may exist on her behalf as of the date of this Agreement, including but not limited
16 to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability
17 claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury
18 claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims,
19 quantum meruit claims, and any and all claims arising under any federal, state or other
20 governmental statute, law, regulation or ordinance, including, but not limited to claims for
21 violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of
22 California's Industrial Welfare Commission, other states' wage and hour laws, the Americans
23 with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
24 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair
25 Employment and Housing Act, the California Family Rights Act, the Family Medical Leave
26 Act, California's Whistleblower Protection Act, California Business & Professions Code
27 Section 17200 et seq., and any and all claims arising under any federal, state or other
28 governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any



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1 and all claims, rights or benefits that she may have under California Civil Code § 1542, which
2 provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
4 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
6 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
7 WITH THE DEBTOR OR RELEASED PARTY.

8 Thus, notwithstanding the provisions of section 1542, and to implement a full and
9 complete release and discharge of the Defendant, Plaintiff expressly acknowledges this
10 Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff
11 does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement
12 Agreement, and that this Settlement Agreement contemplates the extinguishment of any such
13 claims. Plaintiff warrants that Plaintiff has read this Settlement Agreement, including this waiver
14 of California Civil Code section 1542, and that Plaintiff has consulted with or had the
15 opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and
16 specifically about the waiver of section 1542, and that Plaintiff understands this Settlement
17 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this
18 Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts
19 different from or in addition to those Plaintiff now knows or believes to be true regarding the
20 matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the
21 releases and agreements contained in this Settlement Agreement shall remain effective in all
22 respects notwithstanding any later discovery of any different or additional facts. Plaintiff
23 expressly assumes any and all risk of any mistake in connection with the true facts involved in
24 the matters, disputes, or controversies released or described in this Settlement Agreement or
25 with regard to any facts now unknown to Plaintiff relating thereto.

26 Dismissal of the Rollman Action. Ten calendar days following the preliminary approval
27 of the settlement, the Parties will stipulate to dismiss with prejudice Shane Rollman v. American
28 Merchandising Specialists, Inc. action, USDC Case No.: 2:20-CV-02371-KJM-JDP.



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Settlement, § V.

5. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement, including the release of claims contained therein, should be and hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement according to its terms. As of the Effective Date of Settlement, and for the duration of the Class Period, all Class Members are hereby deemed to have waived and released all Released Claims and are forever barred and enjoined from prosecuting the Released Claims against the Releasees as fully set forth in the Settlement. No objections, disputes, or requests for exclusions were received by the Parties or the Court through the date of this Final Order and Judgment.

6. The Court finds and determines that (a) the Settlement Share to be paid to Participating Class Members and (b) the \$3,000.00 payment to the LWDA for the PAGA penalty under the California Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections 2699 et seq., as provided for by the Settlement are fair and reasonable. The Court hereby grants final approval to, and orders the payment of, those amounts be made to the Participating Class Members and to the California Labor & Workforce Development Agency, in accordance with the terms of the Settlement.

7. The Court further grants final approval to and orders that the following payments be made in accordance with the terms of the Settlement:

a. A Class Counsel Fees Payment in the amount of \$88,068.62 for attorney's fees and a Class Counsel Litigation Expenses Payment in the amount of \$15,675.29 to Class Counsel;

b. \$7,500.00 as a Class Representative Service Payment payable to Plaintiff Luis Larraburu for his service as the class representative;

c. \$6,000.00 in Settlement Administration Costs payable to Phoenix Settlement Administrators for its services as the Phoenix Settlement Administrators;

d. Payment of \$3,000 (75% of the \$4,000 PAGA penalty) to the LWDA;

and



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1 e. Employer-side payroll taxes (to be paid in addition to the Gross
2 Settlement Amount by Defendant).

3 8. The settlement administration shall proceed as directed in the Settlement, and no
4 payments pursuant to the Settlement shall be distributed until after the Effective Date. Without
5 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
6 of all matters relating to the interpretation, administration, implementation, effectuation and
7 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule
8 of Court 3.769(h).

9 9. Within fourteen (14) calendar days of the Effective Date, Defendant shall deposit
10 into the Settlement Account, an account designated by the Phoenix Settlement Administrators,
11 the total amount of all Settlement Share to Participating Class Members, (ii) the Court approved
12 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
13 the Court-approved costs of the Phoenix Settlement Administrators, and (v) the payment to the
14 LWDA. Defendant shall also pay their share of the employer-side payroll taxes in addition to
15 the GSA.

16 10. Defendant's payment of such sums shall be the sole financial obligation of
17 Defendant under the Settlement, and shall be in full satisfaction of all claims released herein,
18 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
19 expenses.

20 11. Any check issued by the Settlement Administrator to Class Members who do not
21 timely and validly opt out shall be negotiable for one hundred and eighty (180) calendar days.
22 Those funds represented by checks returned as undeliverable and those checks remaining un-
23 cashed for more than 180 days after issuance (collectively, "Voided Settlement Checks"), plus
24 any interest that has accrued on those funds, will be paid to the California Unclaimed Property
25 Fund.

26 12. By July 22, 2024, Class Counsel must give notice to the class members pursuant
27 to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor
28 Code §2699 (1)(3). The Parties shall file a final accounting report regarding distribution of the



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1 settlement funds by May 21, 2025. A non-appearance case review regarding distribution is
2 scheduled for May 28, 2025 at 8:30 a.m. in SSC-9.

3 13. Nothing in this Final Order and Judgment shall preclude any action to enforce
4 the Parties' obligations under the Settlement or hereunder, including the requirement that
5 Defendant deposit funds for distribution by the Phoenix Settlement Administrators to
6 participating Class Members in accordance with the Settlement.

7 14. The Court hereby enters final Judgment in this case in accordance with the terms
8 of the Settlement, Order Granting Motion for Preliminary Approval of Class Action Settlement,
9 and this Final Order and Judgment.

10 15. The Parties are hereby ordered to comply with the terms of the Settlement.

11 16. The Parties shall bear their own costs and attorneys' fees except as otherwise
12 provided by the Settlement and this Final Order and Judgment.

13 17. The Settlement is not an admission by Defendant nor is this Final Order and
14 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
15 Defendant. Furthermore, the Settlement is not a concession by Defendant and shall not be used
16 as an admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order
17 and Judgment, Settlement, any document referred to herein, any exhibit to any document
18 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
19 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
20 admission or concession with regard to, the denials or defenses of Defendant, and shall not be
21 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
22 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
23 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
24 and any other papers and records on file in the Action may be filed in this Court or in any other
25 litigation as evidence of the settlement by Defendant to support a defense of res judicata,
26 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
27 the Released Claims.

28 ///



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18. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

Date: 06/11/2024

Elaine Lu

THE HONORABLE ELAINE LU
JUDGE OF THE SUPERIOR COURT



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EXHIBIT A

05/21/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

FINAL RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Department SSC-9

Hon. Elaine Lu

Luis Larraburu v. American Merchandising Specialists, Inc.

Case No.: 21STCV17704

Hearing Date: May 21, 2024

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

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is **\$264,205.89** (updated amount after triggering of escalator), non-reversionary. (§I.R)
- B. The Net Settlement Amount is the GSA minus the following:
- **\$88,068.62** for attorney fees to Class Counsel, The Spivak Law Firm and United Employees Law Group (§III.C.2);
 - **\$15,675.29** for attorney costs to Class Counsel (*Ibid.*);
 - **\$7,500** enhancement payment to the named plaintiff and class representative, Luis Larraburu (§III.C.1.a);
 - **\$6,000** for settlement administration costs to Phoenix Settlement Administrator (§III.C.3); and
 - **\$3,000** (75% of \$4,000 PAGA penalty) to the LWDA. (§III.C.4)

C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (§III.D.4)

D. Plaintiffs' release of Defendants from claims described herein.

By **July 22, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **May 21, 2025**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

Page 1 of 10



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The Court hereby sets a Non-Appeal Case Review for May 28, 2025, 8:30 a.m., Department 9.

Plaintiff's counsel shall file a [proposed] Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement that no class members requested exclusion.

BACKGROUND

Plaintiff Luis Larraburu sues his former employer, Defendant American Merchandising Specialists, Inc., for alleged wage and hour violations. Defendant operates a retail service company that provides retail solutions for Samsung and other customers, such as product knowledge training and equipment maintenance and repair. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On May 11, 2021, Plaintiff filed a Class Action Complaint against Defendant alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). On May 31, 2022, Plaintiff filed the First Amended Complaint alleging a cause of action for: (8) civil penalties under the Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

On November 15, 2021, the parties participated in mediation before David Phillips, which resulted in settlement. The terms are finalized in the *Joint Stipulation of Class Action Settlement and Release of Claims* ("Settlement Agreement"), a copy of which was filed with the Court on June 7, 2022.

On September 1, 2022, the Court issued a "checklist" to the parties pertaining to deficiencies in the proposed settlement. In response, the parties filed further briefing, including a First Amended Settlement Agreement on February 9, 2023.

On February 24, 2023, the Court issued another checklist listing further issues with the proposed settlement. In response, on July 28, 2023, the parties filed additional briefing and the Second Amended Settlement Agreement attached to the Second Supplemental Declaration of David Spivak as Exhibit 19. All references below are to that agreement.

On November 21, 2023, the Court granted preliminary approval of the settlement. Notice was given to the Class Members as ordered (see Declaration of Mayra Gonzalez ("Gonzalez Decl.")).

Now before the Court is the Motion for Final Approval of the settlement.

SETTLEMENT CLASS DEFINITION

- "Class," "Class Members," or "Settlement Class" shall mean all current and former non-exempt employees who are or were employed by Defendant in the State of California at

Page 2 of 10



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- any time during the Class Period. Defendant estimates that there were approximately 115 members. (¶I.B)
- "Class Period" shall mean the period of time from August 25, 2016 through March 15, 2022. (¶I.G)
 - "PAGA Member" shall mean any and all current and former non-exempt employees who are or were employed by Defendant in the State of California at any time between August 20, 2019 through March 15, 2022 (the PAGA Period). (¶I.J)
 - "PAGA Period" shall mean the time between August 20, 2019 through March 15, 2022. (¶I.K)
 - "Participating Class" or "Participating Class Members" shall mean all Settlement Class members who do not submit a valid letter requesting to be excluded from the Settlement, consistent with the terms set forth in this Settlement Agreement. (¶I.U)
 - The parties stipulate to class certification for settlement purposes only. (¶III.A)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The original Gross Settlement Amount ("GSA") is \$215,000, non-reversionary. (¶I.R)
 - Defendant estimated for purposes of mediation that there are 6,042.00 Work Weeks by 115 Class Members for the period of August 25, 2016 through November 15, 2021. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiff's counsel of Defendant's report of the total number of Work Weeks and Class Members. If the Work Weeks and/or Class Members as of the date the Court approves the settlement exceeds the referenced 6,042 Work Weeks and/or 115 Class Members by more than 10%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Payment, and the LWDA payment, will increase proportionally according to the number of additional Work Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount. (*Ibid.*)
 - At final approval, the settlement administrator represents that the total number of Workweeks was eight thousand twenty-nine (8,029), which exceeds the Escalator Clause by one thousand nine hundred eighty-seven (1,987). Thus, the Escalator was triggered, and the GSA increased by \$49,205.89. (Gonzalez Decl. ¶12.) The updated GSA is \$264,205.89.
- The Net Settlement Amount ("Net") (\$96,833.34) initially estimated at preliminary approval is the GSA minus the following:
 - Up to \$71,666.66 (33 1/3%) for attorney fees (¶III.C.2);
 - Up to \$17,500 for litigation costs (*Ibid.*);
 - Up to \$15,000 for a service award to the named Plaintiff (¶III.C.1.a);
 - Up to \$10,000 for settlement administration costs (¶III.C.3); and

Page 3 of 10



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- Payment of \$4,000 PAGA Penalty (75% or \$3,000 to the LWDA, 25% or \$1,000 to PAGA Members) (§III.C.4).
- Employer-side payroll taxes will be in addition to the GSA. (§III.D.4)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice pg. 4)
- Response Deadline. Class Members will have 60 days from the initial mailing of the Class Notice by the Settlement Administrator to submit any Settlement Share disputes (§IV.C), requests for exclusion (§IV.D.1), or written objections (§IV.D.2) to the administrator.
 - If Class Members accounting for more than 5% of the Class submit valid requests to be excluded from the Settlement, then Defendant shall have the unilateral right to void this Settlement. (§IV.F)
- Individual Settlement Payment Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount. (§III.D.b)
 - PAGA Payments: The Individual Settlement Amount for each PAGA Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant. The Settlement Administrator will calculate the number of PAGA Work Weeks by calculating the number of days each PAGA Member was employed using their original hire date and final termination date, excluding any time they were unemployed in between during that time period, during the PAGA Period, dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall receive their portion of 25% of the PAGA Penalties regardless of their decision to opt-out of the class settlement. (§III.D.3)
 - Tax Allocation. Each individual settlement payment will be allocated as 15% to wages and 85% to penalties and interest. (§III.D.a)
- Funding and Distribution of Settlement. The Settlement Administrator shall establish a Settlement Account for distributing Settlement Shares and Payments identified in this Agreement. Within fourteen (14) calendar days of the Effective Date, Defendant shall pay the Gross Settlement Amount into the Settlement Account. (§IV.J) Within fourteen (14) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the Settlement Account to all Class Members (who do not submit valid requests to be excluded from the Action). (§IV.K)
- Uncashed Checks. Any check issued by the Settlement Administrator to Class Members who do not timely and validly opt out shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by checks returned as undeliverable and those checks remaining un-cashed for more than 180 days after issuance (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds, will be paid to the California Unclaimed Property Fund. (§IV.L)

Page 4 of 10



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- Phoenix Settlement Administrators will perform notice and settlement administration. (§I.I.X)
- Notice of Entry of Judgment will be posted on the administrator's website. (Notice p. 5.)
- The Settlement Agreement was submitted to the LWDA on July 28, 2023. (Second Supp. Spivak Decl. ISO Prelim, Exhibit 21.)
- Release of Claims: Plaintiff and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action), against Defendant and all of those entities' and individual's past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them, arising during the period August 25, 2016 through March 15, 2022, and arising from, could have been asserted, or related in any way to the claims asserted in the Action against Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class Members will release and discharge Defendant, and any of its former and present parents, subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors, assigns, agents, attorneys, legal representatives ("Released Parties"). This release will not take effect until Defendant has paid the Gross Settlement Amount in full per this Settlement Agreement. (§IV.A)
 - Released Claims. Released Claims by the Participating Class Members include all claims alleged in the operative First Amended Complaint along with related claims that could have been alleged based on the facts alleged in the operative First Amended Complaint including: (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages of terminated or resigned employees, or other benefits), and claims for interest, penalties, or premiums in connection therewith, as well as any claims under the California Labor Code, any applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized wage statement provision under California Labor Code section 226; (3) claims for failure to provide or make available meal and rest periods as required under California Labor Code §512 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor Code §§1198 and 2802; (5) penalties for violations of the California Labor Code; (6) violation of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under California common law, the California Labor Code, California Wage Orders, the California Business and Professions Code, set forth in the Complaint including alleged violation of California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,

Page 5 of 10



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1199, 2698, 2699, 2699.3, 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have been, or could have been, asserted based on the facts alleged in the First Amended Complaint under California law that arise from the allegations as pled including claims for damages, reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts, interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment shall cover and bar each and every Participating Class Member from asserting any Released Claims in the future.

(¶IV.C)

- PAGA claims – include the underlying claims alleged in the PAGA notice letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled to their portion of the PAGA Payment, regardless of whether or not the Participating Class Member opts-out or excludes him or herself from the Class.

(¶IV.C)

- Named Plaintiff will additionally provide a general release and §1542 waiver.

(¶IV.D)

- Dismissal of the Rollman Action. Ten calendar days following the preliminary approval of the settlement, the Parties will stipulate to dismiss with prejudice *Shane Rollman v. American Merchandising Specialists, Inc.* action, USDC Case No.: 2:20-CV-02371-KJM-JDP. (¶V.E)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

The Court preliminarily found in its Order of November 21, 2023 that the presumption of fairness should be applied. No facts have come to the Court's attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. Is the settlement fair, adequate, and reasonable?

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class.

Reaction of the class members to the proposed settlement.

Number of class members: 129 (Gonzalez Decl. ¶3.)

Number of notice packets mailed: 129 (*Id.* at ¶5.)

Number of undeliverable notices: 0 (*Id.* at ¶7.)

Number of opt-outs: 0 (*Id.* at ¶8.)

Number of objections: 0 (*Id.* at ¶9.)

Number of participating class members: 129 (*Id.* at ¶10.)

Average individual payment: \$1,004.01 (*Id.* at ¶15.)

Highest individual payment: \$4,597.40 (*Ibid.*)

Page 6 of 10



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The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members to the proposed settlement and for the reasons set for in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$88,068.62 (33 1/3% of increased GSA) in fees and \$15,675.29 in costs. (Memo ISO Final at 1:17-20.) The Settlement Agreement provides for up to 33 1/3% of the GSA for attorney fees and \$17,500 in costs (§III.C.2).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees using the percentage method, as crosschecked by lodestar. (Memo ISO Final at pp. 5-10.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) The fee request represents approximately one-third of the gross settlement amount, which is the average generally awarded in class actions. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 ["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."].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated:

Attorney/Firm	Rates	Hours	Totals
The Spivak Law Firm	\$150-900	368.04	\$109,928.50
United Employees Law Group	\$725	37.90	\$27,477.50
Totals		405.94	\$137,406.00

(Declaration of David Spivak ISO Final ¶21, Exhibit N; Declaration of Walter Haines ISO Final ¶¶6-9.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, and would represent application of a multiplier of approximately 0.64x.

Fee Split: United Employees Law Group, PC will receive 25% of the Class Counsel Fees Payment, and The Spivak Law Firm shall receive the remaining 75% of the Class Counsel Fees Payment. (§III.C.2)

Here, the \$88,068.62 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet, and no one objected. (Gonzalez Decl. ¶9, Exhibit A thereto.)

As for costs, Class Counsel is requesting a cost amount of \$15,675.29. This is less than the \$25,000 cap estimated at preliminary approval, which was disclosed to Class Members in the Notice and not objected to. (Gonzalez Decl. ¶9, Exhibit A thereto.) Counsel's costs include, but are not limited to: Mediation (\$6,450), Case Anywhere (\$2,480), and Expert (\$1,100).



(Spivak Decl. ISO Final ¶26, Exhibit O; Haines Decl. ISO Final ¶11.) These costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the Court will award \$88,068.62 in fees and \$15,675.29 in costs.

D. Incentive Award

The class representative, Luis Larraburu, seeks an enhancement payment of \$18,432.97 for his contributions to the action. (Memo ISO Final at 10:12-13.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . .'" (*Id.* at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this litigation include: obtaining legal counsel, speaking with his legal counsel on over the phone, informing them of the terms and conditions of his coworkers' employment, assisting them in gathering information, identifying the claims brought in this case, gathering documents from his employment with Defendant, being involved in the settlement process, participating in the mediation, and reviewing the settlement and other case related documents. He estimates spending 51 hours on the case. (Declaration of Luis Larraburu ISO Final ¶7, Exhibit A thereto.)

Based on the above, as well as the benefits obtained on behalf of the class, the Court hereby grants an enhancement payment in the reduced amount of \$7,500 to Plaintiff.

E. Settlement Administration Costs

The settlement administrator, Phoenix Settlement Administrators, is requesting \$6,000 for the costs of settlement administration. (Gonzalez Decl. ¶18.) This is less than the cost of \$10,000 estimated at preliminary approval (¶III.C.3) and disclosed to the Class on the Notice form, to which there were no objections. (Gonzalez Decl. ¶9, Exhibit A thereto.) Based on the above, the Court hereby awards administration costs in the requested amount of \$6,000.



CONCLUSION

Based on the foregoing, the Court orders that:

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

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$264,205.89 (updated amount after triggering of escalator), non-reversionary. (¶I.R)
- B. The Net Settlement Amount is the GSA minus the following:
- \$88,068.62 for attorney fees to Class Counsel, The Spivak Law Firm and United Employees Law Group (¶III.C.2);
 - \$15,675.29 for attorney costs to Class Counsel (*Ibid.*);
 - \$7,500 enhancement payment to the named plaintiff and class representative, Luis Larraburu (¶III.C.1.a);
 - \$6,000 for settlement administration costs to Phoenix Settlement Administrator (¶III.C.3); and
 - \$3,000 (75% of \$4,000 PAGA penalty) to the LWDA. (¶III.C.4)
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶III.D.4)
- D. Plaintiffs' release of Defendants from claims described herein.

By July 22, 2024, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By May 21, 2025, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

The Court hereby sets a **Non-Appearence Case Review for May 28, 2025, 8:30 a.m., Department 9.**



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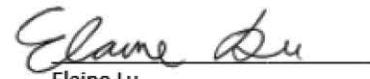
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4 Plaintiff's counsel shall file a proposed Order and Judgment, consistent with this ruling
5 containing all requisite terms, including the class definition, release language, and a statement
6 that no class members requested exclusion.

7 JUDICIAL ASSISTANT TO GIVE NOTICE TO MOVING PARTY (PLAINTIFF). THE MOVING PARTY IS TO
8 GIVE NOTICE TO ALL OTHER PARTIES.

9 IT IS SO ORDERED.

10 DATED: May 21, 2024

11 
12 Elaine Lu
13 Judge of the Superior Court
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Page 10 of 10



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EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 9

21STCV17704

**LUIS LARRABURU vs AMERICAN MERCHANDISING
SPECIALISTS, INC.**

May 21, 2024

10:00 AM

Judge: Honorable Yvette M. Palazuelos
Judicial Assistant: R. Arraiga
Courtroom Assistant: M. Tavakoli

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): David G Spivak via LA Court Connect (video)

For Defendant(s): Matthew Theriault via LA Court Connect (video)

NATURE OF PROCEEDINGS: Hearing on Motion for Final Approval of Settlement;

On 03/21/2024, the Court notified all parties in this action via Case Anywhere that effective 04/02/2024, Judge Elaine Lu would be temporarily assigned to Department 9 at 312 N. Spring Street, Los Angeles, California 90012, Spring Street Courthouse.

Prior to the commencement of today's hearing, the Judicial Assistant again announced that Judge Elaine Lu has been temporarily assigned to Department 9, including all matters set for hearing today in the instant action, and the Court provided each party with an opportunity to file a peremptory challenge under Code of Civil Procedure section 170.6 (if one is still available to that party) prior to the commencement of the hearing.

Having been so advised, all parties in this action indicated in open court that they each accept the assignment of Judge Elaine Lu to preside over the matters set for hearing today.

The matter is called for hearing.

The Court's tentative ruling was served on the parties via Case Anywhere this date (05/21/2024).

No objectors appear this date in Court.

Counsel for Plaintiff argues the tentative ruling in reference to the enhancement award payment.

After hearing argument, the Court **DENIES** the increase of the enhancement award payment and will adopt its tentative.

The Court now adopts its tentative **RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** as the final order of the court. Said ruling is filed this date and

Minute Order

Page 1 of 3



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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 9

21STCV17704

LUIS LARRABURU vs AMERICAN MERCHANDISING
SPECIALISTS, INC.

May 21, 2024

10:00 AM

Judge: Honorable Yvette M. Palazuelos
Judicial Assistant: R. Arraiga
Courtroom Assistant: M. Tavakoli

CSR: None
ERM: None
Deputy Sheriff: None

is incorporated into the case file.

The Court's ruling is as follows:

The Plaintiff's Motion for Final Approval of Class Action Settlement filed by Luis Larraburu on 04/19/2024 is Granted. The motion is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is **\$264,205.89** (updated amount after triggering of escalator), non-reversionary. (§II.R)

B. The Net Settlement Amount is the GSA minus the following:

\$88,068.62 for attorney fees to Class Counsel, The Spivak Law Firm and United Employees Law Group (§III.C.2);
\$15,675.29 for attorney costs to Class Counsel (*Ibid.*);
\$7,500 enhancement payment to the named plaintiff and class representative, Luis Larraburu (§III.C.1.a);
\$6,000 for settlement administration costs to Phoenix Settlement Administrator (§III.C.3); and
\$3,000 (75% of \$4,000 PAGA penalty) to the LWDA. (§III.C.4)

C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (§III.D.4)

D. Plaintiffs' release of Defendants from claims described herein.

By **07/22/2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **05/21/2025**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

Minute Order

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 9

21STCV17704

**LUIS LARRABURU vs AMERICAN MERCHANDISING
SPECIALISTS, INC.**

May 21, 2024

10:00 AM

Judge: Honorable Yvette M. Palazuelos

CSR: None

Judicial Assistant: R. Arraiga

ERM: None

Courtroom Assistant: M. Tavakoli

Deputy Sheriff: None

If the report is **NOT** filed by said date subsequently an Order to Show Cause Re: Sanctions hearing will be set.

A Non-Appearance Case Review Re: Distribution is scheduled for 05/28/2025 at 08:30 AM in Department 9 at Spring Street Courthouse.

Counsel for Plaintiff to prepare and submit a [Proposed] Order and Judgment consistent with the Court's final ruling **FORTHWITH**.

The Judicial Assistant to give notice to Counsel for Plaintiff who is ordered to give further and formal notice to all parties.

Clerk's Certificate of Service By Electronic Service is attached.

Minute Order

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1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
7 party to the within action. My business address is 1801 Century Park East,
8 25th Fl, Los Angeles CA 90067.

9 2. I am familiar with the practice of The Spivak Law Firm, for
10 collection and processing of correspondence for mailing with the United States
11 Postal Service. It is the practice that correspondence is deposited with the
12 United States Postal Service the same day it is submitted for mailing.

13 On Friday, June 07, 2024, I served the foregoing document described as
14 [PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS SETTLEMENT with the third-
15 party cloud service listed below. In doing so, notifications of such filings
16 were electronically mailed to the interested parties which appear on the third-
17 party cloud service's service list in this action as follows:

18 Debra Ellwood Meppen, Esq.
19 Matthew Theriault, Esq.
20 GORDON REES SCULLY MANSUKHANI, LLP
21 633 West Fifth Street
22 52nd Floor
23 Los Angeles, CA 90071
24 dmeppen@grsm.com
25 mtheriault@grsm.com

26 XXXX (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the
27 parties to accept electronic service, I caused the documents to be sent to the
28 persons at the electronic service addresses listed above via third-party cloud
service CASE ANYWHERE.

EXECUTED on Friday, June 07, 2024, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State
of California that the above is true and correct.

23 /s/ Emily HOUNG LY
24 EMILY HOUNG LY



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