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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ALFREDO B. ZAPETA, individually and on behalf of other persons similarly situated and similarly aggrieved employees, Plaintiffs, v. ALL DAY SERVICE INC, an active California Corporation; ADVANCED DYNAMIC SOLUTIONS, INC., an active California Corporation; HR SERVICE GROUP, LLC, an active Maryland Limited Liability Company; and DOES 1 through 10,ADSI, Defendants.	Case No.: 22STCV07872 CLASS AND REPRESENTATIVE ACTION [*Assigned to Hon. Elihu M. Berle in Dept. SS-6*] **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** [FILED CONCURRENTLY WITH THE DECLARATION OF HAIK HACOPIAN WITH EXHIBITS; DECLARATION OF ZORIK MOORADIAN; DECLARATION OF ALFREDO B. ZAPETA; AND [PROPOSED] ORDER] Date: June 21, 2024 Time: 10:00 a.m. Dept.: SS-6

PLEASE TAKE NOTICE that, pursuant to Cal. Rules of Court, rule 3.769, on June 21, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard in Department SS-6 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Alfredo B. Zapeta ("Plaintiff"), individually and on behalf of a similarly-situated class of individuals, will and hereby does move this Court for an order:

1. Preliminarily approving the proposed class settlement of this lawsuit;

2. Provisionally certifying the Class, defined as follows:

> All current and former non-exempt, hourly paid employees of Defendants All Day Service, Inc., Advanced Dynamic Solutions, Inc., and HR Service Group, LLC, who were staffed at the following hotels during the Class Period (the period from March 3, 2018 to May 8, 2023): Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica.

3. Preliminarily appointing Plaintiff Alfredo B. Zapeta as Class Representative;

4. Preliminarily appointing Zorik Mooradian and Haik Hacopian of Mooradian Law, APC as Class Counsel;

5. Preliminarily approving the proposed settlement of Plaintiff's Private Attorneys General Act ("PAGA") claims;

6. Appointing Phoenix Settlement Administrators as the third-party settlement administrator;

7. Scheduling a hearing to consider whether the class settlement should be finally approved, and whether to award an amount for the Service Award to the Class Representative, attorneys' fees and costs to Class Counsel, and settlement administration costs; and

8. Approving the proposed Class Notice, and ordering that it shall be disseminated to the proposed Settlement Class as provided in the Class Action and PAGA Settlement Agreement.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Haik Hacopian with Exhibits, the Declaration of Zorik Mooradian, the Declaration of Alfredo B. Zapeta, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

The Class Action and PAGA Settlement Agreement is attached as **Exhibit "A"** to the Declaration of Haik Hacopian. The proposed Class Notice is attached as Exhibit "A" to the Class Action and PAGA Settlement Agreement. See HH Decl. ¶10, Ex. 1.

Dated: April 30, 2024

MOORADIAN LAW, APC

By: */s/Haik Hacopian*
Zorik Mooradian, Esq.,
Haik Hacopian, Esq.,
Attorneys for Plaintiff Alfredo B. Zapeta, individually and on behalf of other persons similarly situated and similarly aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, Alfredo B. Zapeta ("Class Representative" or "Plaintiff") and Defendants All Day Service, Inc., Advanced Dynamic Solutions, Inc., and HR Service Group, LLC ("ADSI" or "Defendants") have reached a proposed class settlement with a non-reversionary Gross Settlement Amount of $300,000 for a Class consisting of approximately 380 non-exempt employees who worked for ADSI at four locations in California (Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, and Viceroy Santa Monica) from March 3, 2018 through May 8, 2023 ("Class Period"), which is also the date of the Parties' mediation. The Settlement anticipates coverage for a minimum of 15,319 workweeks and a maximum of 16,851, before a negotiated escalator provision may be invoked. This settlement results in a fair, reasonable, and adequate recovery consisting of a gross workweek value of $17.80 (assuming 16,851 workweeks), and an average settlement payment in excess of $375.00.

This Settlement resolves this class action lawsuit and settles the wage and hour claims for all Settlement Class Members who do not request exclusion. Payments will be made on an opt-out non-reversionary basis.

The proposed settlement is memorialized in the "Class Action and PAGA Settlement Agreement" hereinafter referred to as "Settlement Agreement" or "S.A.," which is based on the LASC model agreement for class and PAGA settlements. A true and correct copy of which is attached to the accompanying Declaration of Haik Hacopian (hereinafter "HH Decl.") as **Exhibit "A"** and a redline version is attached as **Exhibit "B"**.

The Parties have conducted an investigation concerning the facts and law during the pendency of this action and which included production of class records and data, conferences, and a mediation session before an experienced mediator, Mr. Jeffrey Krivis.

This proposed settlement is well within the range of what constitutes a fair, reasonable, and adequate settlement to all concerned especially in light of the legal and factual obstacles that Plaintiff faced, the sharply contested issues involved, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiff and the Class. The proposed notice procedure comports with Cal. Rules of Court, rule 3.769, and due process requirements. The notice program should be approved and a final fairness hearing set.

II. SUMMARY OF THE LITIGATION

A. Defendants, Class Members, and Plaintiff

Defendants are entities with common ownership that are engaged in the business of maintenance and janitorial services for hotel and resort properties in Southern California. This settlement is limited to non-exempt employees of Defendants who worked at four locations in Los Angeles County: Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica. Employees primarily serviced the common areas of these locations through both day and overnight shifts. Employees' time was primarily tracked through handwritten time sheets. Declaration of Haik Hacopian (hereinafter "HH Decl.") ¶7.

Plaintiff Jimenez worked at all four of the covered locations from March 2021 through August 13, 2021. The class count as of May 8, 2023 (mediation date and end of class period), is 380 employees. There are 15,319 workweeks, the average shift length is around six hours, and average rate of pay is $14.00/hour. There are at least 275 employees covered by PAGA. HH Decl., ¶8.

B. Plaintiff's Lawsuit

On March 3, 2022, Plaintiff commenced this Action by filing a complaint alleging causes of action against Defendants for (1) Failure to Provide Meal Periods; (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at Termination/Separation; (5) Failure to Provide Compliant Itemized Wage Statements; (6) Failure to Reimburse Business Expenses; and (7) Violation of Unfair Business Practices Act – Bus. & Prof. Code §§17200, et seq. On August 18, 2022, Plaintiff filed a First Amended Complaint alleging a cause of action against Defendants for Penalties Pursuant to California's Private Attorney General Act (Cal. Lab. Code §§ 2698 et. seq.). Defendants deny the allegations in the operative complaint in the Action, deny any failure to comply with the laws identified in in the operative complaint and deny any and all liability for the causes of action alleged. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") S.A. ¶2.1.

C. Discovery and Mediation

The Parties have conducted investigation of the operative facts and applicable law during the pendency of the case through informal discovery. Prior to mediation, Plaintiff obtained a 15% sample of time and payroll data, which included handwritten daily timesheets and wage statements. Plaintiff also had a class list with hire and termination dates as well as relevant wage and hour policies. HH Decl. ¶9.

On May 8, 2023, Plaintiff and Defendants participated in a full-day mediation before Mr. Jeffrey Krivis. The Parties were able to reach a resolution at the mediation and entered into a Memorandum of Understanding ("MOU"). The Parties ultimately entered into their Class Action and PAGA Settlement Agreement incorporating the MOU's terms and which was based on the LASC model agreement for class and PAGA settlements, a true and correct copy of the final executed version of which is attached as **Exhibit "A"** to the Declaration of Haik Hacopian. HH Decl. ¶10, Exh. A. Also attached thereto as **Exhibit "B"** is a redline version of the Settlement Agreement which tracks, as best as possible, the Parties' changes to the model agreement. HH Decl. ¶10, Exh. B.

III. <u>THE PROPOSED SETTLEMENT</u>

A. The Essential Terms of the Settlement

If the Court approves this settlement, Defendants will pay the gross sum of $300,000 ("Gross Settlement Amount" or "GSA") which will be used to fund this Settlement and make payments to Class Members, who will be paid on an all-in non-reversionary opt-out basis. The Gross Settlement Amount excludes the employer share of taxes on the wage component of the Settlement which will be separately funded by Defendants. HH Decl. ¶11.

The principal terms of the class action settlement are summarized below:

- Gross Settlement Amount. S.A. ¶¶1.22 and 3.1: $300,000

- Minus Court-approved Attorneys' Fees (35%). S.A. ¶3.2.2: ($105,000)
- Minus Court-approved Cost Award. S.A. ¶3.2.2: ($20,000)
- Minus Court-approved Service Award and general release by Plaintiff. S.A. ¶3.2.1: ($7,500)
- Minus estimated settlement administration costs. S.A. ¶3.2.3: ($9,000)
- Minus 75% PAGA Payment to LWDA. S.A. ¶3.2.5: ($11,250)
- Minus 25% PAGA Share to Aggrieved Employees. S.A. ¶3.2.5: ($3,750)

Total Deductions from Gross Settlement Amount: ($156,500)

Net Settlement Amount ("NSA"). S.A. ¶1.28: $143,500

The approximate estimated simple average class settlement payment, assuming maximum awards and participation by 380 individuals, calculates to $377.63. HH Decl. ¶12. There are presently no other claims or lawsuits that would be impacted by this settlement. HH Decl. ¶13.

B. Class Members

Class Members are defined as follows:

> All current and former non-exempt, hourly paid employees of Defendants who were staffed at the following hotels during the Class Period (the period from March 3, 2018 to May 8, 2023): Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica. S.A. ¶¶1.5, 1.12.

Aggrieved Employees are defined as follows:

> All current and former non-exempt, hourly paid employees of Defendants who were staffed at the following hotels during the PAGA Period (the period from March 3, 2021 to May 8, 2023): Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica. S.A. ¶¶1.4, 1.31.

C. Settlement Payments to Class Members

The Individual Class Payment, which is a Participating Class Member's pro rata share of the Net Settlement Amount, is calculated according to the number of Workweeks they worked during the Class Period ("the period from March 3, 2018 through May 8, 2023"). An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. S.A. ¶3.2.4.

"Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period ("the period from March 3, 2021 through May 8, 2023"). S.A. ¶¶1.24 and 1.31. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($3,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. S.A. ¶3.2.5.1.

D. Settlement Allocation to Class Members

Twenty Percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"), subject to tax withholding and will be reported on an IRS W-2 Form. Eighty Percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"), not subject to wage withholdings and will be reported on IRS 1099 Forms. S.A. ¶3.2.4.1. Individual PAGA Payments will be reported on IRS 1099 Forms. S.A. ¶3.2.5.2.

E. Opt-Outs and Objections

Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed) to exclude themselves or challenge the number of Class workweeks or PAGA Pay Periods attributed to them. Participating Class Members (those Class Members who have not opted-out) may send written objections to the Administrator during that timeframe. S.A. ¶¶1.43, 7.4.4, 7.5.1, 7.6, 7.7.2.

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator a signed written Request for Exclusion which is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. S.A. ¶7.5.1.

Participating Class Members (those Class Members who do not opt-out) may send written objections to the Administrator. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. S.A. ¶¶7.7.1- 7.7.3.

Each Class Member may challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice with the Administrator. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. S.A. ¶7.6.

F. Release

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties. S.A. ¶5.

<u>Released Class Claims by Participating Class Members</u>: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims that were or could have been alleged based on the facts set forth in the operative complaint in the Action that arose during the Class Period including without limitation with respect to the following claims: (a) failure to provide meal periods; (b) failure to provide paid rest periods; (c) failure to pay wages; (d) failure to timely pay wages at termination/separation; (e) failure to provide compliant itemized statements; (f) failure to

reimburse business expenses; (g) Violation of unfair business practices act – Bus. Prof. Code 17200, et seq.; (h) penalties pursuant to Private Attorneys General Act (PAGA); (j) violation of or claims under the following sections of the California Labor Code, sections 200, 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 2800, 2802; and (j) violation of the California Industrial Wage Orders that could have been premised on the facts, claims, causes of action or legal theories described above, as well as any potential penalties, interest or attorneys' fees associated with all of such causes of action under California law ("Released Class Claims"). Except for Plaintiff's Release by Plaintiff and as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. The foregoing release shall be limited to claims arising during Participating Class Members' staffing at the following locations: Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica. S.A. ¶5.2.

Released PAGA Claims by Aggrieved Employees: All Aggrieved Employees, regardless of whether they are Participating Class Members or Non-Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the operative complaint in the Action, the PAGA Notice (and any amendments or supplements thereto) and ascertained in the course of the Action, arising during or with respect to the PAGA Period. ("Released PAGA Claims"). The foregoing release shall be binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall entitle Defendants to bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. The foregoing release shall be limited to claims arising during Participating Class Members' staffing at the following locations: Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica. S.A. ¶5.3.

"Released Parties" means: Defendants, and each of its former and present directors, officers, principals, trustees, shareholders, owners, managers, managing agents, attorneys, insurers, predecessors, successors, assigns, DBAs, parents, subsidiaries, and affiliates. S.A. ¶1.41. "Defendants" means ALL DAY SERVICE, INC., ADVANCED DYNAMIC SOLUTIONS, INC., and HR SERVICE GROUP, LLC, the named Defendants in the Action. S.A. ¶1.16.

Only Named Plaintiff will be providing a general release and waiver of Civil Code §1542. S.A. ¶5.1.

G. Service Award to Named Class Representative

As part of the settlement, at the time of seeking final approval of the proposed class action settlement, Plaintiff will separately apply for a Service Award in the amount of Seven Thousand Five Hundred Dollars ($7,500) for his services to the Settlement Class and for a general release of all claims. S.A. ¶¶3.2.1. "[I]ncentive awards are fairly typical in class action cases … and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested incentive payment is intended to recognize Plaintiff's contributions on behalf of the Class and is fair in relation to the total settlement, his efforts, and standing alone. HH Decl. ¶14. Plaintiff has put a significant amount and time and effort participating in this case and understands his role and obligations as class representative. Declaration of Alfredo B. Zapeta, ¶¶3-8.

H. Attorneys' Fees & Costs

Defendants agree not to oppose Plaintiff's counsel's application for an attorneys' fees award of $105,000, which is thirty five percent (35%) of the Gross Settlement Amount of $300,000, and payment of documented litigation costs and expenses up to $20,000. S.A.

¶3.2.2. Plaintiff will submit detailed support for his request for a fee award along with his motion for final approval of the settlement. For now, counsel submits that the requested fee is fair compensation for undertaking a complex, risky, expensive, and potentially time-consuming litigation involving this case on a purely contingent fee basis. Here, counsel has incurred substantial attorneys' fees independently conducting pre-filing investigations, analyzing the claims, litigating the case, conducting legal research and analysis, reviewing significant documentary and electronic records produced by Defendants, performing data analysis of employee timekeeping data and payroll records, preparing for and attending a full-day mediation, negotiating the settlement, preparing and amending the long-form Class Action and PAGA Settlement Agreement, Class Notice, and preparing this Motion for Preliminary Approval, and otherwise aggressively pursuing the interests of the putative class. HH Decl. ¶15.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/ multiplier" methods). Plaintiff counsel's request for fees of thirty-five percent (35%) of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the one-third range. *See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2014) 231 Cal.App.4th 860, 878 ("[S]tudies show that . . . fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008) (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that a one-third fee is consistent with market rates).

In conclusion, counsel submits that its request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement as well as with reference to counsel's loadstar. In light of the risks and significant work undertaken by counsel, the results obtained for the class, and the efficiency with which the Parties collaborated to conduct the litigation, the fee and cost request is fair and reasonable. HH Decl. ¶16.

IV. PRELIMINARY APPROVAL IS WARRANTED

Rules of Court, rule 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Fed. R. Civ. P. 23. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (2012) (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). To be approved, a settlement must be "fair, reasonable and adequate to all concerned." *Reed*, 208 Cal.App.4th at 337. Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair, and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arms' length by experienced counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. A trial court's decision to approve a class action settlement is within the sound discretion for the trial judge and may be reversed only if the trial court acted outside of its broad discretion. *See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 407.

A. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: "The strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

"The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at 245. It should be noted that the reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiff might have received if he had succeeded at trial, *Sutter Health Unins. Pricing Cases* (2009) 171 Cal.App.4th 495, 511 (emphasizing that the court must be mindful that "[t]he … class case could have gone to an incredibly lengthy and expensive jury trial, and the class could have lost the case" and must account for that likelihood in discounting the value of the claims for settlement purposes [emphasis in original]). As discussed below, the proposed settlement is fair, adequate and reasonable in light of the overall balance of factors in this case.

B. The Strength of Plaintiff's Case

1. Unpaid Wage Claims

Employee time was tracked through daily time sheets for specific work locations. There was a line entry for each employee on the daily sheet, that logged time in and out and lunch in and out, and a column for employee signatures. The time sheets included an accuracy certification in English and Spanish. Plaintiff contends that because the physical time sheets were maintained by managers, with whom employees did not interface with each workday, they were not always contemporaneous and that employees would be presented with time sheets for multiple days at once to complete. Also, that managers would present employees with completed timesheets to sign that did not necessarily correspond to actual work time. Defendants contended that employees had full leeway in tracking their time on the time sheets, that all entries needed to be consistent with time worked, and that employees were paid in accordance with the time sheets. Also, that its written timekeeping policy disallowed work "off the clock" and that employees should immediately report timecard errors to their supervisor. A compliant overtime policy was also articulated. HH Decl. ¶17.

Any potential claim for unpaid wages will be extremely individualized and difficult to prove. The extent to which an employee worked off the clock and was not compensated will likely depend on a specific shift, position, location, management, and other circumstances that will not translate to certification. Any assessment will rely on morass of individual inquiries that will require a determination as to whether Defendants caused any instance of work off-the-clock or whether such was due to employee choice. HH Decl. ¶18.

Generously assuming an average loss of 15 mins per shift, at the average hourly rate of $14.00 across the 76,595 total shifts, results in $268,082.50 in potentially unpaid wages. Ultimately, in light of factual variations making certification highly unlikely, as well as issues of proof bearing on merits, Plaintiff does not value an unpaid wage claim in excess of 30% of the assessed exposure, or $80,424.75. HH Decl. ¶19.

2. Meal Breaks and Rest Breaks

Defendants have produced written break policies, dated January 1, 2020, that reflect the provision of "an uninterrupted unpaid meal period of at least 30 minutes if" an employee works "more than five (5) hours in a workday" to "be provided no later than the end of [the] fifth hour of work." Also, second meal periods are also discussed, as well as the employee's obligation to accurately record meal breaks. Meal breaks could also be waived for shifts six (6) hours or less in duration and forms were available. HH Decl. ¶20.

Although the written policy does not discuss the availability of meal premium payments, Defendants have produced reports that reflect the payment of meal premiums for missed meal breaks, going back to 2018. HH Decl. ¶21.

As with time recordation, Plaintiff contends that meals were not always recorded contemporaneously on the timesheets. Defendants represented that employees had routine duties and were afforded great leeway in taking their meal breaks, especially night shift employees like Plaintiff Zapeta. HH Decl. ¶22.

Plaintiff's review of the sample time data reflects the vast majority of shifts having a recorded thirty-minute meal break commencing at or before the fifth hour of work. Although the time sheets do not have columns for second meal breaks, shifts of 10 or more hours appear to be extreme outliers. HH Decl. ¶23.

It will be very difficult for Plaintiff to prevail on a meal break claim in the face of largely compliant objective findings. Plaintiff would have to craft some certification theory that would enable him to establish that what appear to be compliant recorded meal breaks were in fact manipulated to show compliance. Significant individualized inquiries would entail in efforts to discern whether specific entries trigger a meal period violation or not. As such, at a potential exposure value based on certification of a claim around half of the 76,795 shifts, the amount would come to $537,565. In light of the challenges in crafting a certifiable theory and prevailing on the merits in the face of compliant policies, Plaintiff does not value a meal break claim at more than $100,000. HH Decl. ¶24.

As to rest breaks, compliant written policies were maintained that allowed for uninterrupted 10-minute paid breaks for every fours of work (or major fraction thereof). Defendants pointed out that employees were made aware of rest break requirements and any instances of missed rest breaks were a result of employee volition. Moreover, that certification of such a claim is highly improbable due to the absence of written records (as rest breaks are not required to be recorded) and a morass of factual inquiry necessary to assess the reasons why any individual employee missed a rest break on specific instances. In light of the challenges inherent in the claim due to compliant policies, both on certification and merits, Plaintiff values a rest break claim at less than the meal break claim and not more than $75,000 for the class. HH Decl. ¶25.

3. Failure to Reimburse Business Expenses

This claim is based on the use of personal cell phones by employees for communication with management and travel by employees during a workday to other locations serviced by Defendants. Plaintiff contends that employees would be told by management to go to other locations during the workday to cover for other employees. Employees would commute to that location in their personal vehicles and not be reimbursed for mileage. That employees would usually travel in a group such that only one employee’s vehicle would be used, thus not all employees were incurring a travel expense. Although there is no official reimbursement policy articulated anywhere, Plaintiff recalls receiving lump sum $50 reimbursement payments sporadically, that were not necessarily 1:1 with the extent of expenses incurred. At 20 miles of travel per employee per workweek, at an average mileage rate of $0.60 per mile, results in exposure of $183,828. There are potential issues with proving the amount of mileage incurred by employees and potential factual variations, including the claim being skewed toward certain groups of employees and managers more than others, that would pose challenges for certification and liability. Based on the foregoing, Plaintiff does not value an expense reimbursement claim at more than $50,000. HH Decl. ¶26.

4. Waiting Time Penalties

Plaintiff received his final wages two weeks after his termination on August 27, 2021. In light of employment circumstances where checks were unable to be immediately issued at the hotels where employees worked, some difficulty and delay in delivery of final paychecks is expected. HH Decl. ¶27.

A claim for waiting time penalties could also be derivative of the claims for unpaid wages and meal and rest premiums but the weaknesses described there would directly impact the viability of this claim. *See Naranjo v. Spectrum Sec. Srvcs.* (2022) 13 Cal.5th 93. At 250 former employees, the maximum waiting time penalties would potentially calculate to $1,071.840. (319 former employees x $14.00 x 8 hours x 30 days). There are class certification variables as to when and how final pay was made available by Defendants and when payments were picked up/delivered to employees. In light of the foregoing, Plaintiff does not believe the value of a waiting time claim exceeds 20% of the assessed maximum, or $214,368. HH Decl. ¶28.

4. Wage Statement Penalties

The regular wage statements were facially compliant with the requirements of Labor Code Section 226. As with waiting time penalties, this claim would be derivative of unpaid wage, meal, and rest break violations. *See Naranjo*, *supra*. Although maximum exposure calculates to $764,750 for the 275 employees during the wage statement penalty period for 7,785 pay periods from March 3, 2021 to March 2, 2023, value may be assessed to 20% of the maximum exposure, or $152,950, due to this claim's reliance on the underlying claims and subject to weaknesses described therein. HH Decl. ¶29.

5. PAGA Claims

There are 7,785 PAGA Pay Periods. Assuming Plaintiff is to identify a predicate violation for every pay period across the unpaid wage, meal break, and rest break claims and stacking a $100 penalty for each and every pay period, would result in $2,335,500 in maximum penalties. If Plaintiff is unable to stack penalties for the predicate violation, more realistic maximum exposure comes to $778,500. Applying an 80% reduction to this amount results in a potential exposure of $155,700. HH Decl. ¶30. *See e.g., Fleming v. Covidien* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047 at *4 (reduction of PAGA civil penalties for wage statement violations from $2,800,000 to $500,000, because employees suffered no injury, defendants were not aware that their wage statements violated the law, and that they took prompt steps to correct violations.) The intention of PAGA penalties is not to serve a punitive or compensatory purpose but to sufficiently act as a deterrent to future Labor Code violations. Moreover, a court may readily conclude that a lower penalty assessment, or a nominal one, will suffice as these defendants are smaller employers. Plaintiff does not believe that any six figure PAGA penalty recovery is very realistic in this case. In light of the foregoing, and also because of potential defenses to the substantive claims that would bear on PAGA liability, the Parties' $15,000 allocation for release of the PAGA claims reflects a very fair compromise and is extremely reasonable. HH Decl. ¶30.

C. Risks and Uncertainty

Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that his position includes real risks and uncertainty. In deciding whether to approve the settlement, the Court must balance the risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar*, 168 Cal.App.4th at 130, 133; *Munoz*, 186 Cal.App.4th at 408-09. In this case, the settlement is fair and adequate when compared to the total potential exposure and the risks inherent in Plaintiff's claims. HH Decl. ¶31.

As courts have observed, "simply because a settlement may amount to only a fraction of the potential recovery does not in itself render it unfair or inadequate. Compromise is the very nature of settlement." *Boyd v. Bechtel Corp.* (C.D. Cal. 1979) 485 F. Supp. 610, 618. In this case, Plaintiff considers the settlement to be significantly more than a "fraction," particularly considering the various potential complications, dangers and pitfalls that proceeding would entail. HH Decl. ¶31.

In addition to considering the value of immediate payment for Settlement Class Members, Plaintiff's counsel discounted the value of the class claims based on a variety of factors, including the California Supreme Court's decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Defendants could have argued that they sufficiently provided breaks without "policing" them. Moreover, Plaintiff's theory of liability for rest break violations was weaker since employers have no obligation to record rest breaks (as rest breaks are paid breaks). The relative lack of written proof, except for potential testimony from Class Members, diminished the prospect of certifying the claim. Thus, a significant discount on those claims was warranted. HH Decl. ¶¶20-25.

The potential penalties were deemed to be substantial claims. In response, Defendants raised the good-faith dispute defense to the waiting time penalty claims, thereby precluding their imposition[1]. Success on the penalty claims would require proving that the Defendant's conduct was "willful." As to PAGA claims, there existed a high likelihood of a nominal award on account of Defendants being smaller employers. HH Decl. ¶¶26-30.

In short, Plaintiff's ability to prevail on certification and merits was far from certain. There is the risk that prolonged litigation would likely have produced a worse result for Class Members. Thus, this factor supports preliminary approval.

D. Risk, Expense, Complexity, and Duration of Further Litigation

This factor also weighs in favor of settlement approval. The parties had engaged in significant review and assessment of the asserted claims. Defendants could have moved for

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[1] *See, e.g.,* Cal. Code Regs. § 13520 (a good-faith dispute exists to a claim for waiting time penalties "when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.").

summary adjudication on all or some of the claims. Moreover, preparation for class certification and trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or summary judgment ruling. As a result, the parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks and the accompanying expense. HH Decl. ¶32. Hence, an additional support for a preliminary approval.

E. Risk of Maintaining Class Action Status

To the extent any claims were certified, Defendants would certainly seek to decertify them. Absent settlement, there was a risk that there would never be a certified class. HH Decl. ¶33. Thus, this factor, too, supports preliminary approval of the settlement.

F. Amount Offered in Settlement Given Realistic Value of Claims

This proposed settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims and significant hurdles. HH Decl. ¶29. Courts recognize that the reasonableness of a settlement is not dependent upon it approaching the potential recovery plaintiffs might receive if successful at trial. *See In re Omnivision Tech., Inc.* (N.D. Cal. Jan. 9, 2008) 2008 WL 123936; *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *Officers for Justice v. Civil Serv. Comm* (9th Cir. 1982) 688 F. 2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness"). The $300,000 Gross Settlement Amount captures 44.5% of the $672,742.75 assessed case value on viable class claims, which is extremely favorable given the significant risk factors described above. HH Decl. ¶31.

G. Discovery Completed and the Status of Proceedings

The lawsuit involved informal discovery which included the production of significant payroll and timekeeping records, and information regarding the size and makeup of the putative class. It was only after the completion of this process that the parties participated in mediation and thereafter reached the proposed settlement. HH Decl. ¶¶9 & 10. Here is an additional factor germane to the preliminary approval.

H. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent and experienced counsel who pressed Plaintiff's claims forward against a reputable employment defense firm. Class Counsel possesses extensive experience litigating wage and hour class actions from the plaintiff side and has been appointed as class counsel in numerous cases alleging similar claims. HH Decl. ¶¶2-3, Declaration of Zorik Mooradian (hereinafter "ZM Decl.") ¶¶2-5. Class Counsel conducted review and analysis of Defendants' practices and timekeeping and payroll records and drew on its extensive experience in similar cases to effectively assess the strengths and weaknesses of Plaintiff's claims. The settlement was also reached with the input and assistance of an experienced and respected neutral mediator. HH Decl. ¶¶9 & 10. This factor strongly supports preliminary approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 ("The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct.").

V. THE PRELIMINARY APPROVAL STANDARD HAS BEEN MET

The Court should grant preliminary approval of the settlement and direct that notice be given if the proposed settlement when it: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

The proposed settlement reflects a substantial portion of the estimated recovery that the Class could reasonably expect in light of the potential litigation risks. As well, the proposed settlement is for a sizable sum in light of the strong defenses and provides for significant individual recovery. In accordance, the proposed settlement is within the range of possible approval for communication of a notice in conformity and consideration thereof by the Class. The Court will have the opportunity to again assess the reasonableness of the settlement after the Class has had the opportunity to opt-out or object. HH Decl. ¶34.

A. The Settlement Resulted From Serious, Informed, and Non-Collusive Negotiations

This proposed class-wide settlement is the result of arm's-length negotiations by counsel, punctuated by a full-day mediation session before an experienced mediator and is, therefore, entitled to an initial presumption of fairness. *See Kullar,* 168 Cal.App.4th at 130. Plaintiff reviewed data for the class and conducted analysis of the data and records to arrive at his estimated damage figures. HH Decl. ¶¶9-10, 17-30.

The parties reached an agreement to mediate before Mr. Jeffrey Krivis, a respected neutral mediator and were able to agree to a resolution at mediation. They then finalized the Class Action and PAGA Settlement Agreement, basing it on the LASC model agreement. HH Decl. ¶10. Therefore, this factor also supports preliminary approval.

B. Provisional Class Certification is Appropriate Here

"Litigation by class action has long been recognized as a superior method of resolving wage and hour claims in California." *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 367. Class certification is appropriate when there exists "an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to alternatives." *Brinker*, 53 Cal.4th 1004 at 1021. As the Supreme Court has noted, "[c]laims alleging a uniform policy consistently applied to a group of employees in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." *Id*. at 1033. This is exactly such a case.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed

Class is defined by reference to two objective characteristics: (1) individuals who worked as non-exempt employees for Defendants at four specific locations in California, and (2) were employed by Defendants at some time during the Class Period. Therefore, Class Members can be identified from Defendants' personnel and other employment records. As to numerosity, the Class consists of around 380 individuals, making it highly impracticable to bring all class members before the Court. HH Decl. ¶8.

2. The Community of Interest Requirements for Class Treatment are Met

"[T]he community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Brinker*, 53 Cal.4th at 1021.

a. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. "Common questions of law and fact are required in order to assure the interests of the litigants and the Court are furthered by permitting the suit to proceed as a class action rather than in a multiplicity of separate suits." *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975. Where the defendant systematically engages in policies and practices that allegedly violate the Labor Code and subject all of its employees to the same unlawful conduct, common questions of law and fact will predominate over individualized issues. *See, e.g, Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1538 (holding that a class of limousine drivers challenging their compensation plan was proper for class treatment). Here, the predominance factor is met because each claim challenges an alleged common policy or practice that Plaintiff contends is illegal. Plaintiff's claims under the Labor Code are predicated on: a failure to pay for all hours worked; meal, rest period policies and practices. These sorts of claims are commonly held to be proper for class certification. *See, e.g., Williams v. Superior Court* (2013) 221 Cal.App.4th

1353, 1371 (certifying class based on uncompensated work time).

b. The Claims of Named Plaintiff are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.WI. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, the claims of Plaintiff are typical of those held by the members of the proposed Class. First, Plaintiff was employed by Defendants during the proposed Class Period and was subject to their wage and hour practices. Second, Plaintiff claims he was injured by the same challenged practices he claims injured the Class as a whole. Therefore, Plaintiff has suffered the same alleged injuries as the other members of the Class and satisfies the typicality requirement.

c. Plaintiff & Class Counsel Will Fairly & Adequately Represent the Class

The adequacy of representation requirement examines conflicts of interest between named parties and the class they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. A party's claim of representative status will only be defeated by a conflict that "goes to the very subject matter of the litigation." *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, Plaintiff and his counsel will adequately represent the class as there are no conflicts between the named Plaintiff and the Class he seeks to represent, and Plaintiff has claims that are in line with those of the class. Declaration of Alfredo B. Zapeta, ¶¶3&4, HH Decl. ¶5, ZM Decl. ¶7. Plaintiff’s counsel also has extensive experience in wage and hour class action litigation. HH Decl. ¶¶2-6, ZM Decl. ¶¶2-5. For these reasons, the Court should provisionally certify the proposed Class.

3. Class-Wide Settlement is Superior to Other Available Methods of Resolution

Here, the alternative method of resolution would be multiple individual lawsuits, challenging the same alleged wage and hour policies and practices of Defendants, and each seeking a small amount of damages. Such duplicative litigation would be extremely inefficient and costly for the courts and wasteful for judicial forums that would otherwise devote resources to other matters. HH Decl. ¶35. In light of these concerns, a class action is the superior method of resolving these wage and hour claims. *Martinez*, 231 Cal.App.4th at 367 ("Litigation by class action has long been recognized as a superior method of resolving wage and hour claims in California.")

VI. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE

This Court should order distribution to the Class Members of the proposed Class Notice in both English and Spanish by first-class mail. S.A. ¶¶1.11 and 7.4.2. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. *Wershba*, 911 Cal.4th at 252. The proposed Notice of Settlement is attached as Exhibit A to the Class Action and PAGA Settlement Agreement. S.A. ¶¶1.11 and 7.4.2, Exh. A.

Here, the Parties propose that the settlement be administered by Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"), an experienced class action settlement administrator. S.A. ¶¶1.2 & 7.1. The Settlement Administrator's duties are detailed in the Class Action and PAGA Settlement Agreement. S.A. ¶7. Class Members' addresses are ascertainable through Defendants' personnel and payroll records. To the extent that the addresses of former employees have changed, Phoenix will run all the addresses provided through the United States Postal Service Notice of Change Of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and perform skip traces to obtain current address information. S.A. ¶7. The Settlement Agreement allocates a maximum of $9,000 for administration expenses, which is appropriate in light of the number of class members and the size of the settlement and the extent of work to be performed in administrating the settlement of the class. S.A. ¶3.2.3. Plaintiff has secured a bid from Phoenix to administer the settlement for $7,950. HH Decl., ¶36, Exh. D.

The content of the proposed Class Notice satisfies Cal. Rules of Court, rule 3.769(d) because it advises class members of the nature of the claims, basic contentions and denials of the parties and the key terms of the settlement, the deadline to opt-out, or object to the settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each class member, and advises them that they will be bound by the terms of the settlement if they do not request exclusion. S.A. ¶7.4.2, Ex. 1. The proposed Class Notice will also notify Settlement Class Members of the final approval hearing date and provides the contact information for Class Counsel, and advises Settlement Class Members that they may enter an appearance through counsel if they wish to. This manner of giving notice satisfies Cal. Rules of Court, rule 3.769(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

VII. THE PAGA ALLOCATION AND PAYMENTS SHOULD BE APPROVED

The Settlement allocates $15,000 for resolution of Plaintiff's PAGA claim with $11,250 (75%) payable to the LWDA and $3,750 (25%) payable to Aggrieved Employees. S.A. ¶3.2.5. Aggrieved Employees are all current and former non-exempt, hourly paid employees of Defendants who were staffed at the following hotels during the PAGA Period (the period from March 3, 2021 to May 8, 2023): Sofitel Los Angeles at Beverly Hills, Pendry West Hollywood, InterContinental Los Angeles Downtown, Viceroy Santa Monica. S.A. ¶¶1.4 & 1.31. Plaintiff's PAGA notice was communicated to the LWDA and Defendant on March 4, 2022 and was assigned case number LWDA-CM- 871693-22. HH. Decl., ¶13, Exh. "C". To the extent an Aggrieved Employee is also a Settlement Class Member, they will receive their Individual PAGA Settlement Payment even if they submit an exclusion request. As required, this Motion and all supporting papers will be concurrently submitted to the LWDA.

VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING

The Parties request that this Court set a hearing for final approval of the settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the settlement or opt-out. *See* Cal. Rule of Court, rule 3.769. The parties propose that the final papers in support of the settlement be filed and served no later than 14 days prior to the hearing on final approval, and that the hearing on final approval of the settlement be set 120 days after the date of the preliminary approval hearing, to allow a reasonable period for notice and administration, and an opportunity to object to the settlement, without excessive delay to the Class as to the receipt of their settlement shares.

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: April 30, 2024

MOORADIAN LAW, APC

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