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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

BREANA HARRISON, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

UNIVERSITY HEALTHCARE ALLIANCE;
and DOES 1-100, inclusive,

Defendant.

Case No.: 21CV003143

CLASS and REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT, and CLASS COUNSEL
AWARD;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION;**

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION;**

**DECLARATION OF MATTHEW H.
FISHER IN SUPPORT OF MOTION;**

**DECLARATION OF TED D.
MECHTENBERG IN SUPPORT OF
MOTION; and**

[PROPOSED] ORDER with COVER SHEET

Assigned For All Purposes to the Honorable
Evelio Grillo (Dept. 21)

Date: August 25, 2023

Time: 10 a.m.

Location: Dept. 21 (Hon. Evelio Grillo)

Reservation ID#: 330161113494

1 **TO THIS HONORABLE COURT, ALL INTERESTED PARTIES, and THEIR**
2 **ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on August 25, 2023 at 10:00
3 a.m., or as soon as the matter may be heard, in Department 21 (Hon. Evelio Grillo) of the above
4 entitled Court at Alameda County Superior Court - Administration Building - 1221 Oak Street,
5 Oakland, CA 94612, Plaintiff Breana Harrison (“Plaintiff”) pursuant to California Code of Civil
6 Procedure §382 and California Rules of Court, rule 3.769, *et seq.*, will and does move this Court
7 for an Order granting final approval of the proposed class action settlement on the terms and
8 conditions that this Court has previously approved (“The Motion”). The Motion is *unopposed*,
9 and is made pursuant to the California Code of Civil Procedure §382 and California Rules of
10 Court, rule 3.769, *et seq.*, and the Order Granting Preliminary Approval of Class Settlement
11 (“Preliminary Approval Order”). Specifically, Plaintiff moves the Court for an Order:

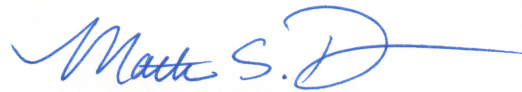
- 12 1. Approving the Class Settlement (**\$90,000** Gross Settlement Fund);
- 13 2. Certifying the Class for settlement purposes only;
- 14 3. Appointing Plaintiff as “Class Representative” for settlement purposes;
- 15 4. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as “Class
16 Counsel” for settlement purposes;
- 17 5. Approving a “Class Representative Enhancement Award” to the Class
18 Representative for their service to the Class and taking the risks of bringing
19 this Action as a class action, which has resulted in substantial benefits to the
20 Class, in an amount up to **\$5,000**;
- 21 6. Approving a “Class Counsel Award” of reasonable attorneys’ fees of
22 **\$29,700** to Class Counsel plus reimbursement of **\$16,516 for litigation**
23 **costs** incurred in pursuing the claims;
- 24 7. Approving the “PAGA Penalty Amount” payment for civil penalties under
25 the Private Attorneys General Act of 2004 (“PAGA”) of **\$1,000** (75% of this
26 amount [**\$750**] paid to the California Labor and Workforce Development
27 Agency [“LWDA Payment”] and 25% to this amount [**\$250**] paid back to the
28 PAGA group [“PAGA Group Amount”]).

8. Approving the “Settlement Administration Costs” of **\$7,500** paid to the CPT Group, Inc. (“CPT”) for settlement administration costs;
9. Directing the Parties to implement the terms of the Settlement; and
10. Entering a Judgment approving the Settlement and retaining jurisdiction over the parties to enforce the terms of the judgment.

This unopposed Motion will be based upon: this Notice; the attached Memorandum of Points and Authorities; the concurrently filed Declarations of Class Counsel, the Class Representative, and the Settlement Administrator Representative; and the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing. Pursuant to Labor Code § 2699(1)(2), and the instructions provided by the Department of Industrial Relations on its web site, a PDF copy of this motion and the supporting papers will be sent/uploaded electronically to LWDA’s website at the time it is filed and served. A copy of the proof of that LWDA submission is attached to Declaration of Matthew S. Da Vega.

Dated: July 31, 2023

DAVEGA | FISHER | MECHTENBERG LLP



By: _____

Matthew S. Da Vega
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION and SUMMARY OF SETTLEMENT TERMS**

3 On behalf of herself and similarly situated individuals, Plaintiff Breana Harrison
4 (“Plaintiff” or “Class Representative”) respectfully moves for final settlement approval of the
5 **\$90,000** (Ninety Thousand dollars) maximum settlement payment for the class claims asserted
6 against Defendant University Healthcare Alliance, (“Defendant” or “UHA”)(or together with the
7 Plaintiff, the “Parties”).

8 Plaintiff and Defendant vigorously disagree on the merits of the case. Class certification,
9 liability and damages are all sharply disputed. Nevertheless, after litigation, investigations,
10 numerous interviews, exchange of extensive information, data, and documents, and an all day
11 mediation the Parties reached an informed agreement to settle the class claims pursuant to the
12 *Second Amended* Joint Stipulation of Class Action Settlement and Release (“Settlement” or
13 “Settlement Agreement” or “*Second Amended* Settlement Agreement”).

14 Plaintiff filed their unopposed Motion for Preliminary Approval of Class Action
15 Settlement. A copy of the *Second Amended* Settlement Agreement was submitted to the Court
16 and attached to the Second Supplemental Declaration of Matthew S. Da Vega ISO of Motion for
17 Preliminary Approval of Class Settlement, filed on March 23, 2023.

18 On April 21, 2023, the Court held a hearing on the motion for Preliminary Approval. The
19 Court preliminarily approved the settlement.

20 On April 21, 2023, the Court issued its Order Granting Preliminary Approval of Class
21 Settlement (“Preliminary Approval Order”). The Court’s Preliminary Approval Order states, in
22 part:

23 “The Court determines there is sufficient evidence to suggest that the Agreement
24 (including the Class Representative Enhancement Payment, Class Counsel's fees
25 and costs, the Settlement Administration Costs, and the allocation of payments to
26 Settlement Class Members) falls within the range of possible approval that could
ultimately be given final approval by this Court as fair, reasonable, and adequate
...”

27 “The Settlement Agreement and the Notice of Class Action Settlement are
28 preliminarily approved. The Court further preliminarily approves the
predetermined Individual Settlement Payments to the Class Members.”

1 “The Settlement Class is provisionally certified for settlement purposes only as a
2 class of: “All current and former medical assistant float pool employees who
3 physically performed overtime work, and were paid an incorrect overtime rate,
4 for Defendant in the State of California from November 11, 2017 through the date
5 the Court grants preliminary approval of the Settlement.”

6 “The “Class Period” refers to the period of time from November 11, 2017 through
7 the date the Court grants preliminary approval of the Settlement.”

8 After the Court issued its Preliminary Approval Order the Parties set a date for the Final
9 Approval/Fairness hearing for August 25, 2023 at 10:00 a.m. in Dept. 21 (Hon. Evelio Grillo).
10 (Declaration of Matthew S. Da Vega in Support of Plaintiff’s Motion for Final Approval
11 [“Da Vega Decl.”], **Exhibit 1 – April 21, 2023 Preliminary Approval of Class and
12 Representative Action Settlement and Provisional Class Certification Order (“Preliminary
13 Approval Order”).**

14 On May 18, 2023, in accordance with the terms of the Settlement Agreement and
15 Preliminary Approval Order, the Class Settlement Administrator CPT mailed the Court-approved
16 Notice of Class Action and Proposed Settlement (aka “Notice Packets”) via first class mail to all
17 of the approximate 54 Class Members after receiving the class member data and running a change
18 of address search. Da Vega Decl., **Exhibit 2 – Declaration of Chantal Soto-Najera (On Behalf
19 of CPT Group, Inc.) with Respect to Notification and Administration** [“CPT Decl.”], ¶ 1 -
20 17).

21 On July 3, 2023 the “Opt-Out”, dispute, and objection deadline passed. (Exhibit 2 – CPT
22 Decl., ¶ 9).

23 As of July 18, 2023 the Settlement Administrator CPT reported (“CPT Decl.”):

- 24 • 0 (zero) Notice Packets remain undeliverable;
- 25 • 0 (zero) Requests for Exclusion (“Opt-Outs”);
- 26 • 0 (zero) Disputes; and
- 27 • 0 (zero) Objections.

28 (Exhibit 2 – CPT Decl., ¶ 8 - 13).

Therefore, there are a total of 54 participating Settlement Class Members out of 54
putative Class Members, representing a 100% participation rate. Pursuant to the Settlement
Agreement the Net Settlement Fund is to be distributed as follows; Participating Class Members

1 will receive a minimum amount of \$100 each and the remainder of the Net Settlement Fund after
2 payment of minimum \$100 paid to each Settlement Class Member shall be equally divided
3 amongst the remaining Settlement Class Members who are allegedly owed waiting time penalties.
4 At the time of this Declaration there are approximately 17 putative Class Members who are
5 allegedly owed waiting time penalties. Based on estimated settlement calculations the average
6 gross payment to each Settlement Class Member is \$565.44 and the highest is \$1,568.39, and
7 minimum \$104.63. (Exhibit 2 – CPT Decl., ¶ 13-17).

8 As of the date of the filing of this motion, and pursuant to the terms of the *Second*
9 *Amended* Settlement Agreement and Preliminary Approval Order, the Class will receive an
10 **Estimated Net Settlement Fund of \$30,534** (Thirty Thousand Five Hundred and Thirty Four
11 dollars) to pay Settlement Class Members. That amount was determined by subtracting Class
12 Counsel’s attorneys’ fees [-\$29,700], Class Counsel’s litigation costs [-\$16,516], the Class
13 Representative Enhancement Award [-\$5,000], the PAGA Penalties to the LWDA payment
14 [-\$750], the PAGA Group Employee payment [-\$250], and the Settlement Administrator costs
15 [-\$7,500] from the Gross Settlement Amount [\$90,000] to determine settlement fund payment to
16 Class Members. (Exhibit 2 – CPT Decl., ¶13). This an excellent result for Class Members,
17 especially given the potential challenges entailed in successfully litigating this case (and where
18 Defendant UHA’s total estimated liability per expert calculations was only \$116,172.91)(See Da
19 Vega Decl. ISO of Motion for Preliminary Approval). Courts routinely approve wage and hour
20 settlements of comparable cases resulting in far less recovery to individual class members. In
21 Class Counsel’s opinion, this is a good result in light of the disputed material factual and legal
22 issues involved, the intrinsic risks of further litigation without any assurance of a better outcome
23 for Class Members, and the substantial benefits available to Class Members under the Settlement.
24 The Settlement promotes judicial economy and eliminates the risk that Class Members could
25 receive nothing after protracted litigation.

25 The Settlement’s key terms are summarized as follows:

26 1. The Settlement Class is defined as:

27 “All current and former medical assistant float pool employees who
28 physically performed overtime work, and were paid an incorrect overtime
rate, for Defendant in the State of California from November 11, 2017

1 until the through the date the Court grants preliminary approval of the
2 Settlement.” “Class Member(s)” refers to a member(s) of the Class.”
(*Second Amended Settlement Agreement* §1.1)

3 “Class Period” refers to the period of time from November 11, 2017
4 through the date the Court grants preliminary approval of the Settlement.”
(*Second Amended Settlement Agreement* §1.7)

5 “Settlement Class Members” is defined to mean those Class Members
6 who have not “opted out” of the Class Settlement by submitting a timely
and valid Request for Exclusion. (*Second Amended Settlement Agreement*
§1.33)

7 2. The Gross Settlement Amount:

8 The Settlement provides for Defendants to make a maximum payment of
9 **\$90,000** in settlement of all class and PAGA claims in the case, including
the Class Counsel Award, all Settlement Administration Costs, the PAGA
10 Penalty Amounts, all settlement payments to Settlement Class Members,
and the Class Representative Enhancement Payment. (the “Gross
Settlement Amount”) (*Second Amended Settlement Agreement* §§1.16.;
2.1).

11 3. The Estimated Net Settlement Fund to Class Members:

12 After deducting the Class Counsel’s Award of attorney fees (-\$29,700)
13 and litigation costs (-\$16,516), Settlement Administration costs (-\$7,500),
PAGA penalties paid to the LWDA payment (-\$750), PAGA Group
14 employee payment (-\$250) and a Class Representative Enhancement
Award (-\$5,000) from the total of the Gross Settlement Amount
15 (\$90,000), the Participating Settlement Class Members shall receive the
approximate Net Settlement Fund/remainder of **\$30,534**) (“Estimated Net
16 Settlement Fund”). (*Second Amended Settlement Agreement* §§ 1.13,
1.20, 7.1)

17 4. Individual Settlement Amount Calculations:

18 The “Individual Settlement Amount Calculations” payment to the Class
Members will be a minimum of \$100 for each Settlement Class Member.
19 The remainder of the Net Settlement Fund after payment of minimum
\$100 paid to each Settlement Class Member shall be equally divided
20 amongst the remaining Settlement Class Members who are allegedly owed
waiting time penalties (and who do not exclude themselves from the Class
Settlement). At the time of this Agreement (and CPT Declaration) there
21 are approximately 17 putative Class Members who are allegedly owed
waiting time penalties. The Individual Settlement Amount(s) will be
22 allocated for tax purposes as follows: Thirty-Three (33%) of each
Individual Settlement Payment will be allocated as wages; Thirty-Three
23 (33%) will be allocated interest, and Thirty-four (34%) as penalties. The
portion allocated to wages will be reported on an IRS Form W-2 and the
24 portions allocated to non-wages (interest and penalties) will be reported on
an IRS Form 1099 by the Settlement Administrator. Defendant shall solely
25 be responsible for the employer portion of the payroll taxes. (*Second*
Amended Settlement Agreement § 7.1)

26 5. Notice Period and Response/Opt-Out Deadline:

27 Class Members had **45 calendar days** following Class Notice (mailed on
28 May 18, 2023) on and until July 3, 2023, to mail in a written request to

be excluded (“Opt-Out Request”) or object to the proposed settlement.
(*Second Amended Settlement Agreement* §§1.21, 1.32, 4.5, 4.6)

6. Release of Claims For Settling Class Members:

The *Second Amended Settlement Agreement* provides for a release of claims for Class Members who did not timely submit an “Opt-Out” Request. The released claims include:

“Released Claims” with respect to the “Released Parties” (defined below) are, “... any and all claims that were asserted in the Action, or that arise from or could have been asserted based on the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff’s Complaint or First Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law (“the Released Claims”). The Released Claims specifically include, but are not limited to Labor Code §§ 201, 202, 203, 204, 216, 218.5, 218.6, 226, 226.3, 510, 515, 1174, 1174.5, 1194, 1194.2, 1194.3, 1194.5, 1197.1, 1198, 1199, 2699.3, 2699.5, C.C.P. § 1021.5, the related IWC Wage Order No. 1-2001, and Business & Professions Code §§ 17200, et seq., claims based on alleged violations of these Labor Code and Wage Order provisions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to pay overtime wages; (2) failure to provide accurate itemized wage statement; (3) failure to pay all wages due at termination [waiting time penalties], (4) all related violation of the Unfair Competition Act (California Business & Professional Code section 17200, et seq.), (5) violation of PAGA, (6) all related violations of the applicable Wage Orders; and (8) interest, fees, and costs (“Released Claims”). The enumeration of these specific statutes shall neither enlarge nor narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action. Except as set forth in Section 6.3 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. (*Second Amended Settlement Agreement* §1.28)

The “Released Parties” means “UHA and any of it current and former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives, partners, accountants, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and entities acting by, through, under and/or on behalf of UHA.” (*Second Amended Settlement Agreement* §1.29)

The *Second Amended Settlement Agreement* also provides Defendant with a general release from named Plaintiff, including a Civil Code § 1542 waiver. (*Second Amended Settlement Agreement* §2.6)

7. PAGA Payments

\$1,000 of the Gross Settlement Fund is allocated to be paid for the resolution

of potential PAGA claims (the “PAGA Penalty Amount”). (*Second Amended Settlement Agreement* §1.27). Pursuant to PAGA, 75% of that amount, **\$750**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA Payment”) and 25% of that amount, **\$250**, to the PAGA Group (the “PAGA Group Amount”). (*Second Amended Settlement Agreement* §§1.18, 1.19, 1.23, 1.24, 1.25, 2.5; also see CPT Decl.)

8. Settlement Administrator Payment

As part of the Final Approval/Fairness Hearing, Class Counsel has applied to the Court for payment from the Gross Settlement Fund to compensate the Settlement Administrator – CPT Group, Inc. - for fees and costs associated with the administration of the settlement for **\$7,500** (the “Settlement Administration Costs”). (*Second Amended Settlement Agreement* §§ 1.3, CPT Decl.)

9. Class Representative Enhancement Award

Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement Payment of **\$5,000** for the Class Representative. (*Second Amended Settlement Agreement* §§1.8, 2.3)

10. Class Counsel Award (Attorney Fees and Costs)

Plaintiff may apply to the Court for an award of up to **\$29,700 in attorney fees plus** reimbursement of up to \$20,000 (**actual costs are \$16,516**) in litigation costs (*Second Amended Settlement Agreement* §§ 1.5, 2.2)

The final approval of the Settlement is appropriate as all requirements for a class action have been satisfied and the terms of the Settlement are fair and reasonable.

II. FACTUAL BACKGROUND

Plaintiff and Class Members are current and former non-exempt "Medical Assistant float pool employees" who work/worked for the Defendant UHA, the medical foundation of Stanford Healthcare, at Defendant's various medical facilities throughout California. Medical Assistant floaters are members of a “float pool” that fill in at these locations depending on the scheduling needs of the various facilities. They do not have a “home” location where their work is predominantly performed. Plaintiff alleges that she and Class Members were not paid for overtime work (hours worked over 8 hours/day or 40 hours/week) at the correct overtime rates (1.5x or 2 x their regular rates) from 4/26/2019 through 12/4/2020 [when Defendant switched from third party ADP's electronic payroll processing system to Stanford Health Care's electronic pay roll processing system] at which point Medical Assistant floaters were then paid for overtime hours at the correct and legal overtime rate(s). Plaintiff further alleges that Defendant failed to

1 keep and provide accurate and timely records of wages earned and other legally mandated
2 records (as a result of Defendant not paying overtime correctly), and failed to pay Plaintiff and
3 Class Members whose employment has terminated (voluntarily resigned and/or were terminated)
4 a final payment of his or her wages in a prompt and timely manner in conformity with California
5 Labor Codes (again as a result of not paying overtime correctly). Defendant denies all
6 allegations.

7 **III. PROCEDURAL HISTORY**

8 **November 29, 2021 (Original Complaint Filed and PAGA Notice Sent):** Plaintiff sent
9 and submitted her PAGA Notice (LWDA-CM-928004-23) and also filed her class action lawsuit
10 under CCP §382 to address Defendant's alleged violations of California wage and hour laws
11 related to Defendant's Medical Assistant "floater" employees.

12 **February 4, 2022 (First Amended Complaint Filed):** Plaintiff filed and served her First
13 Amended Complaint ("FAC") with the addition of the 5th cause of action for violations of the
14 PAGA.

15 **February 24, 2022 (Defendant Answers):** UHA filed and served its answer.

16 **March 28, 2022 (Defendant Answers First Amended Complaint):** Defendant filed and
17 served its answer to the FAC.

18 **April 26, 2022 (Parties Discuss Potential Class Mediation):** The Parties discussed
19 potential resolution of the class wide and PAGA claims and started discussing potential
20 mediators. The Parties eventually agreed upon using JAMS mediator Michael Loeb and
21 scheduled the mediation August 29, 2022. The Parties then exchanged documents/data and briefs
22 regard the case/claims prior to the mediation.

23 **August 29, 2022 (Date of Mediation):** The Parties participate in a full day mediation
24 with experienced JAMS Mediator Michael Loeb. Based on Defendant's data there were
25 approximately 54 putative class members of which only 17 were subject to waiting time penalties
26 (as they had separated employment prior to UHA paying them the back wages). At the mediation
27 the parties came to a tentative settlement subject to court approval that was codified in a
28 Memorandum of Understanding (MOU) and eventually the Joint Stipulation of Class Action

1 Settlement Agreement and Release (“Settlement Agreement”) which was amended twice based
2 on the Court’s input with a finally approved *Second Amended* Settlement Agreement.

3 **April 21, 2023 (Hearing on Motion for Preliminary Approval):** The Plaintiff filed her
4 unopposed Motion for Preliminary Approval of Class Action and PAGA Settlement. A copy of
5 the Settlement Agreement was attached. The Court requested the Parties make minor changes to
6 terms of settlement which were then submitted attached to subsequent declarations (see *Second*
7 *Supplement* Declaration of Matthew S. Da Vega ISO of Motion for Preliminary Approval filed
8 on March 23, 2023). On April 21, 2023 the hearing was held and the Court granted the motion
9 for preliminary approval of class settlement.

10 **April 21, 2023 (Court Issues Order Preliminary Approving Class Settlement):** The
11 same day the Court issued its Order Granting Preliminary Approval of Class Settlement
12 (“Preliminary Approval Order”). After the Court issued its Preliminary Approval Order the
13 Parties set the hearing for Final Approval/Fairness Hearing for August 25, 2023 at 10 a.m..

14 **May 18, 2023 (Notice of Class Action and PAGA Settlement Mailed):** Notice Packets
15 to Class Members were mailed by the Settlement Administrator CPT.

16 **July 3, 2023 (Class Action Notice Period/Response Deadline Ended):** The Class
17 Notice/Response Deadline ended with: 0 Notice Packets remaining undeliverable; 0 Requests for
18 Exclusion (“Opt-Outs”); 0 (zero) Disputes; and 0 (zero) Objections.

19 **August 24, 2023 @ 10:00 a.m. (Hearing on Final Approval/Fairness of Class**
20 **Settlement):** The hearing on Final Approval/Fairness of the Class Action and PAGA settlement
21 is to be held.

22 **IV. THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL**

23 Pursuant to the Settlement, the Settlement Administrator CPT has engaged in a
24 comprehensive notification process which started on May 18, 2023 with mailing of notice to 54
25 Class Members via First Class mail. The notice period in which to submit a dispute, objection, or
26 “opt out” of the settlement concluded on July 3, 2023. The terms of the Settlement have been well
27 received by the Class Member as 0 (zero) Class Members have submitted an “opt-out” (100 %
28 participation rate), 0 (zero) Class Members have objected, and 0 (zero) Class Members have

1 submitted a dispute. (Exhibit 2– CPT Decl., ¶ 9-12).

2 “The trial court’s discretion is broad” regarding approval of a class action settlement, and
3 “is to be exercised though the application of several well-recognized factors.” *Munoz v. BCI*
4 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407. These factors include,
5 but are not limited to, the strength of Plaintiff’s case; the risk, expense, complexity and likely
6 duration of further litigation; the risk of maintaining class action status through trial; the amount
7 offered in settlement; the extent of discovery completed and the stage of the proceedings; the
8 experience and views of counsel; and the reaction of the class members to the proposed
9 settlement. *Id.* (omitting quotations and citations). “The most important factor is the strength of
10 the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.* at
11 407-408 (quoting *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130). An
12 analysis of the pertinent factors to the Parties’ Settlement demonstrates that final approval is
13 appropriate.

14 **A. The Parties Disputed the Merits of Plaintiff’s Case and Likelihood of Class**
15 **Certification**

16 The Settlement is the result of the exchange of significant data and information and
17 vigorously investigated and debated claims. Plaintiff’s Counsel began their investigation into the
18 claims well before the case was filed. Plaintiff’s Counsel interviewed and obtained informal
19 discovery from the Plaintiff and various current and former Class Members regarding their
20 experiences working for Defendant. Likewise, Defendant’s counsel conducted their own
21 investigation of Plaintiff’s allegations after the litigation was initiated. These investigations were
22 crucial to the Parties’ dispute over both the merits of the case, as well as with respect to the
23 appropriate scope of the Class.

24 After the Action was initiated, Plaintiff’s counsel and Defendant’s counsel engaged in
25 litigation, discovery, discussions and negotiations before reaching this Settlement. Early on they
26 began having regular discussions regarding the claims, discovery, production of data, the scope of
27 the Class, and the possibility of mediation and settlement. The Parties each feel strongly
28 regarding their respective positions as to the claims asserted, both at the certification stage and on

1 the merits. In this case, Plaintiff alleges that class certification is appropriate because Defendant's
2 employees were nonexempt employees and subjected to consistent wage and hour policies
3 regarding the lack of correct payment of overtime wages and accurate wage statements. Plaintiff
4 alleges Class Members worked overtime hours but were not paid for said overtime and/or at the
5 appropriate overtime rates throughout the Class Period. Defendant asserts that class certification
6 would not be appropriate because Plaintiff's proposed Class Members were paid correctly.

7 Throughout the litigation, the Parties also have vigorously disputed the merits of Plaintiff's
8 claims. Plaintiff alleges that all Class Members throughout the Class Period were subject to the
9 same wage policy and practices promulgated by Defendant. Plaintiff alleges Defendant failed to
10 pay Class Members for all hours worked and/or at the correct rates. Defendants have generally
11 denied Plaintiff's allegations, and further asserts that it has no liability for any of Plaintiff's or the
12 Class Members' alleged claims. Defendant further contends that, if this matter were to be further
13 litigated, it would have strong defenses on the merits.

14 As the Parties clearly disagree regarding the strength of Plaintiff's claims and likelihood of
15 class certification, the Settlement represents a fair compromise assuring significant recovery to the
16 Class Members that they would not otherwise be guaranteed.

17 **B. The Risk, Expense, And Complexity Of Continuing To Litigate The Action**

18 As demonstrated above, the Parties are sharply divided on the factual and legal issues
19 pertaining to the underlying claims, as well as whether class certification can be obtained in this
20 case. Defendant is represented by well-staffed counsel who are experienced in wage and hour
21 law and class actions, as are Plaintiff's counsel. The Parties contend that continued litigation
22 would be protracted and expensive, with no assurance of a better outcome for the Class.

23 Significantly, while extensive informal discovery has occurred to ensure the Settlement is
24 fair and reasonable to the Class, should the Settlement not be finally approved, the Parties will
25 need to start from scratch in terms of engaging in formal discovery on the certification issues, as
26 well as the merits in this matter. The Settlement reached by the Parties through extensive arms-
27 length negotiations eliminates the risk that the Class Members will receive nothing, eliminates the
28 need for protracted and expensive litigation that financially jeopardizes any recovery, and
eliminates the risk of lengthy and uncertain appeals. The elimination of those many uncertainties

1 is reflected in the Settlement which provides prompt and substantial relief to the Class Members.
2 These factors weigh heavily in favor of approving the Settlement.

3 **C. The Settlement Amount Offered To Class Members Is Fair And Reasonable**

4 The Settlement provides for Defendant to make a payment of **\$90,000** in settlement of all
5 Class claims in the case, including Attorney's Fees and Costs, Settlement Administration Costs,
6 PAGA Penalties, and a Class Representative Enhancement Award. Class Members will share in
7 a Estimated Net Settlement Fund of approximately **\$30,534** after subtracting Attorney Fees
8 [-\$29,700] and Costs [-\$16,516], the Class Representative Enhancement Award [- \$5,000],
9 PAGA LWDA Payment [-\$750], PAGA Group employee payment [-\$250] and Settlement
10 Administration Costs [-\$7,500]. (Exhibit 2 – CPT Decl., ¶13). This is an excellent recovery for
11 the class, which at the time of filing includes 54 (out of 54) Settlement Class Members. The
12 average Class Member will receive a pre-tax award of approximately \$565.44. (Exhibit 2 – CPT
13 Decl., ¶ 17). The amount of the Settlement is reasonable given the difficulty of the claims, the
14 degree of risk and uncertainty involved in further litigation, the amount of time that would pass
15 before Plaintiff and the Class Members would see the fruits of any class verdict in their favor, and
16 the lack of ability of Defendant to pay.

17 The "Individual Settlement Amount Calculations" payment to the Class Members will be
18 a minimum of \$100 for each Settlement Class Member. The remainder of the Net Settlement
19 Fund after payment of minimum \$100 paid to each Settlement Class Member shall be equally
20 divided amongst the remaining Settlement Class Members who are allegedly owed waiting time
21 penalties (and who do not exclude themselves from the Class Settlement). At the time of this
22 Agreement (and CPT Declaration) there are approximately 17 putative Class Members who are
23 allegedly owed waiting time penalties. The Individual Settlement Amount(s) will be allocated for
24 tax purposes as follows: Thirty-Three (33%) of each Individual Settlement Payment will be
25 allocated as wages;Thirty-Three (33%) will be allocated interest, and Thirty-four (34%) as
26 penalties. The portion allocated to wages will be reported on an IRS Form W-2 and the portions
27 allocated to non-wages (interest and penalties) will be reported on an IRS Form 1099 by the
28 Settlement Administrator. Defendant shall solely be responsible for the employer portion of the
payroll taxes. (*Second Amended Settlement Agreement* § 7.1). Since any and all uncashed

1 settlement checks will be distributed to the California Labor & Workforce Development Agency,
2 this Settlement and the associated Final Approval Order and Judgment will not create an unpaid
3 residue, and therefore no distribution of such shall be required.

4 **D. The Settlement Agreement Is Fair And Reasonable**

5 The law favors settlements, especially of class actions. *See Potter v. Pacific Coast Lumber*
6 *Co.* (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
7 950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only be
8 settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
9 1801. The trial court is required to determine whether the “settlement is fair, adequate and
10 reasonable,” and has “broad discretion” in making this assessment. *Id.*

11 Following notice to the Class, the Court can now make a final determination regarding the
12 fairness of the Settlement. In making this evaluation, courts consider and balance a number of
13 factors, as described above, including: [T]he strength of plaintiffs’ case, the risk, expense,
14 complexity and likely duration of further litigation, the risk of maintaining class action status
15 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
16 the proceedings, the experience and views of counsel, the presence of a governmental participant,
17 and the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer,*
18 *Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th
19 at 1801).

20 A presumption of fairness exists when: (1) the parties reached a settlement through arm’s-
21 length bargaining; (2) the parties conducted sufficient investigation and discovery to allow
22 counsel and the Court to act intelligently; (3) counsel are experienced in similar litigation; and,
23 (4) the percentage of objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802. In this case, both
24 Plaintiff and Defendant recognized that it was in their mutual interest to explore early resolution.
25 Defendant agrees, through an informal discovery process, to produce a significant amount of data
26 to enable Plaintiff to fully and fairly evaluate both liability and damages. Indeed, prior to and
27 during the mediation, Defendant produced voluminous data, which Plaintiff analyzed through
28 dynamic spreadsheet calculations via Plaintiff’s experts. Those calculations were provided in
Plaintiff’s Motion for Preliminary Approval and declarations in support thereof. Defendant’s

1 total liability was \$116,172.91 (according to expert calculations) and the matter settled for a
2 Gross Settlement Amount of \$90,000.

3 The Parties therefore had more than enough information to allow for a sufficient analysis
4 of the likelihood of certification (and decertification), liability, and damages. Prior to attending
5 mediation, the Parties were aware of the strengths and weaknesses of their respective positions,
6 and they addressed their respective positions at the lengthy mediation session. It was only after
7 the exchange of information and multiple rounds of arm's-length demands and offers facilitated
8 by the mediator that the parties finally reached their proposed Settlement. The amount is, of
9 course, a compromise figure, and considers risks related to liability, possible damage scenarios,
10 and all defenses asserted by Defendants.

11 Should a Class Member not desire to participate in the Settlement, for whatever reason,
12 the Parties provided for an "Opt-Out" procedure. This procedure allowed any Class Members
13 who believed they had claims worth more than what the Settlement provides with an opportunity
14 to pursue their individual claims. Moreover, in the event that a Class Member disagreed with the
15 Settlement for any reason whatsoever, the Parties provided for an objection procedure. However,
16 to date 0 (zero) Class Members have "opted out", 0 (zero) Class Members have disputed their
17 Workweeks/individual payment amounts, and 0 (zero) Class Members have objected to final
18 settlement approval. At all times during this litigation, the Parties were represented by competent
19 and experienced counsel with decades of class action experience, who vigorously prosecuted their
20 respective positions while seeking a cost-effective resolution to this Action. Counsel is confident
21 that the Settlement is in the best interest of the Plaintiff, and the Class, as it is fair, reasonable,
22 and provides substantial relief which the Class would not be guaranteed, for numerous reasons,
should litigation proceed.

23 **V. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
24 **REASONABLE**

25 Pursuant to the terms of the Settlement, Class Counsel now seeks an Enhancement
26 Payment of **\$5,000 for the Class Representative**. (*Second Amended Settlement Agreement*
27 §§1.8, 2.3). Courts have routinely granted such enhancements. *Staton v. Boeing Co.*, 327 F.3d
28 938, 977 (9th Cir. 2003) ("[N]amed Plaintiffs . . . are eligible for reasonable incentive

1 payments.”). When considering whether to make an incentive award, courts consider the
2 following factors: (1) the risk to the class representative in commencing suit, both financial and
3 otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3)
4 the amount of time and effort spent by the class representative; (4) the duration of the litigation;
5 and (5) the personal benefit, or lack thereof, received by the class representative as a result of the
6 litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (quotations
7 and citation omitted).

8 The typical enhancement award ranges from approximately \$5,000.00 to \$40,000.00,
9 although some awards are higher, and commonly more than one class representative receives
10 awards in the above range. *Mirkarimi v. Nev. Property 1, LLC*, No. 12cv2160 BTM (DHB), 2016
11 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (finding a \$30,000.00 enhancement award is proper);
12 *Chu v. Wells Fargo Inv., LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *5
13 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000.00 to two named plaintiffs, and \$4,000.00 to three
14 named plaintiffs, and indicating that enhancement awards have ranged from \$5,000.00 to
15 \$50,000.00); *see also Williams v. Centerplate, Inc.*, No 11-CV-2159 H-KSC, 12-cv-0008-H-KSC,
16 2013 WL 4525428, at * (S.D. Cal. Aug. 26, 2013) (finding \$5,000.00 incentive awards to three
17 named plaintiffs, representing 2.3% of the common fund, reasonable).

18 Here, the requested Class Representative Enhancement Payment of \$5,000 is reasonable
19 and justified based on the significant risk, difficulties, time and effort the Class Representative
20 incurred in bringing this case on behalf of the Class, as well as the substantial benefits the resulting
21 Settlement provides the Class. The requested award is at the bottom of the reasonable range, and
22 is justified because of the Class Representative’s involvement. The Class Representative has made
23 exceptional efforts to provide information, witnesses, and evidence to Plaintiff’s Counsel to
24 achieve the excellent result described herein. The proposed Class Representative Enhancement
25 Payment of \$5,000 represents only 0.05 % of the \$90,000 gross settlement payment (\$5,000
26 divided by \$90,000) and will not significantly reduce the awards of the Class Members.

27 Plaintiff is a single African American female working in the health care industry. She was
28 the driving force behind this case. She initiated the respective claims, arranged for Plaintiff’s

1 Counsel to obtain evidence through production of her own employment files, interviewed former
2 co-workers, reviewed the pleadings/briefs, had numerous calls and meetings with counsel,
3 attended a full day mediation in person, and took personal and financial risk in coming forward
4 (*see, e.g., Earley v. Sup. Ct.*, 79 Cal. App. 4th 1420, 1433 (2000) (representative risk an adverse
5 award of costs). Plaintiff knows little about the legal system but provided and obtained additional
6 information in support of her legal claims. Plaintiff and witnesses expressed fear that by
7 participating in a class action lawsuit they might risk their current jobs and/or future opportunities.
8 Plaintiff however stepped up and worked diligently in support of the case. Plaintiff had numerous
9 meetings and telephone conversations with Class Counsel to aid in the initial investigation, factual
10 development, mediation, and resolution of this case. She also reached out to and communicated
11 with other former/current Class Members about their work, and encouraged by Plaintiff, these
12 other Class Members to contact Class Counsel to provide information about their time at
13 Defendants. In sum, the Settlement could never have been achieved without her service to the
14 greater good on behalf of the Class has resulted in recovery for these workers. (See Da Vega
15 Decl., **Exhibit 3 - Declaration of Breana Harrison ISO Motion for Final Approval of Class**
16 **Settlement**). The Class Representative also risked potential judgments against herself if these
17 matters were unsuccessful as a losing party is liable for the prevailing party's costs. *Earley v. Sup.*
18 *Ct.* (2000) 79 Cal.App.4th 1420, 1431-33. Additionally, Plaintiff has protected the interests of
19 Class Members during the pending of this matter, and will continue to do so.

20 **VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

21 Under the terms of the *Second Amended* Settlement Agreement, Class Counsel now
22 moves for a Class Counsel Award of reasonable **attorney's fees in the amount of \$29,700** (33%
23 of the Gross Settlement Amount of \$90,000) approved per Court's Preliminary Approval Order
24 and Settlement Agreement. (*Second Amended* Settlement Agreement §§ 1.5, 2.2; and Preliminary
25 Approval Order). Class Counsel also seeks reimbursement of reasonable **costs incurred in the**
26 **amount of \$16,516**. (Da Vega Decl., ¶14; *Second Amended* Settlement Agreement §§ 1.5, 2.2).
27 These amount falls well within the historical range of attorneys' fee awards, especially as Class
28 Counsel's fees constitute one-third (1/3) of the total settlement value. The requested fee

1 represents fair compensation for undertaking complex, risky, expensive, and time-consuming
2 litigation on a contingent fee basis, especially in light of the substantial benefits achieved by
3 Class Counsel for the Class Members. Plaintiff's Counsel diligently litigated and investigated this
4 case. Class Counsel has attached a detailed declaration justifying the award of fees and costs. (see
5 Da Vega Decl., ¶ 1- 22).

6 It has long been recognized that "a litigant or a lawyer who recovers a common fund for
7 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
8 from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of
9 this doctrine is to avoid unjust enrichment and to spread litigation costs proportionately among all
10 the beneficiaries. *Id.* This common fund doctrine is firmly rooted in American case law. *See, e.g.,*
11 *Trustees v. Greenough*, 105 U.S. 527 (1882); *Central R. & Banking Co. v. Pettus*, 113 U.S. 116
12 (1885); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

13 California courts have recognized that an appropriate method for awarding attorney's fees
14 in class action cases like this is to award a percentage of the "common fund" created as a result of
15 the settlement. *City & Cnty. of San Francisco v. Sweet* ("*Sweet*"), 12 Cal.4th 105, 110-11 (1995);
16 *Quinn v. State*, 15 Cal.3d 162, 168 (1975). The basis of the common fund is fairness to the
17 successful litigant who might otherwise receive no benefit because his recovery might be
18 consumed by the expenses; correlative prevention of an unfair advantage to others who are
19 entitled to share in the fund and who should bear their share of the burden of its recovery; and
20 encouragement of the attorney, who will be more willing to undertake and diligently prosecute
21 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
22 and directly compensated should his efforts be successful. *Sweet*, 12 Cal.4th 105, 111 (1995). In
23 *Quinn v. State*, the California Supreme Court expressly recognized that "one who expends
24 attorneys' fees in winning a suit which creates a fund from which others derive benefits may
25 require those passive beneficiaries to bear a fair share of the litigation costs." 15 Cal.3d 162, 167
26 (1975). Similarly, in *Sweet*, the Court recognized that the common fund doctrine has been
27 applied "consistently in California when an action brought by one party creates a fund in which
28 other persons are entitled to share." 12 Cal.4th at 110.

Several courts have expressed frustration with the alternative "lodestar" approach for

1 deciding fee awards, which usually involves wading through voluminous and often
2 indecipherable time records. *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 31 n.5 (citing *In*
3 *re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989)). The percentage approach is
4 preferable to the lodestar because it: (1) aligns the interests of class counsel and absent class
5 members; (2) encourages efficient resolution of the litigation by providing an incentive for early,
6 yet reasonable, settlement; and (3) reduces the demands on judicial resources. *In re Activision*,
7 723 F. Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
8 fund approach to determine the award of attorney's fees. *Lealao*, 82 Cal. App. 4th at 30-31; *see*
9 *e.g.*, *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (approving attorney's
10 fee of 33%).

11 Class Counsel's request for fees of one-third of the Gross Settlement Amount is well
12 within the range of reasonableness. Historically, courts have awarded percentage fees between
13 20% and 50%, depending on the circumstances of the case. *See In re Activision*, 723 F.Supp. at
14 1378. Awarding 33% of a common fund is neither unreasonable nor uncommon. California
15 courts have frequently awarded attorneys' fees in common fund cases equal to one-third of the
16 gross recovery. *See, e.g.*, *Lafitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 (approving
17 one-third percent attorneys' fee); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (1st Dist.
18 2008) (noting that fee of one-third gross settlement value is customary); *see also, e.g.*, *In re*
19 *M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("In private
20 contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total
21 recovery.").

22 Further, California courts recognize that a percentage fee "may be calculated on the basis
23 of the total fund made available rather than the actual payment made to the class." *Lealao*, 82
24 Cal.App.4th at 51 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Waters v. Intern.*
25 *Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Commun's. Co.*,
26 129 F.3d 1026 (9th Cir. 1997)); *see also, e.g.*, *Bergman v. Thelen LLP*, 2016 U.S. Dist. LEXIS
27 170861, *21-22 (N.D. Cal. Dec. 9, 2016) ("...Ninth Circuit precedent requires courts to award
28 class counsel fees based on the total benefits being made available to class members rather than
the actual amount that is ultimately claimed.") (citing *Williams*).

1 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation
2 associated with this class action on a pure contingency basis. The factual and legal issues posed
3 in this case are highly disputed, and there also were risks whether a class would be certified,
4 leaving a large number of putative class members unlikely to receive any recovery. While
5 California courts recognize that the percentage method is superior to the lodestar method, they
6 also recognize that the lodestar provides a useful “cross-check” in determining reasonableness of
7 percentage fees sought. Here, the requested fee award of \$29,700 represents a negative multiplier
8 of the lodestar to date (\$86,075) which is well within the range warranted under California law.
9 (see Da Vega Decl., ¶ 13, 19-21; **Exhibit 4 - NALFA 2020 Litigation Hourly Rate Range**
10 **Growth; Exhibit 5 - Laffey Matrix; Exhibit 6 - National Law Journal Billing Survey 2017;**
11 See also Declaration of Matthew H. Fisher ISO Final Approval, ¶¶ 8-13; Declaration of Ted
12 Mechtenberg ISO Final Approval ¶¶ 8-13). “Multipliers of 1 to 4 are commonly found to be
13 appropriate in complex class action cases.” *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *21
14 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D.
15 Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United States District Court
16 Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most multipliers range
17 from 1.0 to 4.0). As a result, this Court should have no trouble concluding that an award is
18 supported by the lodestar cross-check is fair and reasonable and is justified under California law.
19 “[T]he lodestar method better accounts for the amount of work done, while the percentage of the
20 fund method more accurately reflects the results achieved.” *Rawlings v. Prudential-Bache*
21 *Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516. The Court should approve the requested
22 attorneys’ fees and costs, which are justified by the results achieved, the complexity of the issues,
23 the difficulty of the case, and the risk undertaken by Class Counsel. The requested attorneys’ fees
24 and costs will not be opposed by Defendant and are well within established guidelines.

24 **VII. CONCLUSION**

25 For the reasons set forth above and in the accompanying papers, Plaintiff respectfully
26 requests that the Court grant Plaintiff’s unopposed Motion for Final Approval of the Class
27 Settlement and sign the proposed Order and Judgment thereon. The Settlement is fair, adequate,
28 and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it

1 was achieved as the result of informed, extensive, and arm's length negotiations conducted by
2 counsel for respective Parties who are experienced in wage and hour class action litigation.

3
4 **DATED:** July 31, 2023

DA VEGA | FISHER | MECHTENBERG LLP

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6 

7 By: _____

8 Matthew S. Da Vega
9 Attorneys for Plaintiff and Class
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