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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

GLORIA NAZARENO, et al.,

Plaintiffs,

vs.

ANAND, INC, dba JACK IN THE BOX et al.,

Defendants.

) Case No. 34-2020-00278363

)

) CLASS ACTION

)

) **MEMORANDUM OF POINTS &**

) **AUTHORITIES IN SUPPORT OF**

) **PLAINTIFFS' MOTION FOR FINAL**

) **APPROVAL OF CLASS ACTION**

) **SETTLEMENT**

)

) Date: February 9, 2024

) Time: 9:00 a.m.

) Dept.: 22

) Judge: Hon. Lauri A. Damrell

)

) Complaint filed: May 8, 2020

) Trial Date: Not Set

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TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>SETTLEMENT TERMS</u>	3
III.	<u>LEGAL ARGUMENT</u>	5
A.	The Requested Attorneys' Fees are Fair, Reasonable, and Adequate	6
(i)	The Attorneys' Fees Request Should be Granted in its Entirety	6
(ii)	The Combined Lodestar is Fair and Reasonable	7
(iii)	The Attorney Fee Request is Reasonable Based on a Percentage-of-the-Fund Analysis	11
(iv)	Class Counsel's Litigation Costs and Expenses are Fair and Should be Reimbursed	12
B.	The Enhancement Payment to Plaintiff is Reasonable	13
C.	The Award of Settlement Administration Costs is Reasonable	14
IV.	<u>THE PROPOSED SETTLEMENT MERITS</u> <u>FINAL APPROVAL</u>	15
A.	The Standards for Approval of Class Action Settlements	15
B.	The Proposed Settlement Warrants a Presumption of Fairness	17
C.	The Settlement is the Result of Arm's-Length Negotiations	17
D.	Substantial Investigation has been Conducted	18
E.	Class Counsel is Experienced in Class Litigation	18
F.	The Reaction of the Settlement Class	19
G.	A Comparison Between the Relief Provided by the Settlement and the Potential Result of Proceeding Through Trial Underscores the Value of the Settlement	20
V.	<u>CONCLUSION</u>	22

TABLE OF AUTHORITIES

Cases

<i>In re Activision Securities Litigation</i> , 723 F. Supp. 1373 (N.D. Cal. 1989)	11
<i>In re American Bank Note Holographics, Inc., Securities Litig.</i> , 127 F. Supp. 2d 418 (S.D.N.Y. 2001)	5
<i>In re Apollo Group, Inc. Sec. Litig.</i> , No. CV 04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008) (overturned only on appeal at <i>In re Apollo Group, Inc. Sec. Litig.</i> , No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010).)	21
<i>Blum v. Stenson</i> 465 U.S. 886 (1984)	8
<i>In re Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	10
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	11
<i>Children's Hospital & Medical Center v. Bonte</i> , 97 Cal.App.4th 740 (2002)	8
<i>Clark v. American Residential Services, Inc.</i> 175 Cal.App.4th 785 (2009)	13
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	15
<i>In re Consumer Privacy Cases</i> 175 Cal.App.4th 545 (2009)	7
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	16, 17
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D.Cal.1980) aff'd 661 F.2d 939 (9th Cir. 1981)	17
<i>Hamilton v. Oakland School Dist.</i> , 219 Cal. 322 (1933)	16

1	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	15
2	<i>Hensely v. Eckerhart</i> ,	
3	461 U.S. 424 - 434 (1983)	8
4	<i>Horsford v. Bd. of Trustees of California State Univ.</i> ,	
5	132 Cal.App 4th 359 (2005)	8
6	<i>In re JDS Uniphase Corp. Sec. Litig.</i> ,	
7	No. C-02-1486CW, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007)	21
8	<i>Ketchum v. Moses</i> ,	
9	24 Cal.4th 1122 (2001)	8-9
10	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
11	168 Cal.App.4th 116 (2008)	15
12	<i>Laffitte v. Robert Half International, Inc.</i> ,	
13	1 Cal.5th 480, 506 (2016)	6, 11-12
14	<i>Lane v. Facebook, Inc.</i> ,	
15	696 F.3d 811, 819 (9 th Cir. 2012)	15-16
16	<i>Lealao v. Beneficial California, Inc.</i> ,	
17	82 Cal.App.4th 19 (2000)	7, 8-9, 10
18	<i>Margolin v. Regional Planning Com.</i> ,	
19	134 Cal. App. 3d 999 (1982)	8
20	<i>Officers for Justice v. Civil Service Com'n, of City and County of San Francisco</i> , 688, F.2d 615, 625 (9th Cir. 1982)	15, 16, 21
21	<i>In re Pacific Enterprises Securities Litig.</i> ,	
22	47 F.3d 373 (9th Cir. 1995)	15
23	<i>PLCM Group, Inc. v. Drexler</i> ,	
24	22 Cal. 4th 1084 (2000)	8
25	<i>Rich Vision Ctrs., Inc. v. Board of Medical Examiners</i> ,	
26	144 Cal.App.3d 110 (1983)	16
27	<i>Ridgeway v. Wal-Mart Stores, Inc.</i>	
28	268 F.Supp.3d 975, 993 (N.D. Cal. 2017)	10

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<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	17
<i>Serrano v. Priest</i> (1977) 20 Cal. 3d 25	7, 8
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621 (1982)	7-8
<i>Stambaugh v. Superior Court</i> , 62 Cal.App.3d 231 (1976)	16
<i>Torrisi v. Lazar</i> , 8 F.3d 1370 (9th Cir. 1993)	15-16
<i>Util. Reform Project v. Bonneville Power Admin.</i> , 869 F.2d 437 (1989)	15
<i>In re Vitamin Cases</i> , 110 Cal.App.4th 1041 (2003)	7
<i>Webb v. Board of Education</i> , 471 U.S. 234 (1985)	7-8
<i>Williams v. Vukovich</i> , 720 F.2d 909 (6th Cir. 1983)	17

Statutes

California Labor Code sec. 2698	1
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Other Authorities

Conte & Newberg, Newberg on Class Actions, §11.41 (4th Ed.)	15
Conte & Newberg, Newberg on Class Actions, §11.47 (4th Ed.)	6
Rule 3.769	1

MEMORANDUM OF POINTS & AUTHORITIES

In accordance with California Rules of Court (CRC), Rule 3.769, Plaintiffs, Gloria Nazareno and Eloise Iyar, individually and on behalf of all other similarly situated individuals (hereinafter collectively “Plaintiffs”) respectfully present their Memorandum of Points and Authorities in Support of final approval of this class action against Defendants ANAND, INC. dba JACK IN THE BOX. (hereinafter “Defendant”). Plaintiffs and Defendant shall hereinafter collectively be referred to as the “Parties”.

I. INTRODUCTION

The Court issued an Order Granting Preliminary Approval of Class Action Settlement in this matter on October 27, 2023. By way of the Order the Court found that the commonality, predominance, and typicality requirements were satisfied and certified the class for settlement purposes. (See Order on Plaintiffs Motion for Preliminary Approval of Class Action Settlement (“Order”), ¶ 1, attached as **Exhibit 1** to Plaintiff’s Request for Judicial Notice (“RFJN”) filed concurrently herewith). The Court further found that the settlement terms, including the settlement amount of \$260,000, appeared to be fair, adequate, and reasonable to the Class. (*Id.* at ¶¶ 2 and 8).

By way of the Order the release language was also modified as follows: (a) “Class Members’ Released Claims” are defined as “all claims contained in the Complaint and any additional wage and hour claims that reasonably could have been brought based on the factual allegations contained in the operative Complaint, through the Class Period.” (Settlement Agreement, ¶ 1.32.); (b) “Released PAGA Claims” are defined as “any and all claims that were brought under the Private Attorneys General Act, Labor Code § 2698 et seq., in the Complaint or any wage and hour claim that reasonably could have been brought based on the factual

1 allegations contained in the Complaint and/or PAGA Notice during the PAGA Claim Period.”
2 (Settlement Agreement, ¶ 1.34.); (c) The Settlement Agreement shall be amended to allow for a
3 180-day check cashing period; and (d) The Settlement Agreement shall be amended to clarify
4 that Aggrieved Employees have 60 days to submit a Claim form, object, dispute their
5 workweeks, or opt out of Settlement. (*Id.* at ¶ 3).

6
7 With said amendments to the Settlement Agreement the Court conditionally certified the
8 following Class for settlement purposes only:

9 All individuals in California who have, or continue to, perform work for
10 Defendant, Anand, Inc., from April 6, 2016, up to the date a signed order
11 preliminarily approving the settlement is filed.

12 (hereinafter “Class Members”; *Id.* at ¶ 5).

13 The payment to be distributed to Class Members as settlement (“Net Settlement
14 Amount”) will be the net amount remaining from the Settlement Amount of \$260,000, after the
15 deduction of (i) an enhancement payments payable to Gloria Nazareno and Eloise Iyar in
16 recognition for them serving as Class Representatives, in an amount not to exceed \$10,000
17 (\$5,000 each) (see Order, ¶ 19, Exhibit 1 to RFJN); (ii) attorneys’ fees totaling \$86,666.67 (33
18 1/3% of Settlement Amount) and costs incurred litigating the Action not to exceed \$23,000 (*Id.*
19 at ¶ 20) – the actual costs incurred being \$19,611.96; (iii) reasonable costs of administering the
20 settlement, including payment of the Settlement Amount to class members, in an amount of
21 \$17,650 (*Id.* at ¶ 17); and the amount of the PAGA payment paid to the LWDA totaling \$10,000.
22 (*Id.* at ¶ 21). Aggrieved Employees will receive 25% of the PAGA payment totaling \$2,500
23 leaving a Net Settlement Amount is \$116,071.37 available to Class Members who submit a valid
24 Claim Form. (See Declaration of Matthew R. Schoech (“Schoech Decl.”), ¶ 19). The LWDA
25 was provided with a copy of this motion and all supporting papers. (See Schoech Decl., ¶¶ 27-
26
27
28

28).

On November 16, 2023, ILYM Group, Inc., the Claims Administrator appointed by the Court, served the approved Class Notice and Claim Forms in both English and Spanish on the 2,217 Class Members. (Declaration of Christina Fowler, ¶¶ 3-7 (hereinafter “Fowler Decl.”)). Reminder cards were mailed on December 21, 2023. (*Id.* at ¶ 8).

As of January 16, 2024, the Claims Administrator received 122 valid Claim Forms, no objections to the settlement, no opt outs and no disputes. (*Id.* at ¶¶ 12-15). Because Class Members consisting of only 7.57% of the settlement amount, those Class Members who submitted valid Claim Forms will receive a distribution of 40% of the Net Settlement Amount (\$260,000, minus disbursements discussed *infra*) commensurate with the percentage of workweeks worked during the Class Period, as reflected in Defendant’s records. (*Id.* at ¶ 18; See Order, ¶ 18, Exhibit 1 to RFJN).

The proposed settlement and resulting Agreement was achieved after extensive, arms-length negotiations through mediator Judge Richard Gilbert (ret.). It falls well within the range of reasonableness for approval under California law and is precisely the type of case recognized as ideally suited for class adjudication in that it involves a large number of individually small claims. Those Class Members that submitted valid Claim Forms, who would likely never otherwise have their claims addressed, are being provided with real monetary compensation without the need for filing individual claims. As discussed more fully below, the proposed settlement warrants final approval.

II. SETTLEMENT TERMS

Pursuant to the Parties’ Joint Stipulation Regarding Class Action Settlement and the Court’s Order Preliminarily Approving Class Action Settlement, the Parties have agreed to the

following class definition:

All individuals in California who have, or continue to, perform work for Defendant, Anand, Inc., from April 6, 2016, up to the date a signed order preliminarily approving the settlement is filed.

(See, Order, ¶ 5, Exhibit 1 to RFJN).

Individuals entitled to recover under the agreement must submit a timely and valid Claim Form to become a Qualified Claimant. (*Id.* at ¶ 13). Defendant will pay a Maximum Gross Settlement Amount of \$260,000 to resolve and release the claims alleged in the Complaint. (*Id.* at ¶ 8). Any of the Net Settlement Funds above the 40% threshold for which no claims are made and no checks issued may revert to Defendant. (*Id.* at ¶ 18).

Class Representative Enhancement Payment of up to \$5,000 each (\$10,000 total) will be paid as a to Plaintiffs Gloria Nazareno and Eloise Iyar. (*Id.* at ¶ 19).

The Claims Administrator has provided a cost estimate of \$17,650 to administer the class settlement that will be paid from the Gross Settlement Amount (*Id.* at ¶17).

Per the terms of the settlement, up to Thirty-Three and 1/3 Percent (33 1/3%) of the Gross Settlement Amount, or up to \$86,666.67 will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. (*Id.* at ¶ 20). Additionally, the parties agree that Plaintiff also will be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$23,000. (*Id.*).

From the Maximum Gross Settlement Amount, \$10,000 is allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis. (*Id.* at ¶ 21).

1 Ten Percent (10%) of each Qualified Claimants' Claim Amount shall be allocated for
2 payment of disputed wages and shall be subject to required payroll taxes. Qualified Claimants
3 shall receive an IRS Form W-2 for reporting of this portion of their Claim Amount. (*Id.* at ¶ 15).
4 The Parties further agree that Ninety percent (90%) of each Qualified Claimants' Claim Amount
5 shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted
6 for any payroll taxes. This portion of the Claim Amount consists of other income, not wages, for
7 which the Qualified Claimants shall receive an IRS Form 1099-MISC. (*Id.*).

9 Any uncashed settlement checks will be tendered to the State Controller's Unclaimed
10 Property Fund in the name of the Qualified Claimant and/or Aggrieved Employee. Any funds
11 above the 40% threshold for which no claims are made and no checks are issued may revert to
12 Defendant. (*Id.* at 18).

14 **III. LEGAL ARGUMENT**

15 The Gross Settlement Amount of \$260,000 represents a fair, reasonable, and adequate
16 resolution of this case. Moreover, considering all of the facts in this case as set forth in detail in
17 the Motion for Preliminary Approval of Class Action Settlement, the Settlement Amount
18 represents a considerable Net Settlement Amount for all Class Members who submitted valid
19 Claim Forms.

21 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
22 basis [to warrant approval], particularly if recommended by “experienced and competent” class
23 counsel. *In re American Bank Note Holographics, Inc., Securities Litig.*, 127 F. Supp. 2d 418,
24 429-30 (S.D.N.Y. 2001). In light of the considerations set forth herein and in the Motion for
25 Preliminary Approval of Class Action Settlement, Class Counsel believes that the proposed
26 Settlement as a whole is fair, reasonable, and in the best interest of the Class Members.
27
28

(Schoech Decl. ¶ 20). Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, have experience with this type of litigation, and significant discovery and investigation has been completed. Conte & Newberg, *Newberg on Class Actions*, §11.47 (4th Ed.) Accordingly, the Court should grant final approval of the proposed Settlement.

A. The Requested Attorneys' Fees are Fair, Reasonable, and Adequate

(i) The Attorneys' Fees Request Should be Granted in its Entirety.

The request for attorney's fees is fair, reasonable, and adequate under the circumstances. Only after a settlement was reached and relief negotiated for the Class, did the parties discuss attorneys' fees. (Schoech Decl., ¶ 8). Further, given that any fee award must be approved by the Court, the Agreement contemplates an award of reasonable attorneys' fees and costs as awarded by the Court, but the parties did not negotiate a specific fee payment. Rather, Plaintiff agreed not to seek more than 33 1/3% of the Settlement Amount for attorneys' fees and costs not to exceed \$23,000. (See Order, ¶ 20, Exhibit 1 to RFJN). Proposed class members were placed on notice that Class Counsel stood to be paid up to 33 1/3% of the total Settlement Amount and reimbursed costs not to exceed \$23,000, and none one of the 2,217 class members objected or opted out of the settlement. (See Schoech Decl., ¶ 21; Fowler Decl., ¶¶ 7-8, 12-15).

In *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 506 (2016), our Supreme Court ruled that trial courts "retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." Thus, "when an attorney fee is awarded out of a common fund preserved or recovered by means of litigation . . . the award is not per se unreasonable merely because it is calculated as a percentage of the common fund." *Id.*, at 486.

1 In this case the total value of the fund is \$260,000. (See Fowler Decl., ¶ 16).
2 Accordingly, this Court has discretion to utilize either a percentage-of-the-fund or a lodestar
3 method to “ensure that the fee awarded is within the range of fees freely negotiated in the legal
4 marketplace of comparable litigation.” *In re Vitamin Cases*, 110 Cal.App.4th 1041, 1060 (2003)
5 (quoting *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 49–50 (2000)). As the Court
6 explained in *In re Consumer Privacy Cases* 175 Cal.App.4th 545 (2009): Regardless of whether
7 attorneys’ fees are determined using the lodestar method or awarded based on a “percentage-of-
8 the-benefit” analysis under the common fund doctrine, the ultimate goal is the award of a
9 reasonable fee to compensate counsel for their efforts, irrespective of the method of calculation.
10 It is not an abuse of discretion to choose one method over another as long as the method chosen
11 is applied consistently using percentage figures that accurately reflect the marketplace. *Id.* at
12 557-58.
13

14
15 Here, Class Counsel is asking for an award of \$86,666.67 in attorney fees (determined by
16 multiplying the gross settlement of \$260,000 by the 33 1/3% allocated in the Settlement
17 Agreement for fees) and their actual costs which total \$19,611.96. By any standard, the attorney
18 fees sought by Class Counsel are reasonable given the length and complexity of this litigation
19 and should be granted. (Schoech Decl., ¶ 15.)
20

21 (ii) The Combined Lodestar is Fair and Reasonable

22 The “starting point” of the analysis – lodestar amount – is calculated by multiplying the
23 number of hours reasonably expended times the reasonable hourly rate of compensation. *Serrano*
24 *v. Priest* (1977) 20 Cal. 3d 25, 48 (“Serrano III”). The lodestar properly includes time expended
25 in pre-litigation activity, (interviewing the client, investigating the facts and law, developing
26 litigation strategy, and drafting the pleadings), during the litigation, and in applying for a fee
27
28

award. *See, e.g., Serrano v. Unruh*, 32 Cal. 3d 621, 635 -637 (1982) (“Serrano IV”); *Webb v. Board of Education*, 471 U.S. 234 (1985).

The inquiry whether the hours expended were “reasonable” is made in view of the ultimate result of the litigation, and not a hindsight examination of each discrete step along the way. So long as the hours expended were reasonably incurred in pursuit of that ultimate result and are the type of work which would be billed to a paying client, they are properly included in the lodestar. *Hensely v. Eckerhart*, 461 U.S. 424, 431 - 434 (1983).

A reasonable hourly rate is determined by reference to the prevailing market rate, in the relevant legal market, for attorneys of comparable experience, expertise, and skill in comparably complex work. *Children’s Hospital & Medical Center v. Bonte*, 97 Cal.App.4th 740, 783 (2002); *Blum v. Stenson* 465 U.S. 886, 895 fn. 11 (1984) (federal law accord); *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084 (2000); *see also, Ketchum v. Moses*, 24 Cal.4th 1122, 1139 (2001) (reputation of counsel to be considered in determining reasonable hourly rate); *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1003 (1982) (rates in comparable litigation are relevant in determining reasonableness).

Once the lodestar is determined, the Court “may increase or decrease that amount by applying a positive or negative ‘multiplier’ to take in to account a variety of other factors, including the quality of the representation, the novelty or complexity of the issues, the results obtained, and the contingent risk presented.” *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19, 26 (2000); *see also Ketchum*, 24 Cal.4th at 1132; *Serrano III*, 20 Cal. 3d at 48-49. The purely contingent nature of class counsel’s fee, very high contingency risk confronted, delay in compensation, and preclusion of other employment are all properly considered factors. *Id.*; *Horsford v. Bd. of Trustees of California State Univ.*, 132 Cal.App. 4th 359, 399-400 (2005);

Ketchum, 24 Cal 4th at 1136; *Lealao*, 82 Cal.App.4th at 42-50.

Collectively, Class Counsel have expended 486.92 attorney hours prosecuting this class action, and reasonably expect to spend an additional 5-10 hours to conclude settlement approval and settlement administration (this 5-10 hour estimate has not been included in the lodestar). Class Counsel's combined lodestar, based upon the hours expended and reasonable billing rates, is \$308,908. (Schoech Decl., at ¶¶ 9-11; Van Dyke Decl., at ¶¶ 7-10). A breakdown of the attorneys, the hourly rates, and the number of hours expended by each attorney is provided below and in the supporting attorney declarations:

Lawyer	Title	CA Bar Admission	Rate	Hours	Lodestar
Matthew Schoech	Managing Partner	2004	\$ 600.00	234.4	\$ 140,640.00
Glen Van Dyke	Managing Partner	1996	\$ 650.00	66.7	\$ 43,355.00
			TOTALS	301.1	\$ 308,908.00

The extent of the proceedings in this action, as discussed above and in the accompanying declarations of counsel, demonstrate that the number of hours expended was reasonable and necessary to obtain this settlement. As set forth more fully in the accompanying Declarations of Matthew Schoech and Glen Van Dyke, for the past three and a half years, Class Counsel thoroughly investigated and researched the viability of this case prior to filing the complaint, initial client intakes, client communications, legally research and analysis, drafting and filing pleadings, research and retention of expert witnesses, strategy meetings, attend meetings and negotiations with defense counsel, communications with counsel, propound written discovery, analysis of significant amounts of data pertaining to the allegations in the Complaint, damage calculations, attend case management conferences, review and analyze settlement agreement, and preparation of motions for preliminary and final approval of class settlement. (Schoech

Decl., ¶¶ 5-6; Van Dyke Decl., ¶ 5).

The billing rates for each attorney, the owner of their respective firms, is reasonable in the relevant market for each of these attorneys given their standing, particularly for comparably complex class action work by comparably qualified attorneys. (Schoech Decl., ¶ 11; Van Dyke Decl., ¶ 9). For instance, in *Ridgeway v. Wal-Mart Stores, Inc.* 268 F.Supp.3d 975, 993 (N.D. Cal. 2017), partner hourly rates of \$850 per hour (and a multiplier of 2.0) was approved in a class action.

Based on the quality of the result achieved here, the substantial contingency litigation risk presented by achieving class certification and proving the existence of a defect, class counsel's preclusion of other work, and the delay of compensation, Class Counsel's requested fee award of \$86,666.67 is reasonable and fair.

Trial courts have "wide latitude" in assessing the value of attorneys' fees, and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118. California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. See *Lealao* at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation.

1 *Id.* at 48. The percentage-of-the-benefit approach is preferred in such cases because “it better
2 approximates the workings of the marketplace than the lodestar approach.” *Id.* at 49.

3 (iii) The Attorney Fee Request is Reasonable Based on a Percentage-of-the-Fund
4 Analysis

5 A percentage-of-the-fund analysis also justifies the common fund fee award requested
6 here. *Laffitte*, supra, 1 Cal. 5th at 506. As one California court has specifically recognized,
7 percentage-of-the-fund awards generally average around one-third (33.333%) of the total
8 recovery. *Chavez v. Netflix, Inc.*, 162 Cal.App 4th 43, 66, fn. 11 (2008) (“Empirical studies show
9 that, regardless of whether the percentage method or the lodestar method is used, fee awards in
10 class actions average around one-third of the recovery”); *see also In re Activision Securities*
11 *Litigation*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (noting the benchmark in federal common
12 fund cases is 25%). Additionally, one-third (33 1/3 %) is consistent with contingency fee rates in
13 the Northern California legal market, generally, where rates of 30-40% of gross recovery are
14 typical.
15
16

17 Here, the requested attorney fees are \$66,666.67 which is 33 1/3% of the total amount of
18 Settlement Payments of \$260,000. This 33 1/3% figure is entirely consistent with the percentage
19 that contingency attorneys customarily charge for their services in Northern California and the
20 federal common fund “benchmark” range, *supra*.
21

22 Furthermore, in deciding whether to approve a percentage fee award such as this, the
23 court may consider the risks and potential value of the litigation; whether counsel took the case
24 on contingency; the novelty and difficulty together with the skill shown by counsel; and the
25 number of hours worked and the asserted hourly rates. *Laffitte*, supra, 1 Cal. 5th at 504. As set
26 forth in herein, this settlement was reached after both sides considered the risks and value of the
27 litigation. While Plaintiff maintain their claims are viable and, if proven, would be in excess of
28

1 the \$260,000 settlement after factoring in interest, penalties, and attorneys' fees, there is no
2 guarantee the class would recover said amounts considering the legal defenses. (Schoech Decl.,
3 ¶¶ 16-17). This Settlement represents a compromise based on the facts and circumstances
4 attendant to this Action. (*Id.*). There is undeniably significant litigation risk avoided by the
5 proposed Settlement, whether at class certification proceedings, at trial, or in appellate
6 proceedings. (*Id.*).
7

8 Additionally, seasoned class action and attorneys prosecuted this litigation solely on a
9 contingent-fee basis and have been at risk that they would not receive any compensation for
10 prosecuting claims against the Defendant. (Schoech Decl., ¶ 4; Van Dyke Decl., ¶ 4).
11

12 While Class Counsel, devoted its time and resources to this matter, it necessarily had to
13 take time and resources away from some other pending matters. (*Id.*) In fact, as set forth herein,
14 Class Counsel litigated this case over the course of a year and a half, expending a total of 301.1
15 hours. Furthermore, the hourly rates for these seasoned attorneys are fair and reasonable given
16 their respective backgrounds and experience. (See discussion, *supra.*). In sum, the requested fee
17 of \$86,666.67 which represents 33 1/3% of the Total Settlement Payments, is fair, reasonable
18 under a percentage-of-the-fund method and by a traditional lodestar analysis.
19

20 (iv) Class Counsel's Litigation Costs and Expenses are Fair and Should be
21 Reimbursed
22

23 The Settlement Agreement provides for a reimbursement of attorney fees and costs and
24 caps reimbursable litigation costs at \$23,500. To date, Class Counsel's litigation costs are
25 \$19,611.96 (Schoech Decl., ¶¶ 12-13). These costs are largely comprised of filing fees, service
26 costs, mediation costs, postage and copy costs, expert fees. *Id.* As noted, there are no objectors
27 to this Settlement, including the provision for payment of litigation expenses. Moreover, these
28

litigation expenses were reasonably necessary to prosecute and settle this action. Accordingly, the request for costs should be granted.

B. The Enhancement Payments to Plaintiffs are Reasonable

Incentive awards are routinely approved to compensate class representatives for their time, effort, and risks incurred on behalf of the class. See e.g., *Clark v. American Residential Services, Inc.* (2009) 175 Cal.App.4th 785, 804.

Similarly, the Court's preliminary approval order implicitly designated Gloria Nazareno and Eloisa Iyar as the Class Representatives. In that capacity, Plaintiffs seeks payment of an incentive award for their committed service and substantial time and effort serving as class representatives, in the amount of \$5,000 each, a total of \$10,000.00. Defendant has agreed not to oppose the request. An award of this amount is reasonable given the hours that Plaintiffs have spent litigating this case and assisting Class Counsel in resolving this case with Defendant. (Schoech Decl., ¶ 22; Declaration of Eloise Iyar in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Exhibit 2 to RFJN (hereinafter "Iyar Decl."); and Declaration of Gloria Nazareno in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Exhibit 3 to RJFN (hereinafter "Nazareno Decl.")).

As set forth more fully in the Iyar Decl. and Nazareno Decl. which were filed in support of Plaintiffs Motion for Preliminary Approval of Class Action Settlement, Gloria Nazareno spent approximately 25-30 hours on tasks related to the litigation (Nazareno Decl., ¶ 13) while Eloise Iyar spent approximately 20-25 hours (Iyar Decl., ¶ 9).

Plaintiffs knew the risks of litigation, including being potentially liable for Defendants' fees and costs if the lawsuit was unsuccessful, that the lawsuit could continue for several years, and that it would be public knowledge that Plaintiffs were involved in a class action lawsuit.

1 Plaintiffs also understood that my own claim for damages would be delayed because they were
2 proceeding in an action for all other past and present employees in my position. Even with this
3 knowledge, Plaintiffs were willing to serve as class representatives because they believed
4 Defendant owed them and other employees for missed meal and rest breaks and unpaid wages.
5 (Iyar Decl., ¶ 4; Nazareno Decl., ¶ 7).

6
7 Apart from this reasonable enhancement payment to Plaintiffs, their personal recovery in
8 this action and settlement will be determined in the same way as another Class Member, so their
9 interests are in no way placed ahead of the other class members'. Further, as with attorneys'
10 fees, putative class members were fully aware of the potential for this disbursement deducted
11 from the Settlement Amount and there were no objections to such. (See Fowler Decl., 14 and
12 Schoech Decl., ¶¶ 22-23).

14 **C. The Award of Settlement Administration Costs is Reasonable**

15 Plaintiffs submit that payment in the amount not to exceed \$17,650 is reasonable. The
16 class in this case consisted of 2,217 individuals. The Fowler Declaration describes the time and
17 effort involved in administering the class settlement to date. The \$17,650 payment out of the
18 settlement funds represents approximately 6.8% of the total Settlement Amount, and
19 approximately than \$7.96 per class member. The Claims Administrator work in connection with
20 this matter will continue with the calculation of the settlement award payments, issuance and
21 mailing of the settlement award checks, the necessary tax filing and reporting on such payments,
22 and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to
23 perform. (Fowler Decl., ¶ 21). Based on the fees and costs associated with the administration of
24 the class action, the additional fees and costs for calculating tax payments, distribution, and
25 responding to inquiries, the amount of the claims administration fees are fair and reasonable.
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1 **IV. THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL**

2 **A. The Standards for Approval of Class Action Settlements**

3 As a matter of public policy, settlement is a strongly favored method of resolving
4 disputes. (*See Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (1989).)

5 There is also a “strong judicial policy that favors settlement,” particularly “where complex class
6 action litigation is concerned.” (*Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 2176 (9th Cir.
7 1992); Conte & Newberg, *Newberg on Class Actions* (4th ed. 2002) § 11:41 (“Newberg”); *In re*
8 *Pacific Enterprises Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). The court has broad
9 discretion in reviewing a proposed class settlement for approval. *Kullar v. Foot Locker Retail,*
10 *Inc.*, 168 Cal.App.4th 116, 127-128 (2008). The Court must consider whether the settlement as a
11 whole is reasonable; it stands or falls in its entirety. *See Hanlon v. Chrysler Corp.*, 150 F.3d
12 1011, 1027 (9th Cir. 1998); *Class Plaintiffs*, *supra*, 955 F.2d at 1276; *Officers for Justice v. Civil*
13 *Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).

14 “The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on
15 the merits.” *Officers for Justice*, *supra*, 688 F.2d at 625. Yet, the Court should explore “all the
16 relevant factors” bearing on approval of a class action settlement. *See Hanlon*, *supra*, 150 F.3d at
17 1026.) In determining the fairness of a proposed settlement, the court is guided by factors which
18 were summarized by the Ninth Circuit in *Hanlon*, 150 F.3d at 1026:

19 Assessing a settlement proposal requires the district court to balance a number of factors:
20 the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further
21 litigation; the risk of maintaining class action status throughout the trial; the amount offered in
22 settlement; the extend of discovery completed and the stage of the proceedings; the experience
23 and views of counsel; the presence of a governmental participant; and the reaction of the class
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1 members to the proposed settlement. *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th. Cir. 2012);
2 *Torrissi v. Lazar*, 8 F.3d 1370, 1375 (9th Cir. 1993). “The list is not exhaustive and should be
3 tailored to each case. Due regard should be given to what is otherwise a private consensual
4 agreement between the parties.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
5 “The relative degree of importance to be attached to any particular factor will depend upon and
6 be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique
7 facts and circumstances presented by each individual case.” *Officers for Justice, supra*, 688 F.2d
8 at 625. Due regard should be given to what is otherwise a private consensual agreement between
9 the parties. (*Id.*) The inquiry “must be limited to the extent necessary to reach a reasoned
10 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
11 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate
12 to all concerned.” (*Id.*) “Ultimately, the [trial] court’s determination is nothing more than ‘an
13 amalgam of delicate balancing, gross approximations and rough justice.’” (*Id.* (citation
14 omitted.)). All of these factors support final approval.

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18 Moreover, there is a strong and uniform policy in the State of California favoring
19 compromises leading to the expeditious resolution of litigation. *Hamilton v. Oakland School*
20 *Dist.*, 219 Cal. 322, 329 (1933) (“it is the policy of the law to discourage litigation and to favor
21 compromises”); *Rich Vision Ctrs., Inc. v. Board of Medical Examiners*, 144 Cal.App.3d 110, 115
22 (1983) (there exists a “general policy of favoring compromises of contested rights”); *Stambaugh*
23 *v. Superior Court*, 62 Cal.App.3d 231, 235 (1976). This judicial policy is particularly
24 compelling in cases such as this involving a complex representative action. *Officers for Justice,*
25 *supra*, 688 F.2d at 625 (“voluntary conciliation and settlement are the preferred means of dispute
26 resolution . . . especially . . . in complex class action litigation.”)
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B. The Proposed Settlement Warrants a Presumption of Fairness

A class settlement should be approved if the settlement is found to be fair, adequate, and reasonable. *Dunk*, 48 Cal.App.4th 1794, 1801. Generally, a presumption of fairness exists where (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.* at 1802.) The proposed settlement here satisfies the above requirements.

There is an initial presumption that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *See Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir. 1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs"); see also 4 Newberg on Class Actions §11.41; Manual for Complex Litigation (Third) §30.42.) Indeed, the non-collusive nature of the negotiations and the stature of counsel have often been recognized as important factors in the final approval of class action settlements. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.Cal.1980) *aff'd* 661 F.2d 939 (9th Cir. 1981) ("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight").

C. The Settlement is the Result of Arm's-Length Negotiations

The first consideration in the approval analysis is whether the settlement is the result of serious, informed, and non-collusive negotiations. Courts place "a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]" *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). "Where a settlement is the product of arms-length negotiations conducted by capable and experienced counsel, the Court begins its analysis with a presumption that the settlement is fair and reasonable." *See e.g., Ellis*, 87 F.R.D. at 18 (affording

1 “considerable” weight to settlements resulting from arm’s length, good faith negotiations
2 undertaken by experienced counsel.) The proposed settlement here is the result of extensive
3 analysis of the claims, two full days of mediation with an experienced mediator, which resulted
4 in a total settlement amount of 25.7% of the value of the maximum total damages– a significant
5 recovery in light of the risk, time, burden, and expense, of continuing this litigation and the
6 potential for decertification or ultimate dismissal of claims. (Schoech Decl., ¶ 25).
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8 **D. Substantial Investigation has Been Conducted**

9 Substantial documentation was exchanged and analyzed between the parties before
10 reaching a settlement that counsel for all considered in reaching the instant settlement. Indeed,
11 because of the extensive documentation obtained, Plaintiffs’ counsel were fully informed of the
12 extent of the claims and the strengths and weaknesses of the allegations and thus, could be
13 confident that they were in the best possible position to evaluate the risks of continued litigation
14 and negotiate a resolution on behalf of the Class. As described above and in detail in Plaintiffs’
15 Motion for Preliminary Approval of Class Action Settlement and supporting papers, the parties
16 engaged in extensive fact exchange, expert analysis, exchange of legal theories, case law, and
17 damages calculations.
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20 The parties further negotiated over the terms of the settlement agreement, including
21 exchanging information about the structure of the agreement as well as a range of settlement
22 amounts that would be acceptable to both sides. Both parties had a full and fair opportunity to
23 investigate each of these matters and ensure that settlement was an appropriate and fair
24 resolution.
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26 **E. Class Counsel is Experienced in Class Litigation**

27 Also weighing in favor of preliminary approval is Class Counsels’ experience and
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1 success in other consumer class actions. *See In re Mego Finan.al Corp. Secur. Lit. v. Nadar*, 213
2 *F.3d* 454, 459 (9th Cir. 2000) (counsel’s experience and competence considered by the Court in
3 approving settlement). Plaintiffs’ Counsel have worked on large, complex cases for decades,
4 with a particular focus on consumer protection claims. Combined, Class Counsel have nearly
5 48years of experience litigating complex matters throughout California, having litigated, and
6 resolved over hundreds complex civil actions, including wage an hour cases and class actions.
7 (Schoech Decl., ¶3; Van Dyke Decl. ¶ 3). Drawing from this experience, Class Counsel
8 executed the Settlement Agreement and believe that it constitutes a fair and adequate outcome.
9 (Schoech Decl., ¶¶ 7, 16, and 20).

11 **F. The Reaction of the Settlement Class**

12 The final day for Class Members to submit a claim form, exclude themselves from the
13 settlement, object to the settlement, or dispute the number of workweeks was January 16, 2024.
14 (See Fowler Decl., ¶¶ 12-14). 122 valid claim forms were received and no requests for
15 exclusion, objections, or disputes were received. (*Id.* at ¶¶ 12-15). That means that the 122
16 Class Members who submitted valid Claim Forms stand to receive a sizeable award from the
17 settlement. *Id.* at ¶ 16. Those Class Members that submitted valid Claims Forms will receive a
18 pro rata distribution of 40% of the Net Settlement Amount (\$116,071.37) totaling \$46,428.55, a
19 significant recovery. (*Id.* at ¶ 18). Utilizing the Gross Settlement Amount, the highest Individual
20 Settlement Share to a Settlement Class Member is currently estimated to be approximately
21 \$1,274.56, the average Individual Settlement Share is currently estimated to be approximately
22 \$370.48 and, the lowest Individual Settlement Share is currently estimated to be approximately
23 \$1.85. (*Id.* at ¶ 18). For the PAGA portion of the settlement, 25% of the PAGA Payment (i.e.,
24 \$2,500) will be allocated to Aggrieved Employees regardless of whether they opt out of the
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1 Settlement. The Individual PAGA Payments are allocated on a pro rata basis using the number of
2 Qualifying Workweeks during the PAGA Period. There are 1,550 Aggrieved Employees who
3 worked 147,271 Qualifying Workweeks during the PAGA Period. The highest Individual PAGA
4 Payment to an Aggrieved Employee is currently estimated to be approximately \$6.71, the
5 average Individual PAGA Payment is currently estimated to be approximately \$1.61, and the
6 lowest Individual PAGA Payment is currently estimated to be approximately \$0.02. (*Id.* at ¶ 20).

7
8 Class Counsel is not aware of any negative reaction from any Class Members or
9 Aggrieved Employees. (Schoech Decl., ¶ 26).

10 **G. A Comparison Between the Relief Provided by the Settlement and the Potential**
11 **Result of Proceeding Through Trial Underscores the Value of the Settlement**

12 Plaintiffs and Class Counsel closely considered the potential recovery which might be
13 achieved for the Class if this matter proceeded through trial. (Schoech Decl., ¶¶ 16.) That
14 evaluation confirmed that the proposed Settlement is in the best interests of the Class.

15 Plaintiffs' expert's evaluation determined that Class Members maximum potential damages,
16 including interest, at trial would be \$1,013,540.56. (*Id.* at ¶ 25). In addition, the costs would
17 increase substantially to litigate the matter through trial and appeal. As it stands now, the
18 litigation costs amount to \$19,611.96, or approximately \$8.85 per class member – significantly
19 less than even the filing fee for an individual plaintiff. Based on this comparison and given the
20 costs and risks of further litigation (including the risks that the Class will not be certified), the
21 settlement, providing for monetary relief to the entire class of \$260,000, is an excellent result.

22
23 Nonetheless, despite the potential recovery and the confidence that Plaintiffs have in the
24 substantive underpinning of their case, continuing to litigate this dispute is not without risks. For
25 example, if litigation continued, this matter would still need to overcome the hurdle of obtaining
26 class certification as well as any potential motion for summary judgment. These hurdles were
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1 alone significant enough to warrant a discount at settlement. If Defendant defeated certification
2 there would be no class-wide relief regardless of the merits of the Class members' claims.
3 Further, even if Plaintiff was successful on a motion for class certification, Defendant could
4 move for decertification of the Class before or during trial and likely would challenge
5 certification on appeal. Accordingly, this factor weighs heavily in favor of final approval of the
6 Settlement Agreement, because if at any point the Class failed to become certified or if
7 certification was reversed, the Class would get nothing.

9 Further, even if the Class was certified via motion and this matter continued through trial,
10 there is no way to assure that the Class would fare any better than the proposed Settlement. Even
11 a meritorious case can be lost at trial with devastating results. *See In re JDS Uniphase Corp.*
12 *Sec. Litig.*, No. C-02-1486CW, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (after a lengthy
13 trial, jury returned a verdict against plaintiffs, the action was dismissed.) Indeed, as one court has
14 aptly noted, "it is the very uncertainty of outcome in litigation and avoidance of wasteful and
15 expensive litigation that induce consensual settlements". *Officers for Justice v. Civil Service*
16 *Com'n, of City and County of San Francisco*, 688, F.2d 615, 625 (9th Cir. 1982). Nor does
17 success at trial eliminate the risk to the Class. In *In re Apollo Group, Inc. Sec. Litig.*, following a
18 plaintiffs' verdict, the court overturned the verdict and granted defendants' motion for judgment
19 as a matter of law. *In re Apollo Group, Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 WL
20 3072731 (D. Ariz. Aug. 4, 2008) (overturned only on appeal at *In re Apollo Group, Inc. Sec.*
21 *Litig.*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010).)

25 Additionally, but for this litigation and the proposed settlement, the claims of the Class
26 Members would likely go un-prosecuted because their individual claims are not large enough to
27 warrant individual litigation. Further, the claims are also the type which would likely not be
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1 vindicated on an individual basis because, by the very nature of the allegations, the existence of
2 the claims alleged here were not likely to be discovered by the Class. Lastly, the Settlement
3 provides for relief now rather than a speculative payment years from now. Consequently,
4 Plaintiffs are confident that the proposed settlement is a highly successful result for the Class.
5

6 **V. CONCLUSION**

7 Accordingly, Plaintiffs respectfully requests that the Court grant final approval of the
8 class action Settlement in its entirety, the requested Attorney Fee Award in the amount of
9 \$86,666.67 and costs of \$19,611.96 to Class Counsel, the Class Representative Enhancement
10 Payment to Plaintiffs, Gloria Nazareno and Eloise Iyar, of \$5,000 each, Administrative Costs in
11 the amount of \$17,650 payable to the Claims Administrator, ILYM Group, Inc., and the PAGA
12 payment of \$10,000. Plaintiffs further respectfully requests that the Court enter final judgment
13 in this action and retain continuing jurisdiction over the enforcement and administration of the
14 Settlement.
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17 DATED: January 17, 2024
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SCHOECH LAW GROUP, PC

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21 Matthew R. Schoech
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