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Attorneys for Plaintiff CHRISTOPHER FRANCESCHI and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ANDREW TREJO BACA; CHRISTOPHER FRANCESCHI, on behalf of themselves and all others similarly situated, and the general public,

Plaintiffs,

v.

AIRPORT APPLIANCE, INC., a California corporation; AIRPORT HOME APPLIANCE, a business entity of unknown form; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV421926

[Assigned for all purposes to the Hon. Theodore C. Zayner, Dept. 19]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: February 11, 2026
Time: 1:30 p.m.
Dept: 19

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

PLEASE TAKE NOTICE that on February 11, 2026, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 19 of the above-entitled court, located at 161 North First Street, San Jose, California 95113, Plaintiffs Christopher Franceschi and Andrew Trejo Baca ("Plaintiffs") will hereby move the Court for final approval of a class action settlement, entry of a final Order and Judgment, approval of Plaintiffs' enhancement awards, approval of Plaintiffs' attorneys' fees and costs, and approval of the settlement administration expenses.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Aaron Bartz, Walter Haines, David Keledjian, Christopher Franceschi, Andrew Trejo Baca, and Jonathan Paul, all documents and records on file in this action, and on such other further oral and documentary evidence as may be given at the hearing on this Motion.

Dated: January 20, 2026 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiff CHRISTOPHER FRANCESCHI and all others similarly situated

Dated: January 20, 2026 D.LAW, INC.

/s/ David Keledjian
Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
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ANDREW TREJO BACA, and the putative class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This class action and PAGA settlement, arising out of Plaintiffs' allegations that Defendant violated California's wage and hour laws, is sought on behalf of 542[1] current and former non-exempt employees who worked in California for Defendant Airport Appliance, Inc. ("Defendant") beginning September 5, 2019 through November 22, 2024.

Pursuant to the preliminary approval order, the notice of class settlement and related settlement documents were mailed to the class on August 28, 2025. No class member has opted out of the settlement and no class member has objected to the settlement. (See Declaration of Jonathan Paul ("Paul Decl.") ¶¶ 7-8.)

There is no claim form requirement, and each member of the class is entitled to receive compensation, with no reversion to the Defendant. The gross settlement is $1.8 million. The net amount to be paid to class members (after payment of class counsel fees and expenses, settlement administration costs, Private Attorneys General Act ("PAGA") penalties, and Plaintiffs' enhancement awards), is approximately **$1,013,422**. Each class member's share of the settlement is based on workweeks[2], and each shall receive, on average, approximately **$1,869**.

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[1] In the motion for preliminary approval, Defendant estimated there were over 555 class members. After a further review by the settlement administrator revealing several duplicates, the number of class members has been reduced.

[2] As explained in the motion for preliminary approval, the parties have allocated the settlement such that the Salesperson Group receives 70% of the Net Settlement Amount, the Non-Exempt Employee Group receives 30% of the Net Settlement Amount. This allocation is justified because the Salesperson Group had "regular rate" and failure to pay rest period premiums based on their commission agreements, which were not at issue with the Non-Exempt Employee Group. The Salesperson Group's average hourly wage was also higher than the Non-Exempt Employee Group because they received commissions.

II. THE SETTLEMENT

The class members entitled to the settlement fund are all current and former non-exempt employees who have performed work in the state of California for Defendant at any time during the period beginning from September 5, 2019 through November 22, 2024. There are 542 class members.

The settlement fund is all in (except for the employer's share of payroll taxes, which Defendant shall pay in addition to the $1.8 million settlement), there is no claim form requirement, and no residual will revert to Defendant. No class member has opted out, and no class member has objected to the settlement. In the event a class member does not negotiate (cash) his or her settlement check, the claims administrator shall distribute the unclaimed funds to Legal Aid at Work.

The payment to the Settlement Class Members will be characterized eighty percent interest and penalties, and twenty percent wages. The administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest.

Based upon Class Counsel's independent analysis and investigation in this matter, the Settlement Class will be compensated based on each member's respective number of workweeks worked during the Class Period. The total number of workweeks is 42,916. Based on the settlement terms, there will be an approximate net settlement fund of **$1,013,422**.

The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. The Class Counsel Fees Payment shall not exceed thirty-five percent of the $1.8 million settlement fund, or $630,000. The settlement fund will also be used to pay Class Counsel Litigation Expenses of $26,578, as well as settlement administration costs of $15,000.

The PAGA allocation of the settlement is $90,000, of which $67,500 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - $22,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked for Defendant at any time from July 3, 2022 through November 22, 2024).

The settlement also includes Plaintiffs' Class Representative Service Payments. Based on Plaintiffs' work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting with developing the claims and theories in this case, and related work, Plaintiffs seek a total of $25,000.

In summary, the settlement fund is allocated as follows:

(1) Net settlement fund: $1,013,422;

(2) Attorney's fees and costs: $630,000 in attorneys' fees and $26,578 in costs;

(3) Settlement administrator expenses of $15,000;

(4) PAGA payment: $90,000 (67,500 to the LWDA, and $22,500 to aggrieved employees);

(5) Class Representative Service Payment: $25,000 for the named Plaintiffs.

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE

Pursuant to both state and federal rules of civil procedure, "a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs . . .." (Cal. Civ. Code § 1781(f); *see also* Fed. R. Civ. P. 23(e).)

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to a proposed class action under Civil Code section 382, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers for Justice, supra*, 688 F.2d at 623-624).) The settlement of a class action follows in three stages: (1) preliminary approval of the proposed settlement; (2) notice to class members; and (3) final approval or fairness hearing at which evidence and argument may be heard on the fairness of the settlement. Here, this Court already preliminarily approved the settlement, notice was provided to all class members, no class members have objected, and no class members have opted out.

A. The Settlement is Presumed Fair

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. (*See Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider relevant factors such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant and the reaction of the class members to the proposed settlement. (*See Officers for Justice, supra*, 688 F.2d at 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed class action settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.)

B. The Settlement Was Reached Through Arm's Length Negotiations

This settlement is the result of arms-length and hard-fought negotiations. Defendant has denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

Plaintiffs and Class Counsel recognize the expense of continuing to litigate and trying this case against Defendant through possible appeals which could take several years. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiffs and Class

Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members.

Here the litigation has been hard fought and displayed capable and experienced advocacy on both sides. "There is likewise every reason to conclude that settlement negotiations were vigorously conducted at arm's length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig*., 720 F. Supp. 1379, 1392 (D. AZ 1989).

C. <u>Plaintiffs Conducted Sufficient Investigation and Discovery To Warrant Settlement</u>

The stage of the proceedings and the amount of discovery completed are important factors for courts to consider in determining whether a settlement is fair, adequate and reasonable. (*See In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741, affd., 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd., 661 F.2d 939 (9th Cir. 1981).)

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel obtained both formal and substantial informal discovery from Defendant, including personnel records and pay data for Plaintiffs, employment policies, and timekeeping and payroll records for a 40% sampling of the class.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members. There can be no doubt that counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

D. <u>Class Counsel Is Experienced In Similar Litigation And Endorse The Settlement</u>

The view of attorneys advocating for the class is "entitled to significant weight." (*Fisher Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis, supra*, 87 F.R.D. at 18.) Class counsel has significant experience in class actions and employment litigation, including wage and hour class actions. As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein. The recovery for the class is fair, reasonable and adequate, and Class Counsel supports the settlement.

E. <u>There Are No Objectors To The Settlement</u>

Significantly, there has not been a single objection to the settlement, and not one class member has asked to be excluded from the settlement. This alone is a testament to the fairness and adequacy of the settlement.

F. <u>The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement</u>

Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

Plaintiffs' Second Amended Class and Representative Action Complaint alleges claims for 1) Failure to Pay All Wages; 2) Failure to Provide Meal Periods; 3) Failure to Authorize and Permit Proper Rest Periods; 4) Failure to Pay Meal and Rest Break Premiums at the Proper Regular Rate of Pay; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6)Waiting Time Penalties; 7) Unfair Business Practices; 8) Failure to Reimburse Expenses; and

9) Violation of Labor Code § 2699 (PAGA). Plaintiffs further allege that they and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal. App 4th 116, 118 and *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, the following describes the settlement's reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Based on the foregoing, Plaintiffs have determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. The reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

1. <u>Unpaid Wages</u>

Plaintiffs allege that Defendant failed to pay employees for all overtime hours worked based on Defendant's failure to pay the regular rate of pay to salespersons for commissions earned. California Labor Code § 510(a) and the IWC Wage Orders regulating payment of wages in the state of California, provide that eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for each employee and any work in excess of twelve (12) hours in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for each employee. Plaintiffs contend that Defendant miscalculates the regular rate, by among other things, failing to properly include items of remuneration when determining the employees' regular rate. Plaintiff contends that Defendant is therefore in violation of Labor Code § 510 and 1194, and the relevant California Industrial Welfare Commission Orders. Pursuant to California law, a commission paid on a weekly basis is added to the employee's other earnings for that workweek and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular hourly rate for the particular workweek. (29 CFR § 778.118; see also DLSE 2002 Enforcement Policies & Interpretations Manual, §§ 49.1.2-49.2.1.3).

Defendant disputes Plaintiffs' claims, alleging that it paid the proper regular rate of pay, and that in any event, salespersons employed regularly earned at least 50% of their pay through commissions, and were therefore exempt from overtime.

Plaintiffs and their expert analyzed payroll and time records for the class members and calculated that the regular rate claim is worth approximately **$604,000**. This claim only affected the Salesperson Group, and in arriving at the damages calculation, Plaintiffs' expert reviewed payroll records for the Salesperson Group, including pay period counts per year, commissions earned, and a weighted average of rate of pay. Based on Defendant's defenses, including that salespersons may be exempt in pay periods where they earned at least 50% of their pay due to commissions, the Plaintiffs placed a reasonable settlement value of the unpaid wages claim at sixty percent of the total verdict value, or **$362,400**. This valuation takes into consideration Plaintiffs' counsels' analysis of the law, and evidence produced by the Defendant. (Bartz Decl., ¶ 11.a.).

2. <u>Meal and Rest Period Claims</u>

a. <u>Meal period liability and damages</u>

Plaintiffs contend that Defendant fails to provide duty-free meal periods to Plaintiffs and the class members, who suffered short, late and missed meal periods on a regular basis. Plaintiffs' expert analyzed each pay period for any meal violation (i.e. short, late, missed) and calculated 28.5% violation rate on shifts with at least one (1) violation.

In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), the California Supreme Court held that "under ... Labor Code section 512, subdivision (a), an employer must relieve the employee of all duty for the designated period but need not ensure that the employee does no work" during the meal period. *Brinker*, 53 Cal. 4th at 1034. However, "...an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 962–963 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1304–1305 (2010) [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand' " would be illegal].) The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks." *Brinker*, 53 Cal. 4th at 1040.

Moreover, in *Donohue, supra*, the Court held that at both the class certification and summary judgment stage, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue, supra*, 11 Cal.5th at 78 ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.")

Plaintiffs allege that the failure to provide meal periods here was particularly acute, given that there was no evidence that Defendant paid meal period premiums at all during the class period.

Defendant, on the other hand, contends that it has fully compliant meal period policies, and that its objective records reflect strict compliance with California's meal period requirements. Further, Defendant believes that the meal period claim cannot be certified because of the existence of individualized issues as to the why meal periods were not taken, among other reasons.

Class Counsel and their expert calculated the maximum verdict value of the meal break claims to be approximately **$1 million**. This calculation is based on the assumption that each late, missed or short meal period was the result of Defendant's interference with Plaintiffs' and the class members abilities to take duty-free meal periods. Accordingly, Class Counsel and their expert determined a total violation rate for the class members, and average rate of pay based on the payroll data for the class. Based on discussions with Plaintiffs and interviews of other class members, and the fact that Defendant has facially compliant meal period policies, Plaintiffs believe they had a fifty percent probability of recovering all of these damages. Accordingly, Plaintiffs contend the reasonable exposure of the meal break claim is approximately **$500,000**. (Bartz Decl., ¶ 11.b.i.).

b. Rest period liability and damages

Labor Code § 226.7(b) provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated under an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

Plaintiffs' theory on the rest break claim is that Plaintiff Franceschi and other salespeople were not separately compensated for their rest periods, because Defendant's commission plans did not account for them. *See, e.g.*, *Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864, 871-872 (2013); *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 110-111 (2017). Plaintiffs further allege that Plaintiffs and other non-exempt employees were not able to take duty-free rest periods, because they were always on-call and unable to take their rest periods. Moreover, like the meal period claim, there was no evidence that any premium payments were attributed to any rest period violations. Plaintiffs contend that a complete lack of premium pay "would require perfection or, more likely, a 'deep, system-wide error' in failing to pay such premiums." *In re Tea Station Inv*., 2021 Bankr. LEXIS 2985, at *22 (C.D. Cal. Oct. 26, 2021).

Defendant contends, on the other hand, that liability is tenuous at best because Defendant had a compliant rest period policy, and that Plaintiffs would not be able to succeed on this claim because of numerous individual issues regarding why rest periods were not taken.

Plaintiffs' expert calculated total violations across the class, multiplied by an average rate of pay for the class members. As such, Class Counsel and their expert calculated the maximum verdict value of the rest period claims to be **$1.1 million**. Based on the difficulty of proving rest period violations on a classwide basis, and the lack of objective evidence proving such violations, Plaintiffs believe they had a forty percent chance of recovering all of the rest period damages. As such, Plaintiffs believe the reasonable exposure of the rest break claim is approximately **$440,000**. (Bartz Decl., ¶ 11.b.ii.).

3. <u>Failure to Pay Meal and Rest Period Premiums At The Regular Rate</u>

Plaintiffs contend that Defendant failed to pay for missed meal and missed rest periods at the regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 878 (2021) (finding that "regular rate of compensation" in section 226.7(c) "has the same meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee."). Based on Plaintiffs' investigation and discovery, however, Defendant failed to pay any meal and rest period premiums whatsoever. As such, the meal and rest period analysis above reflects the proper exposure for this claim, and there is no separate damages exposure here. (Bartz Decl., ¶ 11.c.).

4. <u>Wage Statement Claim</u>

Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, … (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer…, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee… ."

Plaintiffs' theory of liability with respect to the paystub claim is twofold. ***First***, Plaintiffs allege that Defendant fails to set forth the proper regular rate when calculating overtime when bonuses and other non-discretionary compensation is paid. ***Second***, Plaintiffs allege that

Defendant failed to set forth all premium payments for meal and rest period violations. In *Naranjo v. Spectrum Security Servs., Inc.*, 13 Cal.5th 93 (2022), the Court held that an employer's obligation to report wages includes an obligation to report premium pay for meal and rest break violations. Plaintiffs therefore contend that any time Defendant failed to do so here should result in paystub penalties.

Defendant argues that, even assuming there are any violations, which it denies, Defendant presents evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters., LLC,* 870 F.Supp.2d 810, 829 (N.D. Cal. 2012) (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.*, 656 F.Supp.2d 1128, 1146 (2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

Pursuant to Labor Code section 226, subd. (e)(1), employees are entitled to $50 for the initial pay period in which a violation occurs, and $100 per pay period for subsequent violations. Nevertheless, pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008), the heightened penalty amount is not recoverable unless there is a showing of a prior citation or in the absence of a good faith dispute. *See also Bernstein v. Virgin America, Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). Because there is no evidence here that Defendant has previously been cited with Labor Code violations, Class Counsel believes the $50 penalty to be applicable for all violations.

Based on the pay periods at issue here, Plaintiffs and their expert calculated wage statement penalties by multiplying the total employee count during the statutory period by the total number of pay periods during that period. The maximum verdict value of the paystub penalties are approximately **$724,000**. Because this claim is derivative of the wage and meal and rest period claims above, Plaintiffs believe they have a fifty percent chance of recovering all of those penalties, or **$362,000**, based on the risks set forth above and Defendant's defenses. (Bartz Decl., ¶ 11.d.).

5. <u>Waiting Time Penalties</u>

Labor Code § 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with *Labor Code* §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

In *Naranjo, supra*, the Court held that failing to pay meal and rest period premium payments constituted "wages" for purposes of waiting time penalties. *Naranjo, supra*, 13 Cal.5th at 117. Defendant denies any violations whatsoever, and that even if such violations are proven, that Defendant has a good faith dispute regarding whether such wages are owed.

Plaintiffs and their expert determined that the total verdict value of this claim is approximately **$1.15 million**, based on termination counts provided, multiplied by the average daily rate per terminated employee and the maximum 30-day waiting time period. Class Counsel believes the reasonable settlement value is far less than the maximum amount because of the willfulness standard for proving such penalties. Plaintiffs believe they have a forty percent possibility of proving all such penalties. As such, Plaintiffs believe the realistic value of the waiting time penalties are **$460,000**. (Bartz Decl., ¶ 11.e.).

6. <u>Failure to Reimburse Expenses</u>

Labor Code section 2802 provides, in pertinent part: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . .." The purpose of section 2802 is "to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007).

Plaintiffs allege that they and the class members were required to use their own personal cell phones for their work, reimbursement was required. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014) (finding that reimbursement for personal cell phone usage required when mandatory for performing one's job). Additionally, Plaintiffs allege that certain non-exempt employees were required to purchase steel toe boots and maintain their protective gear consisting of a safety jacket and a vest.

Defendant contends that Plaintiffs were paid for all of their expenses, and that they were not required to use their cell phone for work purposes, and any other expenses incurred were appropriately reimbursed.

Based on testimony from Plaintiffs and the class members, Plaintiffs allocate $15 per pay period for the reimbursement claim. As such, the value of this claim as calculated by Plaintiffs' expert is approximately $370,000. Based on the Defendant's defenses, and issues in proving the reimbursement claim on a classwide basis, Plaintiffs allege they had a thirty percent chance of recovery here, and the realistic value of the reimbursement claim is therefore **$111,000**. (Bartz Decl., ¶ 11.f.).

7. <u>PAGA</u>

Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor Code violations identified above. Once a PAGA violation is found, a court must award civil penalties. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1211-1213 (2008). Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

Significantly, however, the California Supreme Court recently ruled that penalties may not accrue during a time when the law was unsettled, which it was in part during the pendency of this case. *See Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) ("*Naranjo II*") (finding that employer's reasonable, good faith dispute precluded penalties from being awarded for failure to report meal and rest period payments on wage statements). As such, there is a very real possibility that a court would substantially reduce the PAGA penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal. 2011) (reducing penalties from $2.8 million to $500,000 based on wage statement violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Plaintiffs and their expert calculated the maximum verdict value of the PAGA penalties **$17 million**, based on assumed violations of Labor Code sections 1194, 512, 226.7 and 226, violations for each and every pay period at issue, stacking of penalties, heightened subsequent penalties, and a 100% violation rate. Plaintiffs believe recovering all of these penalties is highly unlikely, and based on a Court's discretion to reduce such penalties, Plaintiffs believe they had a ten percent chance of recovering those penalties. As such, Plaintiffs value the claim at **$1.7 million**. (Bartz Decl., ¶ 11.g.).

8. Total Damages Exposure[3]

Plaintiffs believe that the **$1.8 million** settlement achieved in this case is excellent for the class members. Based upon a realistic exposure of **$3.94 million**, the settlement represents approximately 46% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the difficulty in proving the claims, Class Counsel believe this settlement is an excellent result for all of the class members. (Bartz Decl., ¶ 11.h.).

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. *Wershba,* 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); *White v. Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the

[3] The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Moreover, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) at 20, available at http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

G. All Class Members Have Received Proper Notice of the Settlement

Pursuant to the Court's Preliminary Approval Order dated August 4, 2025, the Notice of Class Action Settlement was sent out to all 542 Class Members via first-class mail by Claims Administrator Xpand Legal ("Xpand") on August 28, 2025. Prior to this date, the name, last known address, and Social Security number of each Class Member were provided by Defendant through a review of its personnel files. Upon its receipt of the Class Member contact information, Xpand accessed the National Change of Address ("NCOA") database and updated the addresses provided by Defendant.

After receiving the Class Notice, not a single Class Member has objected to the settlement and not one class member has requested exclusion from the settlement. (Paul Decl., ¶¶ 7-8).

IV. PLAINTIFFS' REQUESTED ATTORNEYS' FEES ARE APPROPRIATE AND JUSTIFIED

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 ["the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 ["percentage fees have traditionally been allowed in . . . common fund cases"]). Plaintiffs' request for thirty-five percent of the common fund is reasonable, falls within the Ninth Circuit's historical benchmark for attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.*, Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the settlement fund].)

The percentage method is the preferred method in common fund settlements and regularly used in wage and hour class action settlements. *See, e.g., In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018) ("[T]he percentage-of-the-fund method is preferred when counsel's efforts have created a common fund for the benefit of the class."); *Jones v. San Diego Metro. Transit Sys.*, 2017 WL 5992360, at *4 (S.D. Cal. Nov. 30, 2017) ("the percentage-of-recovery approach is preferred when fees will be drawn from a common fund"); *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2013 WL 7985367, at *1 (C.D. Cal. Dec. 23, 2013) ("The use of the percentage-of-the-fund method in common-fund cases is the prevailing practice in the Ninth Circuit for awarding attorneys' fees."); *Bautista v. Harvest Mgmt. Sub LLC*, 2014 WL 12579822, at *11 (C.D. Cal. July 14, 2014) ("The benefit percentage method is generally preferred in common fund cases"). The "recognized advantages" of the percentage method include "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Laffitte*, *supra*, 1 Cal. 5th at 503.

Unlike the federal courts, California law does not recognize an explicit 25% "benchmark" to use in determining common fund fees. *Laffitte*, 1 Cal.5th at 495-504. To the contrary, many California courts have concluded that common fund awards exceed the Ninth

Circuit benchmark. *See In re Ampicillin Antitrust Litigation* 526 F.Supp. 494 (D.D.C. 1981) (court approved attorney fee award equal to 45% of the settlement fund).

Class counsel seeks an award of attorneys' fees of $630,000, or thirty-five percent of the settlement. Class counsel's fee is eminently reasonable here. Class counsel achieved an excellent result, with an average payout of more than $1,869 per class member.

B. <u>Plaintiffs' Attorneys' Fees Are Also Recoverable Under A Lodestar Cross-Check</u>

A lodestar cross-check is also within a Court's discretion to ensure that the fee percentage is reasonable. *See Laffitte, supra*, 1 Cal.5th at 504-506. As *Laffitte* recognizes, "trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte*, *supra*, 1 Cal.5th at 505 (internal quotation omitted). Other courts agree. *See, e.g.*, *Aguilar v. Wawona Frozen Foods,* 2017 WL 2214936, at *6 (E.D. Cal. 2017) ("[I]t is well established that '[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean counting. . . [courts] may rely on summaries submitted by the attorneys and need not review actual billing records.'") (internal citations omitted); *Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (in class actions, hours may be documented in summary or declaration form, without the need for full time records)).

Once a lodestar has been established, it may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1095 (2000). "[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases." *In re Washington Public Power Supply System Securities Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). In evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the contingent risks involved, qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the case, the results achieved, and related matters. *See, e.g.*, *Serrano,* *supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.,* 34 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic area. *PLCM Group v. Perez*, 22 Cal. 4th 1084, 1096-1097 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel). Class Counsel's hourly rates are comparable to, or less than, those charged by other class action plaintiffs' counsel and are commensurate with the rates awarded to Class Counsel in similar actions. (*See* Bartz Decl., ¶ 25.a; Declaration of Walter Haines ("Haines Decl."), ¶ 7; Declaration of David Kelejian ("Keledjian Decl."), ¶ 15, and Ex. 2 thereto).

A properly supported motion for attorney's fees is prima facie evidence that the expenses and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985). Here, Class Counsel provide appropriately detailed declarations and detailed, contemporaneous billing statements in support of the lodestar amounts. (Bartz Decl., ¶ 25.a, Ex. 4). Billing records are entitled to a "presumption of credibility" and "are entitled to credence in the absence of a clear indication the records are erroneous." *Horsford v Board of Trustees,*132 Cal.App.4th 359, 396 (2005).

Based on Class Counsel's lodestar, a thirty-five percent fee results in a 2.37 multiplier to date. A multiplier is appropriate when "(1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). Here, Class Counsel took this case on a full contingency basis, their rates are commensurate with market rates of hourly defense counsel, and do not reflect the risk associated with this being a contingency case. (Bartz Decl., ¶ 25.f).

This case also presented substantial risks for Class Counsel. Defendant raised various exemption defenses, and attempted to compel arbitration of the claims which, if successful, may have substantially reduced Defendant's exposure in this action. This was a very real possibility, but Plaintiff and Class Counsel aggressively litigated this matter to a successful settlement.

California law also embraces the application of fee multipliers. *See Wershba v. Apple Computer,* 91 Cal.App.4th 224, 255 (2001) (under California law, "[m]ultipliers can range from 2 to 4 or even higher."). The multiplier requested here is also in line with those granted in other complex class actions involving a common fund. *See Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230 (N.D. Cal. Dec. 8, 2021) (multiplier of **5.49** granted after lodestar cross-check in wage and hour class action); *Steiner v. Am. Broadcasting Co.*, 248 Fed. App'x 780, 783 (9th Cir. 2007) (awarding cross-check multiplier of **6.85**); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal., May 21, 2015) (applying **5.5** lodestar multiplier in UCL class action).

The multiplier also does not reflect additional work that will need to be performed in this case. Class Counsel estimate that they will spend at least 25 hours preparing and attending the final approval hearing, conferring with the settlement administrator, responding to inquiries from class members, and assisting in administering the settlement. (Bartz Decl., ¶ 25.a). Accounting for such future incurred fees is permissible when performing a lodestar cross-check. *See In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.*, 746 Fed.Appx. 655, 659 (9th Cir. 2018); *Reyes v. Bakery and Confectionary Union and Ind. Int'l Pension Fund*, 281 F.Supp.3d 833, 856 (N.D. Cal. 2017) (finding that 125 anticipated future hours included in lodestar to manage "class members' claims" appropriate and reasonable). When such future hours are included in the lodestar, the multiplier is reduced to 2.16.

1. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Prosecution of this Case on a Contingency Basis

Recognizing that attorneys who represent clients under contingency-fee agreements shoulder considerable risk of the possibility of minimal or low recovery, courts recognize that contingent-fee attorneys should obtain a larger fee than the market-value of their services in order to help assure skilled representation of class interests. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th at 580 ("[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."); *Ketchum v. Moses*, 24 Cal. 4th at 1132 (2001) ("[A] contingent fee contract, since it involves a gamble on the result, may properly provide for larger compensation than would otherwise be recoverable.')).

The risks faced by attorneys working on contingency are substantial. This is particularly true in the context of class action litigation where there can be numerous hotly contested procedural and substantive issues, considerable outlay of costs without guarantee of recovery, and the possibility that intervening factors, such as the financial condition of the defendant, may limit the scope of potential recovery. California courts thus recognize that "the experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Ketchum*, 24 Cal. 4th at 1136. "Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions … [attorneys] must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior." *Lealao*, 82 Cal. App. 4th at 47. These policies support Plaintiffs' fee request, as Class Counsel undertook substantial risk in prosecuting this case.

2. The Requested Award of Attorneys' Fees is Supported by the Results Achieved on Behalf of the Class

Courts assess the reasonableness of a request for attorneys' fees by examining the results achieved on behalf of the Class. *See Serrano*, 20 Cal. 3d at 49. This settlement represents a substantial recovery for the Settlement Class in light of the compelling defenses to liability.

As set forth above and in the supporting declarations, Class Counsel undertook a thorough analysis of the claims in this action including spending hundreds of hours of legal research and data analysis to develop the core theories of liability in this case. Using this data, Class Counsel was able to determine that the maximum settlement amount of $1.8 million was well within the range of the "risk adjusted" valuation of the potential recovery. Class Counsel also expended substantial efforts and resources communicating with Plaintiffs and other settlement class members, in order to maximize the total amount claimed by class members under the settlement. The result is that participating Class Members will receive over $1,013,422 in total settlement payments at an average recovery of more than $1,869. Accordingly, the cumulative benefits achieved by the Settlement favor approval of the requested fees.

3. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Experience, Reputation, and Skill

The "skill and experience of the attorneys and nature of work performed" are also evaluated under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd*., 159 Cal. App. 4th 841, 880 (2008). Class Counsel regularly litigate wage and hour claims and have considerable experience settling wage and hour class actions. *See* Bartz Decl. at ¶¶ 14-16; Haines Decl. at ¶ 3; Keledjian Decl., ¶¶ 3-11.

V. PLAINTIFFS' REQUESTED COSTS ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel has incurred a total of **$26,578** in costs and expenses that would normally be billed to a fee-paying client. Defendant has agreed to pay out these costs out of the settlement amount. The majority of costs incurred in this action relate to filing fees, expert fees, and mediator fees, which are costs that are reasonable and necessary to the litigation of this case. (*See* Bartz Decl. at ¶ 26, Ex. 5).

In accordance with the Settlement Agreement, Class Counsel requests an award of $30,000, which is less than the amount of costs Preliminarily Approved by the Court in this Action. Accordingly, the requested costs should also be awarded.

VI. THE REQUESTED PAYMENT TO THE CLAIMS ADMINISTRATOR IS REASONABLE AND SHOULD BE APPROVED

Plaintiffs request final approval of claims administration costs in the amount of $15,000 to be paid to Xpand, which, per the Court's preliminary approval Order, attests that it has promptly and properly distributed the Class Notice, to all Class Members and has otherwise completed all of its duties in administering and facilitating the settlement terms in this action. (*See generally* Paul Decl.)

VII. **THE ENHANCEMENT AWARDS FOR THE CLASS REPRESENTATIVES ARE FAIR AND REASONABLE**

The proposed Class Representative Service Payments are intended to recognize their initiative, risks, and efforts on behalf of the Settlement Class. Courts routinely approve class representative service payments, also known as incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for efforts in bringing the case); Manual for Complex Litigation, § 21.62, fn. 971 (noting that such awards "may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery"). "An incentive award may be appropriate to induce someone to serve as a class representative. In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation." *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272 (2015).

In this litigation, the named class representatives Christopher Franceschi and Andrew Trejo Baca testify to their risks, time and effort incurred, the adverse consequences suffered, and the benefits received in this case. (*See generally*, the Declarations of Christopher Franceschi and Andrew Trejo Baca). In addition, the named plaintiff is required to execute a general release of all claims against Defendant, which includes a waiver of unknown claims and their rights under California Civil Code § 1542. For all of these reasons, the requested service payments of $15,000 for Mr. Franceschi, and $10,000 for Mr. Baca, are appropriate and justified.

VIII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court issue an Order and Judgment approving the Settlement, and grant Plaintiffs' attorneys' fees and costs, Xpand's administrative expenses, and Plaintiffs' enhancement awards.

Dated: January 20, 2026

BARTZ LAW GROUP, APC

// Aaron Bartz //
Aaron A. Bartz
Attorney for Plaintiff CHRISTOPHER FRANCESCHI and all others similarly situated

Dated: January 20, 2026

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