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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FATIMA FLORES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

A.I. FOODS CORPORATION, a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 22STCV27843

*[Assigned for all purposes to the Honorable
Lawrence P. Riff, Dept. SSC-7]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 23, 2024
Time: 10:00 a.m.
Dept.: SSC-7

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 23, 2024 at 10:00 a.m. in Department 7 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Fatima Flores (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Fatima Flores as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Amended Stipulation of Settlement (hereinafter the “Settlement”);
5. Approving an award of \$131,666.66 in attorneys’ fees to Class Counsel;
6. Approving an award of \$16,812.09 in costs to Class Counsel;
7. Approving an award of \$8,250.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approving a service award of \$5,000.00 to Plaintiff Fatima Flores for her services as Class Representative;
9. Approving an award of \$18,750.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff’s Motion for Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys’ fees and costs, service award, LWDA payment, and settlement

1 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
2 [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final
3 Judgment submitted concurrently herewith should be entered so as to give finality to, and allow for
4 disbursements from, the Settlement.

5 This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the
6 supporting declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Fatima Flores¹,
7 Mayra Gonzalez of Phoenix Settlement Administrators, and the exhibits attached thereto; the
8 Settlement; all other pleadings and papers on file in this action; and on any further oral or documentary
9 evidence or argument presented at the time of hearing.

10
11 Dated: June 24, 2024

Respectfully submitted,
LIDMAN LAW, APC

12
13 By:



14 Scott M. Lidman
15 Attorney for Plaintiff
16 FATIMA FLORES
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27 ¹ The declaration of Plaintiff Fatima Flores was originally filed with this Court in connection with the
28 Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed her
declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Fatima Flores (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with Defendant A.I.
5 Foods Corporation (hereinafter “A.I. Foods” or “Defendant”) on behalf of the Settlement Class defined
6 as: “All current and former non-exempt, hourly employees of Defendant A.I. Foods Corporation who
7 worked at any time in California between August 26, 2018 and May 17, 2023. Class Period means the
8 time period between August 26, 2018 and May 17, 2023.”

9 In this non-reversionary Settlement, all participating Settlement Class members will receive
10 **automatic** payments without the need to submit a claim form, resulting in an average settlement payment
11 of approximately \$1,639.93 to each participating Settlement Class member. This is a favorable resolution
12 of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiff
13 faced.

14 Since this Court granted preliminary approval on March 18, 2024, nothing has changed to impact
15 the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice
16 of the Settlement and of their projected Settlement payments, 0 of the 127 Settlement Class members
17 have opted out of the Settlement and not a single Settlement Class member filed an objection to any
18 portion of the Settlement.

19 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the
20 Settlement Class continues to meet the requirements for class certification for settlement purposes under
21 Code of Civil Procedure § 382; (2) the Settlement warrants final approval because it is a fair, adequate,
22 and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
23 Counsel’s attorneys’ fees and costs, Plaintiff’s Class Representative Service Award, payment to the Labor
24 Workforce Development Agency (“LWDA”), and settlement administration costs are all fair, adequate,
25 and reasonable.

26 In light of the foregoing, Plaintiff respectfully requests that this Court enter the [Proposed] Order
27 Granting Plaintiff’s Motion for Final Approval of Class Action Settlement and [Proposed] Final Judgment
28 submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 26, 2022, Plaintiff filed the instant putative class action complaint. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On October 12, 2023, pursuant to the terms of the settlement, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and A.I. Foods of her intention of filing a PAGA claim based on the labor code violations as alleged in her complaint. *Id.* The Parties intend to submit a stipulation permitting, subject to Court approval, to file a First Amended Class and Representative Action Complaint Amended Complaint after PAGA exhausts adding causes of action for: (i) wage statement violations; (ii) waiting time penalties; and (iii) civil penalties under the PAGA. Therefore, Plaintiff’s primary claims/allegations are that A.I. Foods: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) engaged in unlawful business practices; (7) failed to pay all wages upon separation of employment; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to A.I. Foods’ alleged failure to pay Settlement Class members for all time worked and its alleged failure provide Settlement Class members all legally compliant duty-free meal and rest periods. Lidman Decl., ¶¶ 17-28. Specifically, Plaintiff alleges the Class Members were not fully compensated for all of their time worked due to unlawful shaving of time worked and/or rounding such that they would not be fully paid for all time worked. Lidman Decl., ¶ 17. Plaintiff also alleges that this practice was not-even handed over time and would almost exclusively benefit A.I. Foods and the employees were routinely underpaid for their time worked. Indeed, based on Plaintiff’s review of the timekeeping and payroll data produced in connection with mediation, it appeared that 58% of the relevant pay periods had an underpayment to the employees due to rounding and that on average Class Members were underpaid about 2 minutes per shift. Additionally, Plaintiff alleges that A.I. Foods required her and other Class Members were subject to temperature checks in connection with the COVID-19 pandemic but failed to compensate them for such time, which took approximately 5 minutes to complete. *Id.*

1 Plaintiff alleges that Class Members were not provided with all legally-compliant first meal
2 periods beginning before the end of the fifth hour of work. Lidman Decl., ¶ 19. Specifically, Plaintiff
3 alleges that as a result of the work demands imposed by A.I. Foods, the Settlement Class Members were
4 not provided a full uninterrupted 30-minute meal period before the end of the fifth hour of work. *Id.*
5 Based on a review of the timekeeping data, there was an approximate 68.1% violation rate, with the
6 majority of the violations being for short meal periods. *Id.* Additionally, it appeared to be a virtual 100%
7 violation rate for second meal periods.

8 Plaintiff alleges that the Class Members were not authorized and permitted to take all required
9 rest periods due to A.I. Foods' rest period policies and practices. Lidman Decl., ¶ 21. Specifically,
10 Plaintiff contends A.I. Foods failed to authorize second and/or third rest periods on shifts worked in excess
11 of 6.0 and/or 10.0 hours. Based on Plaintiff's review of the timekeeping records, virtually all of the shifts
12 worked during the relevant time period were in excess of 6.0 hours. *Id.*

13 Plaintiff further alleges that A.I. Foods issued inaccurate wage statements in violation of Labor
14 Code section 226 as a result of the alleged unpaid minimum wages and overtime wages, and meal and
15 rest period premium wages described above. Lidman Decl., ¶ 23. Plaintiff also contends that this conduct
16 violated Labor Code section 226(a) because the wage statements issued to Settlement Class Members did
17 not include all hours worked and the rate at which they were being paid.

18 Plaintiff alleges that A.I. Foods is also liable for waiting time penalties under Labor Code section
19 203 as a result of its failure to timely pay all wages upon separation. Lidman Decl., ¶ 25. There are
20 approximately 75 Class Members who have separated their employment during the relevant time period.
21 *Id.*

22 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code
23 violations. Lidman Decl., ¶ 27.

24 As explained *infra* and in Plaintiff's Motion for Preliminary Approval, A.I. Foods denies
25 Plaintiff's claims, maintains that it has consistently compensated Settlement Class Members in
26 accordance with all applicable laws, and asserts several affirmative defenses, both on the merits and with
27 respect to class certification.

1 **B. Mediation and Settlement**

2 In advance of mediation, A.I. Foods produced a 20% sampling timekeeping and payroll data for
3 the putative class, as well as its wage and hour policies and other relevant documents and information
4 relevant to the claims alleged. Lidman Decl., ¶ 11. Specifically, Plaintiff received a list of unique
5 Employee ID numbers for 132 employees. The Parties agreed that Plaintiff’s sample shall represent 20%
6 of the total Employee ID numbers. *Id.* Using Excel’s “RAND” function which randomly generates a
7 value between 0 and 1, each of the 132 Employee ID numbers was randomly assigned such a value. After
8 the random assignment, the list of Employee ID numbers was sorted in ascending order according to the
9 values randomly assigned. After the list was sorted, Plaintiff selected the agreed upon 20% sampling.

10 In addition to the representative sampling, A.I. Foods produced key data points and all relevant
11 written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was
12 provided with the following:

- 13 • Plaintiff’s personnel files and timekeeping and payroll documents;
- 14 • Key data points, including total number of employees, workweeks, and pay periods during the
15 relevant time period;
- 16 • Exemplars of the wage statements provided during the relevant time period;
- 17 • A.I. Foods’ Meal & Rest Period Policy;
- 18 • A.I. Foods’ job descriptions;
- 19 • A.I. Foods’ Employee Handbook for 2023;

20 This information coupled with the representative data sampling, enabled Plaintiff to extrapolate to
21 the entire class and aided in Plaintiff’s creation of a class-wide exposure model for all the claims at issue,
22 including unpaid wages and penalties potentially owed for alleged minimum and overtime wages, and
23 meal and rest and unpaid wages violations. Ultimately, this discovery allowed the parties to assess the
24 merits and value of Plaintiff’s claims and A.I. Foods’ defenses thereto. *Id.*

25 On June 30, 2023, a mediation was held with Kelly Knight, Esq. a well-respected mediator with
26 ADR Services, Inc. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing
27 legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and
28 defenses. *Id.*

1 **C. Preliminary Approval of Settlement**

2 Plaintiff filed the Settlement to the Court with her Motion for Preliminary Approval on December
3 8, 2023. Lidman Decl., ¶ 13. On December 8, 2023, Plaintiff also submitted the Settlement to the LWDA.
4 Lidman Decl., ¶ 39, Exh. D. On February 8, 2024, Plaintiff submitted the Addendum to the Settlement
5 to the LWDA. Lidman Decl., ¶ 41, Exh. E.

6 Subsequently on March 18, 2024, the Court granted preliminary approval of the class action
7 settlement, approving the Settlement. Lidman Decl., ¶ 13, Exh. A (Order Granting Preliminary
8 Approval). Plaintiff submitted to the LWDA the Order Granting Preliminary Approval on June 24, 2024.
9 Lidman Decl., ¶ 40, Exh. F.

10 On May 2, 2024, the Court-approved Class Notice was sent to 127 Settlement Class members.
11 The Settlement Class members had until July 1, 2024 to submit disputes, objections, and/or requests for
12 exclusion. *See* Declaration of Mayra Gonzalez of Phoenix Settlement Administrators (“Gonzalez Decl.”),
13 ¶ 8. As of the date of this filing, there have been **no objections, no disputes** and **no opt-outs**. *Id.*, ¶¶ 8-
14 10. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

15 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

16 **A. Settlement Class Definition**

17 The Settlement Class approved at the preliminary approval stage encompassed “All current and
18 former non-exempt, hourly employees of Defendant A.I. Foods Corporation who worked at any time in
19 California between August 26, 2018 and May 17, 2023.”

20 As of the date of Preliminary Approval on March 18, 2024, the total number of workweeks at
21 issue in the Settlement was 16,859. Gonzalez Decl., ¶ 3. Because the escalator clause was triggered,
22 Defendant elected to shorten the class period to May 17, 2023.

23 **B. Monetary Terms of the Settlement**

24 The Settlement requires to pay a Gross Settlement Amount (“GSA”) of \$395,000.00. Gonzalez
25 Decl., ¶ 12. The Net Settlement Amount (“NSA”) is the amount remaining from the GSA after deducting
26 requested attorneys’ fees (\$131,666.66) and verified costs (\$16,812.09), proposed Class Representative
27 Service Award to Plaintiff (\$5,000.00), Settlement Administration costs (\$8250.00), and PAGA payment
28 to the LWDA (\$18,750.00). Based on these requested amounts, the NSA is calculated to be

1 approximately \$214,521.25. Gonzalez Decl., ¶ 12; Lidman Decl., ¶ 32, Exh. B.

2 The Net Settlement Amount shall be allocated to Settlement Class members who worked during
3 the Class Period, as follows:

4 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
5 number of Workweeks worked by all Participating Class Members during the Class Period, and (b)
6 multiplying the result by the total Workweeks worked by each Participating Class Member during the
7 Class Period. Settlement, ¶ 3.2.4.

8 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
9 the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Pay
10 Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay
11 Periods worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility and
12 liability for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

13 The Parties agreed that 33% of each Participating Class Member's Individual Class Payment will
14 be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
15 withholding and will be reported on IRS Form W-2. The remaining 67% of each Participating Class
16 Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties
17 (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
18 reported on IRS Forms 1099. Settlement, ¶ 3.2.4.1.

19 **C. Summary of Notice Process**

20 **1. *Mailing of Notice Packets***

21 On April 8, 2024, A.I. Foods provided Phoenix Settlement Administrators ("PSA") with the
22 names, last known addresses, phone numbers, social security numbers, and dates of employment (or
23 information allowing the Settlement Administrator to calculate the total workweeks worked by each
24 Settlement Class Member) of each Settlement Class member employed during the Class Period and
25 PAGA Period. Gomez Decl., ¶ 3. After performing address updates and verifications, PSA mailed the
26 Class Notice to the 127 Settlement Class members on May 2, 2024. *Id.*, ¶¶ 4-5. Following the initial
27 mailing, 0 Class Notices were returned to PSA as undeliverable. *Id.*, ¶ 6. As a result of a skip trace,
28 forwarding address provided by the Post Office, or re-mail requests from Counsel or Class Members, 0

1 Class Notices were re-mailed. *Id.*, ¶ 6. As of the date of filing this final approval motion, 0 Class Notices
2 remain undeliverable with no forwarding address, and where no new address could be located through
3 skip trace. *Id.*, ¶ 7.

4 Settlement Class members have until July 1, 2024 to submit objections, requests for exclusion, or
5 disputes. Gonzalez Decl., ¶ 8. Therefore, after the response deadline expires and prior to the Final
6 Fairness hearing, Plaintiff will file a supplemental administrator declaration.

7 As of the date of this filing, there were no objections, no disputes, and none of the 127 Settlement
8 Class member has elected to opt-out of the Settlement. *Id.*, ¶¶ 8-10. Accordingly, as of the date of this
9 Motion, the participation rate amongst the Settlement Class members is 100% and the average estimated
10 payment is \$1,639.93, with the highest estimated payment to a Settlement Class member being \$3,990.64.
11 *Id.*, ¶¶ 11-19.

12 **D. Timing of Payments**

13 A.I. Foods shall fully fund the Gross Settlement Amount, including all amounts necessary to fully
14 pay A.I. Foods's share of payroll taxes, by transmitting such funds to the Administrator within 30 days
15 of the Effective Date. *See* Settlement, ¶ 4.3. "Effective Date" means the latter of the follow: (a) the
16 Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed;
17 (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or
18 withdrawn; (c) the final resolution of any appeal that has been filed. Settlement, ¶ 1.19.

19 **E. Uncashed Funds**

20 Each member of the Settlement Class who receives a Settlement Award must cash the check(s)
21 within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to
22 Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to
23 the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the
24 name of the Settlement Class member. Lidman Decl., ¶ 30.

1 **F. Notice of Judgment**

2 As stated in the Notice mailed to Settlement Class members, the final judgment entered by the
3 Court will be posted by the Settlement administrator on the Settlement Administrator's website at flores-
4 v-ai-foods.phoenixcases.com. See Gonzalez Decl., Exh. A.

5 **IV. ARGUMENT**

6 **A. This Court Should Confirm its Conditional Certification of the Settlement Class for**
7 **Settlement Purposes Because It Meets All of the Requirements for Class**
8 **Certification Under Code of Civil Procedure § 382**

9 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its
10 members are too numerous for joinder to be practical; (2) the representative and absent class members
11 share a community of interest, and questions of law and fact common to the class predominate over
12 questions unique to individual class members; (3) the representative's claims are typical of the class'
13 claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond*
14 *v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

15 Here, this Court found that the Settlement Class meets all the requirements for class certification
16 for settlement purposes when it granted preliminary approval of the Settlement on December 5, 2023.
17 *See* Lidman Decl., ¶ 13; Exh. A. Subsequent to the Court's order granting preliminary approval, no events
18 have cast doubt on the propriety of this determination and, in fact, the reaction of the Settlement Class
19 members thus far to the Settlement has been strongly in support of the Settlement, with no Settlement
20 Class members objecting to any portion of the Settlement and no Settlement Class member elected to opt-
21 out of the Settlement. *See* Gonzalez Decl., ¶¶ 8-10. This Court should therefore confirm its conditional
22 certification of the Settlement Class.

23 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
24 **and Reasonable Compromise of Disputed Wage and Hour Claims**

25 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
26 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
27 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
28 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval

process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

1. The Settlement was Reached at Arm's-Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arm's-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of 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.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

"In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements

1 inherently involve compromise, even settlements providing for substantially narrower relief than likely
2 would be obtained if the suit were successfully litigated can be reasonable because, “the public interest
3 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
4 litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109
5 (7th Cir. 1972)).

6 Here, the Settlement resulted from extensive arm’s length settlement negotiations between
7 qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate,
8 and reasonable for all Settlement Class members. While Plaintiff maintains that her claims are
9 meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which
10 justifies a downward departure from the maximum exposure that Plaintiff’s calculated each claim carried.

11 As detailed in Plaintiff’s Motion for Preliminary Approval, there is significant risk of non-
12 certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example,
13 with respect to Plaintiff’s claim that Linzer failed to pay for all hours worked, A.I. Foods contends that it
14 compensated Class Members for all of their time worked. Lidman Decl., ¶ 18. A.I. Foods also contends
15 that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-
16 compensable. *Id.* A.I. Foods also contends that the temperature checks took seconds not minutes and
17 was compensated time. A.I. Foods further asserts that Plaintiff would be unable to certify a rounding
18 class given the individualized inquiries that would be required, and also that A.I. Foods’ rounding
19 policy/mechanism was, according to it, neutral on its face and in its application. *Id.*

20 As for Plaintiff’s meal period claim, A.I. Foods counters that it has always maintained a lawful
21 meal period policy and provided non-exempt employees with an opportunity to take legally compliant
22 meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely
23 the result of employee choice, rather than any policy or practice of A.I. Foods. Lidman Decl., ¶ 20.
24 Further, A.I. Foods points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th
25 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are
26 taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure”
27 standard). Finally, A.I. Foods contends Plaintiff’s meal period claim is not suited for class certification,
28 since individual inquiries would be required to assess which employees took non-compliant meal periods,

1 how many meal periods were non-compliant or missed, and the reasons why a particular employee took
2 a non-compliant meal period or missed a meal period during a particular shift. *Id.*

3 As for Plaintiff's rest period claim, A.I. Foods contends that its policies and procedures authorized
4 and permitted Settlement Class Members to take all off-duty rest periods in compliance with California
5 law. Lidman Decl., ¶ 22. A.I. Foods also argues that Plaintiff's rest period claim is inherently unsuited
6 for class treatment as it requires an individualized inquiry into whether each Settlement Class Member
7 was in fact authorized and permitted to take a compliant rest period, which would evolve into an
8 unmanageable series of mini-trials. *Id.*

9 As for Plaintiff's wage statement claim, A.I. Foods argues that its alleged wage statement
10 violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or
11 any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required
12 by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 24.

13 As for Plaintiff's waiting time penalties claim, A.I. Foods asserts it has strong defenses to the
14 waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding
15 imposition of penalties. Lidman Decl., ¶ 26. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute
16 that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12
17 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt
18 precluded imposition of waiting time penalties over contested wages owed).

19 As for Plaintiff's PAGA claim, A.I. Foods argues that Plaintiff's PAGA claim will fail for the
20 same reasons that her underlying claims will fail. Lidman Decl., ¶ 28. ("Because the underlying causes
21 of action fail, the derivative UCL and PAGA claims also fail."). A.I. Foods also maintains that, given its
22 good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties
23 if it were to find A.I. Foods liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v.*
24 *Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA
25 penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL
26 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).

27 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
28 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further

litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed statistical analysis of class-wide data to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury

Individual settlement payments will be calculated based on the number of workweeks worked by each Settlement Class member. See Settlement ¶ 5.B. This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as Settlement Class members who worked more workweeks, would have been subject to more of the alleged wage and hour violations than those who worked fewer shifts. Thus, the formula for compensating Settlement Class members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

3. The 100% Participation Rate Further Confirms that the Settlement is Fair, Adequate, and Reasonable

Class members’ response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a “particularly impressive” favorable response from class members). Here, as of the filing of this Motion, not a single Settlement Class member has objected to the Settlement, no Settlement Class member has elected to opt-out, and none of the 127 Class Notices were returned undeliverable. Gonzalez Decl., ¶¶ 12-17. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check

Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover

1 their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
2 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See*,
3 *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
4 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
5 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
6 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court
7 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage of fund
8 method survives in California class action cases.” Specifically, the *Laffitte* Court held:

9 The recognized advantages of the percentage method—including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it
12 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
13 litigation—convince us the percentage method is a valuable tool that should not be denied
14 our trial courts.”

15 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
16 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
17 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
18 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
19 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
20 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
21 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
22 attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
23 and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
24 and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*
25 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored
26 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
27 counsel for success and penalizes it for failure.’”) (citation omitted).

28 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools

1 such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours
2 worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the
3 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
4 utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have
5 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
6 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
7 requested percentage fee.”)

8 Here, Class Counsel’s fee request of \$131,666.66 (one-third of the Gross Settlement Amount) is
9 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
10 “regardless whether the percentage method or the lodestar method is used, fee awards in class actions
11 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
12 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
13 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
14 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
15 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
16 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
17 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
18 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 36-37. Thus, the percentage sought
19 by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

20 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
21 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
22 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then can enhance
23 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
24 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
25 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
26 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
27 decrease a lodestar calculation”).

28 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,

supra, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of \$178,722.50 which is 1.36 times more than the \$131,666.66 fee request. Lidman Decl., ¶ 33. A summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, at ¶ 36, Exh. C.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (24th Year Attorney)	\$900	72.4	\$65,160
Elizabeth Nguyen (16th Year Attorney)	\$800	56.6	\$45,280
Paul K. Haines (15th Year Attorney)	\$800	21.1	\$16,880
Milan Moore (6th Year Attorney)	\$650	74.1	\$48,165
Paralegals	\$175	18.5	\$3,237.50
Total Lodestar			\$178,722.50

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding

attorneys' fees). First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Gonzalez Decl., ¶¶ 8-10. Additionally, the *average* settlement payment in this case of approximately \$1,639.93 is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for approximately two years of work. Lidman Decl., ¶ 30. During this time, Class Counsel have expended \$16,362.09, in actual costs, have devoted substantial time to this litigation and expect to incur approximately \$450.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and messenger fees, postage fees, and/or costs for future appearances. Lidman Decl., ¶ 31, Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Schumacher's documents and policies, analyzing timekeeping data and payroll records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form settlement agreement, preparing the Motions for Preliminary and Final Approval, overseeing

1 the settlement administration process, and otherwise litigating this case. *See* Lidman Decl., ¶ 30. Given
2 the considerable potential for adverse outcomes in this case, including, but not limited to losing on class
3 certification and/or merits issues., the contingent risk borne by Class Counsel was great. Lidman Decl.,
4 ¶ 29.

5 Class Counsel’s previous experience in litigating wage and hour class actions also supports the
6 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
7 hour class action litigation, with substantial experience litigating claims for meal and rest period
8 violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration of Paul K. Haines (“Haines
9 Decl.”), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience
10 in similar matters was integral in evaluating the strengths and weaknesses of the case against Stratasys
11 and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 33. Practice in the narrow field of wage
12 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
13 federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to
14 compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-
15 third of the Class Settlement Amount is reasonable.

16 Other factors also show that the fee amount requested in this case is reasonable under the
17 circumstances. This case involved nuanced legal issues including questions surrounding Stratasys’
18 obligation to “provide” meal periods and “authorize and permit” rest periods, and the propriety of
19 statutory penalties, to name just a few. Lidman Decl., ¶¶ 17-30. Thus, Class Counsel’s requested fee
20 award is fair, reasonable, and adequate and should be approved.

21 **D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and**
22 **Reasonable**

23 Class Counsel seek reimbursement of \$16,812.09 (including anticipatory fees and expenses
24 related to the instant motion and other future activity in this case) in litigation costs. Class Counsel’s
25 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
26 *See* Lidman Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
27 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
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1 “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*,
2 No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)(“costs of reproducing pleadings, motions
3 and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees*
4 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th
5 Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
6 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research,
7 copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the
8 expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class
9 member has objected to them, Plaintiff respectfully requests the Court should grant the request for actual
10 costs incurred.

11 **E. The Court Should Finally Approve the Requested Administration Costs**

12 Plaintiffs also request that the Court approve \$8,250.00 in administration costs to the Settlement
13 Administrator, Phoenix Settlement Administrators (“PSA”). As detailed in the declaration of Mayra
14 Gonzalez on Behalf of PSA submitted herewith, PSA performed duties in connection with this Settlement
15 that were integral in effectuating the Settlement and the Notice process. Among other things, PSA
16 calculated each Settlement Class member’s individual settlement payment, updated addresses contained
17 in the class data supplied by A.I. Foods, formatted and the Class Notices for mailing, mailed Class Notices
18 to all 127 Settlement Class members in English and Spanish, kept the parties informed of any objections
19 or requests for exclusion, and have otherwise administered the Settlement. *See* Gonzalez Decl., ¶¶ 2-16.

20 For these reasons, PSA’s requested costs are fair, reasonable, and adequate, and should be finally
21 approved.

22 **F. This Court Should Finally Approve Plaintiff’s Requested Service Award Because It**
23 **Is Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts and the Risks that**
24 **She Assumed on Behalf of the Class**

25 Courts routinely approve service payments to compensate named plaintiffs for the services they
26 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
27 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in
28

bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 service payment).

Here, Plaintiff seeks a service award of \$5,000.00, and believes this request is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of Settlement Class members. Lidman Decl., ¶ 45; Declaration of Fatima Flores ("Flores Decl."), ¶ 7. Plaintiff gathered documents for use in the lawsuit, and attended several meetings with Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement reached. *See* Lidman Decl., ¶ 38; Flores Decl., ¶ 8. Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class member has objected to the proposed award, as of the date of this filing. *See* Gomez Decl., ¶¶ 8-12. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved. The class has benefited from Plaintiff's actions as the average settlement amount is \$1,639.93.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize him and/or affect future employment. *See* Lidman Decl., ¶ 38; Flores Decl., ¶ 8. Plaintiff also understood the risk that she could be liable for Defendants' costs if he lost the case. *See* Lidman Decl., ¶ 40; Flores Decl., ¶ 8. Plaintiff accepted these risks and burdens because she wanted Defendants to compensate their current and former employees for unpaid wages. Velasquez Decl., ¶¶ 7. Plaintiff estimates she spent 6-8 hours on activities related to this case. *Id.* at ¶ 8.

Moreover, Plaintiff has agreed to release, in addition to the released claims included within the Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant and the Released Parties. Plaintiff's release includes unknown claims, and that she is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code. Settlement ¶ 5.1.1.

V. CONCLUSION

For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's motion in its entirety and adopt the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Final Judgment submitted herewith.

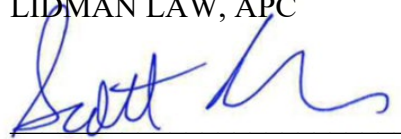
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1 Dated: June 24, 2024

Respectfully submitted,
LIDMAN LAW, APC

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3 By:



4 Scott M. Lidman
5 Attorney for Plaintiff
6 FATIMA FLORES
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