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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

LUZ HERNANDEZ, TYLER SMITH, individually, on behalf of all others similarly situated, the State of California and other aggrieved employees,

Plaintiffs,

v.

UNITED GROUND EXPRESS, INC., a corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2326322
Consolidated with Case Nos. CIVSB2405630 and CIVSB2410517

Assigned to: Hon. David E Driscoll, Dept. S22

Complaint filed: October 30, 2023
FAC filed: September 11, 2024
SAC filed: December 19, 2025
Trial date: Not set

CLASS & PAGA ACTION

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

(Declarations of Alan Wilcox and Nick Castro, and [Proposed] Order Concurrently Filed Herewith)

FINAL APPROVAL HEARING
Date: August 4, 2026
Time: 8:30 a.m.
Dept.: S22

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 4, 2026, at 8:30 a.m. in Department S22 of San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415-0210, Luz Hernandez and Tyler Smith (collectively the "Plaintiffs" or "Class Representatives") will, and hereby does, move for an order as follows:

1. Certifying the class, defined as all persons employed by Defendant United Ground Express, Inc. ("Defendant," and together with Plaintiffs the "Parties") who were employed by Defendant in California and classified as hourly-paid employees who worked for Defendant from October 30, 2019, to April 12, 2025 (the "Class Period") (each "Class Member(s)", collectively the "Class"), for settlement purposes;
2. Approving the "Aggrieved Employees," defined as all persons employed by Defendant in California and classified as hourly-paid employees who worked for Defendant from December 11, 2022, to April 12, 2025 (the "PAGA Period"), for settlement purposes;
3. Approving the $1,500,000.00 settlement (the "Gross Settlement Amount") as memorialized in the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement") between the Plaintiffs and Defendant as fair, just, reasonable and adequate. A true and correct copy of the Settlement is attached as **Exhibit 1** to the Declaration of Alan Wilcox in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Class Counsel Declaration") submitted concurrently with this Motion for Final Approval of Class Action Settlement (the "Motion").
4. Finding that Class Members were given adequate notice of the Settlement and advised of their rights to participate in the Settlement, object to the Settlement, or exclude themselves from the Settlement, in a reasonable manner. A true and correct copy of the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval is contained within the Settlement Agreement attached as **Exhibit 1** to the Class Counsel Declaration (the "Class Notice");
5. Appointing Plaintiffs Luz Hernandez and Tyler Smith as "Class Representatives" for settlement purposes, and approving a payment of $15,000.00 to each ($30,000.00 total)

Plaintiff (the "Class Representatives' Service Payments");

6. Appointing Benjamin H. Haber, Daniel Kramer and Alan Wilcox of Wilshire Law Firm, PLC ("WLF") as class counsel ("Class Counsel") for settlement purposes;
7. Approving payment of $500,000.00 in attorneys' fees, which is 33 and 1/3% of the Gross Settlement Amount (the "Class Counsel Fees Payment");
8. Approving payment to Class Counsel for litigation costs in the amount of $43,968.53 for litigating this action (the "Class Counsel Litigation Expenses Payment");
9. Approving payment of administrative expenses to ILYM Group, Inc. as the settlement administrator (the "Administrator") in the amount of $12,950.00 (the "Administration Expenses Payment");
10. Directing that the clerk of the Court to enter the Court's order as a final judgment; and,
11. Without affecting the finality of the final judgment, and pursuant to C.C.P. 664.6, reserving continuing jurisdiction over the Parties, Class Counsel, Defendant's counsel, and the Administrator for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

This Motion will be based on the accompanying Memorandum of Points and Authorities, the Declarations of Alan Wilcox, Nick Castro and such oral argument as may be heard by the Court, and all other papers on file in this action.

Dated: July 13, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: ______________________

Benjamin H. Haber
Daniel Kramer
Alan Wilcox
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this Motion, Plaintiffs seek final approval of the Settlement with Defendant. The Settlement will provide substantial monetary payments to approximately 1,369 Class Members.

Upon the Court's approval of the Settlement, participating Class Members will receive an ***average estimated individual settlement payment of approximately $630.91***, with the ***highest individual estimated settlement payment to be paid of approximately $3,273.96***. (Declaration of Nick Castro Regarding Notice and Settlement Administration ["Castro Decl."], ¶ 14.) As of filing this Motion there **no objections to the settlement** and **one request for exclusion**. (*Id.* at ¶¶ 11.) For the reasons set forth in this Motion, the Settlement is fair, just, reasonable, and adequate and is in the best interests of the Class Members.

Final approval of the Settlement is warranted as it satisfies all the criteria for approval under California law. As demonstrated in the Motion for Preliminary Approval of Class Action, the Settlement provides excellent benefits to the Class, particularly considering the complexities and risks of the Action. Accordingly, Plaintiffs request that the Court grant final approval of the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") (Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and the putative Class Members were employed by Defendant in California and classified as hourly-paid employees who worked for Defendant during the Class Period. Defendant is a subsidiary of United Airlines, Inc. and provides critical functions related to safety, security, customer service, operational efficiency and regulatory compliance. (Class Counsel Decl., ¶ 2.)

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Class Counsel Decl., at ¶ 3.) Plaintiffs allege that Defendant failed to pay for all hours worked. (*Id.*) Plaintiffs further allege that Defendant failed to:

provide employees with legally compliant meal and rest periods; and Defendant failed to reimburse business expenses. (*Id.*) Based on these allegations, Plaintiffs assert related claims for failure to pay wages during employment, failure to pay all final wages at termination, failure to provide accurate wage statements, failure to keep requisite payroll records, unfair business practices, and civil penalties under PAGA. (*Id.*)

On October 30, 2023, Plaintiff Hernandez filed a putative wage and hour class action on behalf of herself and all hourly-paid, non-exempt employees in California against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) violation of California's Unfair Competition Law, California Business and Professions Code §§17200, et seq. (Class Counsel Decl., ¶ 4.) Plaintiff Hernandez sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA on December 11, 2023. (*Id.*) On January 25, 2024, Defendant removed the Hernandez Class Action to the Central District of California, Case No. 5:24-cv-00168. On February 14, 2024, Plaintiff Hernandez filed a separate PAGA action in San Bernardino County, Case No. CIVSB2405630. (*Id.*) On March 28, 2024, Plaintiff Smith filed a separate class action in San Bernardino County Superior Court entitled Tyler Smith v. United Ground Express, Inc., Case No. CIVSB2410517. (*Id.*) On April 2, 2024, Plaintiff Hernandez's Motion to Remand was granted and the Hernandez Class Action was remanded to the San Bernardino County Superior Court. (*Id.*) On September 11, 2024, Plaintiffs filed an Amended Consolidated Complaint, consolidating the Hernandez Class Action, the Hernandez PAGA Action, and the Smith Class Action. (*Id.*) Plaintiffs sent an amended notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA on June 16, 2025. (*Id.*) On December 1, 2025, Plaintiffs filed a Joint Stipulation for Leave to File Second Amended Consolidated Class and Representative Action Complaint

("SAC") to effectuate the terms of the settlement and the SAC was filed on December 19, 2025 (*Id.*)

B. Discovery and Investigation

Following the filing of the Action, both Plaintiff and Defendant propounded multiple sets of formal written discovery, and the Parties exchanged information, data, and documents, and reviewed the same before going to mediation. (Class Counsel Decl. ¶ 5.) ***Defendant also deposed both Plaintiffs and Plaintiff took a deposition of Defendant's Person Most Knowledgeable.*** (*Id.*) Defendant produced a sampling of time and pay records for Class Members. (*Id.*) Defendant also provided copies of its wage and hour policies and practices in effect for the Class Members during the Class Period and information regarding the total number of current and former employees. (*Id.*) The Parties have engaged in sufficient formal and informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties. (*Id.*)

After reviewing Defendant's discovery responses and documents regarding Defendant's wage and hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (Class Counsel Decl. ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Action. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) This extensive investigation and discovery allowed Class Counsel to act intelligently and effectively in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations and Agreement

On February 18, 2025, the Parties participated in private mediation with experienced class action mediator Michael E. Dickstein. (Class Counsel Decl., ¶ 7.) The mediation was conducted via Zoom, which led to an agreement to settle this action. (*Id.*) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses and further negotiations regarding the Settlement terms, the Parties finalized the Settlement, the material terms of which are stated in the Settlement Agreement. (*Id.*, **Ex. 1**).

Class Counsel has conducted a thorough investigation into the facts of this Action. (Class Counsel Decl., ¶ 8.) Based on the foregoing discovery and their independent investigation, and evaluation, Class Counsel is of the opinion that the Settlement is fair, just, reasonable, and adequate and is in the best interests of the Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.*)

D. <u>Preliminary Approval and Overwhelming Support for the Settlement</u>

Following the execution of the Settlement Agreement, the Court granted Plaintiffs' Motion for Preliminary Approval of Class Action Settlement on March 24, 2026. (Class Counsel Decl., ¶ 9.) The deadline for Class Members to opt out or object to the Settlement was June 8, 2026. (*Id.*) The reaction of the Class to the settlement so far has been overwhelmingly positive. (*Id.*) Indeed, as of the filing of this Motion, one Class Member has timely opted out of the Settlement and no Class Member has objected to the Settlement. (*Id.*; Castro Decl. at ¶ 11.)

E. <u>Key Terms of the Proposed Settlement</u>

Under the Settlement Agreement, Defendants will pay the Gross Settlement Amount to resolve this Action. The key terms include:

1. <u>Aggrieved Employee</u>: An "Aggrieved Employee" is all persons employed by Defendant in California and classified as an hourly-paid employee who worked for Defendant during the PAGA Period. (Settlement, ¶ 1.4, 1.31.)

2. <u>Class</u>: For purposes of this Settlement Agreement only, the Parties agree to the certification of the Class pursuant to California Code of Civil Procedure section 382 defined as: "all persons employed by Defendant in California and classified as an hourly-paid employee who worked for Defendant during the Class Period." (Settlement, ¶ 1.5.)

3. <u>Participating Class Members</u>: "means a Class Member who does not submit a

valid and timely Request for Exclusion from the Settlement." (Settlement, ¶ 1.35.)

4. Class Period and PAGA Period End Dates: Pursuant to section 8 of the Settlement, the Class Period and PAGA Period end dates were revised to April 12, 2025. (*See* Settlement, ¶ 8; *see also* Castro Decl. at ¶ 5.)

5. Gross Settlement Amount: The Gross Settlement Amount of $1,500,000.00 will be used to pay all of the following (the Gross Settlement Amount less these payments shall be the "Net Settlement Amount"):

a. "Individual Class Payments" are the Participating Class Members' pro rata share of the "Net Settlement Amount" (as defined below) calculated according to the number of "Workweeks" (any week during which a Class Member worked for Defendant for at least one day during the Class Period) worked during the Class Period (the "Individual Class Payments");

b. "PAGA Penalties" are the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($12,500.00) and the 75% to LWDA ($37,500.00) in settlement of PAGA claims;

c. "Individual PAGA Payments" are the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period;

d. "LWDA PAGA Payment" is the the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i);

e. Class Counsel Fees Payment;

f. Class Counsel Litigation Expenses Payment;

g. Class Representatives Service Payment; and

h. the Administration Expenses Payment. (Settlement, ¶¶ 1.3, 1.7, 1.22, 1.23, 1.24, 1.27, 1.28, 1.34, and 3.1-3.2.5.2.)

6. Effective Date: "means the date on which the later of the following events has

occurred: (a) the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval of the settlement and Final Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed (i.e., 61 days following Final Judgment being entered); (b) when any appeal, writ, or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or other appellate proceeding has upheld the Court's Final Approval Order with no right to pursue further remedies or relief." (Settlement, ¶ 1.18.)

7. Uncashed Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, ¶ 4.4.3.)

8. Released Parties: "means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates." (Settlement ¶ 1.41.)

9. Release by Participating Class Members: "Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,…" (Settlement, ¶ 5) "All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims that were or could have been asserted based on the facts pled in the Operative Complaint or the PAGA Notice, irrespective of theory of liability. This release specifically includes but is not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's alleged failure to pay for all hours worked (including minimum, straight time, and overtime wages); meal period violations, including but not limited to failure to provide meal periods and failure to correctly calculate the appropriate rate of pay for meal period premiums; rest period violations, including but not limited to failure to authorize and permit

rest periods and failure to correctly calculate the appropriate rate of pay for rest period premiums; failure to maintain accurate and/or complete records; failure to timely pay final wages during employment and/or at termination; failure to furnish accurate itemized wage statements; paid sick leave violations, including but not limited to failure to pay sick leave wages and failure to correctly calculate the appropriate rate of pay for sick leave; failure to reimburse business expenses; failure to pay vested vacation time; unlawful deductions; failure to pay reporting time pay; failure to provide suitable seating; unfair and/or unlawful competition and/or business practices; and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 516, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and the applicable Wage Orders. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Settlement, ¶ 5.2.)

10. Release by Allegedly Aggrieved Employees: "Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,…" (Settlement, ¶ 5) "The LWDA, Plaintiff as a proxy for the State, and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were or could have been asserted based on the facts pled in the Operative Complaint or the PAGA Notice, irrespective of theory of liability. This release specifically includes but is not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's alleged failure to pay for all hours worked (including minimum, straight time, and overtime wages); meal period violations, including but not limited to failure to provide meal periods and failure to correctly calculate the appropriate

rate of pay for meal period premiums; rest period violations, including but not limited to failure to authorize and permit rest periods and failure to correctly calculate the appropriate rate of pay for rest period premiums; failure to maintain accurate and/or complete records; failure to timely pay final wages during employment and/or at termination; failure to furnish accurate itemized wage statements; paid sick leave violations, including but not limited to failure to pay sick leave wages and failure to correctly calculate the appropriate rate of pay for sick leave; failure to reimburse business expenses; failure to pay vested vacation time; unlawful deductions; failure to pay reporting time pay; failure to provide suitable seating; unfair and/or unlawful competition and/or business practices; and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 516, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period." (Settlement, ¶ 5.3.)

11. <u>Distribution Formula:</u> "An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Settlement, ¶ 3.2.4.) As to PAGA: "The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($12,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment." (Settlement ¶ 3.2.5.1.)

12. <u>Tax Allocation:</u> 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining

75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (Settlement, ¶ 3.2.4.1.)

13. Class Representatives' Service Payments: Class Representatives' Service Payments to the Class Representatives of not more than $15,000.00 each ($30,000.00 total) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members. Defendant will not oppose Plaintiffs' request for Class Representatives' Service Payments that do not exceed this amount. (Settlement, ¶ 3.2.1.)

14. Attorneys' Fees and Costs: A Class Counsel Fees Payment of not more than 33 and 1/3%, which is currently estimated to be $500,000.00, and a Class Counsel Litigation Expenses Payment of not more than $50,000.00. Defendant will not oppose requests for these payments provided they do not exceed these amounts. (Settlement, ¶ 3.2.2.)

15. Notice of Proposed Class Action Settlement: The Class Notice set forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Castro Decl. **Ex. A**.) A true and correct copy of the Class Notice is attached as **Exhibit A** to the Castro Declaration. (*Id.*) Class Members were notified by U.S First Class Mail of the Settlement. (Castro Decl., ¶ 7.) The Administrator undertook its best efforts to ensure that the Class Notice was provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the Class Notice to updated addresses. (*Id.* at ¶¶ 5-6.)

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel … and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The factual record must be sufficiently developed to withstand evaluation of plaintiffs' likelihood of success, with the most important factor being "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. (*Clark v. American Residential Services, LLC*, (2009) 175 Cal.App.4th 785, 799).

Whether a class action settlement should be approved is a question committed to the trial court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give "[d]ue regard ...to what is otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id*. [internal citations omitted].)

A. Plaintiffs' Case and Risks of Further Litigation

Plaintiffs have established that their claims are based on viable causes of action. Class Counsel engaged in formal and informal discovery (Class Counsel Decl. ¶¶ 5-6). Through all of this informal discovery and investigation it became abundantly clear that both Parties were able to establish credible claims and viable defenses. While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 10.) Plaintiffs also recognize that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*)

Under *Clark*, the most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement (*Clark* at 799). Indeed, the Plaintiffs have identified and provided a sufficient basis for bringing legitimate claims against Defendant, which could very well lead to a favorable judgment should litigation continue. However, the strengths of Plaintiffs' claims cannot be viewed in a vacuum. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment compared to the relative strengths of Plaintiffs' claims, it is clear that the Gross Settlement Amount is within the "ballpark" of reasonableness, and approval of the Settlement is appropriate.

Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. ***Indeed, each Class Member is eligible to receive an average benefit of approximately $630.91, and the highest estimated net payout is expected to be approximately $3,273.96.*** (Castro Decl., ¶ 14.) Furthermore, given that continued litigation of this Action could very reasonably result in a lower award than the amount of the Settlement (or even no award), the Gross Settlement Amount and Individual Class Payments are reasonable.

A settlement is not judged against what the plaintiff might recover had he or she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 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."]).

B. <u>A Presumption of Fairness Over the Settlement Exists</u>

A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) 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." (*Wershba*, at 245.) A presumption of fairness exists here as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery, which allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage and hour litigation.

The Settlement was reached over the course of a full-day mediation with experienced employment mediator, Michael E. Dickstein after a full-day mediation (Class Counsel Decl., ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id*.) The Parties went into the mediation willing to explore the potential for a settlement of the Action, but the Parties were also prepared to litigate their positions through trial and appeal if a settlement had not been reached. (*Id.*)

As discussed above, Class Counsel conducted formal and informal discovery concerning the claims set forth in the Action, including depositions, sufficient to allow Plaintiffs and Class Counsel to act intelligently and effectively in negotiating the proposed Settlement. (*Id.* at ¶ 10.)

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Class Counsel Decl., ¶¶ 26-35.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and has been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id*.)

Based on Class Counsel's experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiffs' claims, the strength of Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of Class Members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra,* 168 Cal.App.4th at p. 129 ["The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms' length transaction entered without self-dealing or other potential misconduct"].)

Lastly, as of the date of this Motion, no Class Member has objected to the Settlement, and one Class Member has timely requested exclusion from the Settlement. (Castro Decl., ¶ 11.) The overwhelmingly positive response of the Class strongly supports final approval of the Settlement.

(*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].) In fact, Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, "only nine objections were submitted", and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23"], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, the "fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness," and the court did not abuse its discretion in approving settlement].) Here, the percentage of objectors is small as there are **zero** objectors out of 1,369 Class Members. (Castro Decl., ¶ 11.)

Taken all together, a presumption that the Settlement is fair, just, adequate, and reasonable therefore exists, and the Settlement should be approved.

IV. CLASS COUNSEL FEES PAYMENT, CLASS COUNSEL LITIGATION EXPENSES PAYMENT, AND CLASS REPRESENTATIVES' SERVICE PAYMENTS ARE REASONABLE.

Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class Counsel the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. (Settlement ¶ 3.2.2.) Defendant has further agreed to pay the Class Representatives the Class Representatives' Service Payment. (*Id.* at ¶ 3.2.1.) Defendant has also agreed that it would not oppose an application for these payments addressed above, and no Class Member has objected to these amounts. (*See generally* Settlement; Castro Decl., ¶ 11.)

A. Class Counsel Fees Payment Is Reasonable

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually **50%** of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys' fees at fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent*** commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50% was awarded involved "smaller" settlement funds of under $10 million].)

In common fund cases like this one, the primary method California courts use for calculating attorneys' fees is the percentage of the common fund method, which may be followed by a lodestar cross-check. In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, the California Supreme Court affirmed an award of 33 1/3% of a $19 million wage and hour class action settlement with a 2.03 to 2.13 multiplier. (*Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506.) In doing so, the California Supreme Court explained:

> As to the incentives a lodestar cross-check might create for class counsel, we emphasize the lodestar calculation, when used in this manner, ***does not override the trial court's primary determination of the fee as a percentage of the common fund*** and thus ***does not impose an absolute maximum or minimum on the potential fee award***. If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment. Courts using the percentage method have generally weighed the time counsel spent on the case as an important factor in choosing a reasonable percentage to apply.

(*Id.* at p. 505, emphasis added; *see also Beaver v. Tarsadia Hotels* (S.D. Cal. Sept. 28, 2017) 2017 WL 4310707, at *9 [applying *Laffitte* standard to fee request for 33 1/3% of common fund].)

The settled-for Class Counsel Fees Payment is consistent with the average fee award in class actions. Indeed, as is the case here, the custom and practice in class actions is to award ***approximately*** one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) 33 and 1/3% of the Gross Settlement Amount fits squarely within the "approximate" custom and practice of awarding around one-third of a fund and is therefore reasonable.

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to "cross-check" or 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." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

Applying the lodestar method requires a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a multiplier to the lodestar to take into account various factors. "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the Action involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at pp. 556-57.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at p. 557.)

Detailed timesheets are **not** necessary for a lodestar cross-check. "The law is clear … that an award of attorney fees may be based on counsel's declarations, without production of detailed time records." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375) (*see also United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407 "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate.") Here, Class Counsel submits their declaration to support their lodestar hourly rates concurrently with this Motion.

Additionally, as the California Supreme Court explained in *Laffitte*:

> With regard to expenditure of judicial resources, we note that 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."

(5 Newberg on Class Actions, *supra*, § 15:86, p. 331; *see, e.g., Goldberger v.*

> *Integrated Resources, Inc., supra*, 209 F.3d at p. 50 [2d Cir.; "where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court"]; *In re Prudential Ins. Co. America Sales Practice Action Agent Actions* (3d Cir.1998) 148 F.3d 283, 342 [agreeing with district court that "detailed time summaries were unnecessary where, as here, it was merely using the lodestar calculation to double check its fee award."]; *Barbosa v. Cargill Meat Solutions Corp.* (E.D.Cal.2013) 297 F.R.D. 431, 451 ["Where the lodestar method is used as a cross-check to the percentage method, it can be performed with a less exhaustive cataloguing and review of counsel's hours."].)

(*Laffitte, supra,* 1 Cal.5th at p. 505.)

Class Counsel's lodestar is at least $271,535.00 based on over 325.8 hours of work performed thus far. (Class Counsel Decl., ¶¶ 16-25.) Accordingly, the Class Counsel Fees Award is reasonable and fair as it is based on an approximate multiplier of 1.84. This disparity is important to note because when plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 [finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by Plaintiffs' Counsel."].) Indeed, there is no reason for the Court to reduce Class Counsel's lodestar with a negative multiplier. (*Roos v. Honeywell Int'l., Inc.* (2015) 241 Cal. App. 4th 1472, 1495 ["a trial court acts appropriately . . .when it accepts in a common-fund case a cap on fees . . . when the application of the cap results in a lower award than would be authorized under the lodestar method."], disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

To be sure, trial courts have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) In addition, it has been held that "[m]ultipliers can range from 2 to 4 or even higher." (*See Wershba*, *supra,* 91 Cal.App.4th at p. 255; *see also Van Vranken*, *supra,* 901 F. Supp. At p. 298 ["[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."].)

Once this lodestar figure has been determined, the Court may take into account other "enhancement" factors to adjust the lodestar award. While Plaintiffs seek a multiplier of 1.84 here, the overall reasonableness of Plaintiffs' request is underscored by the fact that similar multipliers have been found to be reasonable for Class Counsel in other class actions. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 WL 3673845, *3 [finding WLF's multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"]; *Chavez, supra,* 162 Cal.App.4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ["most" common fund cases apply a multiplier of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11, *citing* a study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and finding that a multiplier of 2.43 would be "per se reasonable.")

By way of further example, the intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int'l* (2014) 231 Cal.App.4th 860, 881-82.) The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

Factors considered in determining whether a lodestar multiplier is appropriate generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the preclusion of other employment by the attorney due to acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the public. (*Serrano, supra,* 20 Cal.3d at pp. 48-49.) All these factors favor approval of a multiplier along the lines of those approved in the cases above.

The major consideration in determining the necessity of a multiplier is the contingent nature of the award. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) Further, the possibility of no recovery is only one of the uncertainties involved in taking on such a case. Other uncertainties are the amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133, 1138.)

Furthermore, contingency fees should be higher than fees for the same legal services paid concurrently with the provision of the services. (*Id.*) "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. If he is paid no more, competent counsel will be reluctant to accept fee award cases." Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. (*Id.*) A risk enhancement is "earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-level compensation for such services which typically pay a premium for the risk of nonpayment or delay in payment of attorney's fees." (*Id*. at p. 1138.)

Here, Class Counsel has been the only counsel to represent the Class Members in this Action and have borne the entire risk and costs of litigating this Action purely on a contingency basis. Class Counsel's outlay of time and money in this case has been significant. (Class Counsel Decl., at ¶ 23.)

The other factors are also present here. As discussed, this Action represents complex questions of law and fact. Defendants' contentions compared to Plaintiffs' assertions underscore the risk of prevailing at class certification and trial, and any of these obstacles could have prevented recovery completely. (*Id.* at ¶ 8.) Given the complexities of this Action, this Action required experienced and competent lawyers with expertise in the issues presented herein. Further, proceeding to trial would have added years to the resolution of this Action because of the difficult legal and factual issues raised and the likelihood of appeals. (*Id.*) Despite these risks, Class Counsel took this case on a contingency basis. (*Id.* at ¶ 24.) Further, there are only so many cases that Class Counsel can take at any one time. (*Id.*) As a direct result of litigating this Action, there were other meritorious cases that were presented to Class Counsel and that would have generated substantial fees but were nonetheless declined during the pendency of this Action in order to devote the attention necessary to achieve this favorable result. (*Id.*) Considered against the risks of continued litigation, and the importance of the employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Class.

Thus, Plaintiffs' request for the Class Counsel Fees Payment is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. Accordingly, the Court should approve the Class Counsel Fees Payment requested herein.

B. Class Counsel Litigation Expenses Payment Is Reasonable.

As of the date of filing this Motion, WLF has incurred around $43,968.53 in costs. Defendant has agreed that they will not oppose the Class Counsel Litigation Expenses request. (Class Counsel Decl., ¶ 25.) Accordingly, Class Counsel respectfully requests reimbursement of $43,968.53 in costs. The categories of costs are set forth in the accompanying Class Counsel Declaration, and these costs are easily seen to be both reasonable and necessary.

Counsel can recover "out-of-pocket expenses that 'would normally be charged to a fee-paying client'" including costs for "service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such costs are properly recoverable on motions for settlement approval. (*See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018, 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL 3151077, at *12 ["Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable."].)

Therefore, the requested Class Counsel Litigation Expenses Payment should be approved.

C. Class Representatives' Service Payments Are Reasonable.

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement Agreement, subject to the Court's approval, Defendant agreed to pay a Class Representatives' Service Payments in the amount of $15,000.00 each ($30,000.00 total) to Plaintiffs Luz Hernandez and Tyler Smith. The Class Representatives' Service Payments are also in exchange for Plaintiffs' general release of all claims against Defendant, which is broader than the other Class Members. Plaintiffs have submitted declarations demonstrating their devotion to this Action, including their efforts assisting Class Counsel in the Action, communicating with Class Counsel frequently for litigation, preparing for mediation, sitting for deposition, and reviewing case-related documents. (*See, generally,* Declarations of Plaintiffs submitted in support of Motion for Preliminary Approval.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) Courts routinely approve a $10,000 enhancement award for plaintiffs represented by class counsel. (*See, e.g., Moreno, supra,* 2021 WL 3673845 at *3 ["The Court concludes a $10,000 incentive award is appropriate."]; *Suarez v. Bank of Am., Nat'l Ass'n, No. 18-CV-01202-LB, 2024 WL 150721, at *4 (N.D. Cal. Jan. 11, 2024)* ["The court approves awards of $10,000 for each class representative."].)

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." (*Clark* at 804.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Id.* at p. 806.) "An incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit."' (*Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, *quoting Clark*, 175 Cal.App.4th at p. 804.) The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (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 (or lack thereof) enjoyed by the class representative as a result of the litigation." (*Id.* at pp. 1394–95.) Plaintiffs' declarations describe how each of the five *Cellphone Termination* factors are present here.

D. <u>The Administration Expenses Payment Is Reasonable.</u>

The Administrator estimates that it will incur a total of $12,950.00 in costs associated with the administration of this Settlement. (Castro Decl., ¶ 16.) These expenses are reasonable, based upon the size of the Class, claim and exclusion tracking, and Class Member payment processing.

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement.

Dated: July 13, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: ______________________

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