

1 Kevin Mahoney (SBN: 235367)  
 2 [kmahoney@mahoney-law.net](mailto:kmahoney@mahoney-law.net)  
 Katherine Odenbreit (SBN: 184619)  
 3 [kodenbreit@mahoney-law.net](mailto:kodenbreit@mahoney-law.net)  
 John A. Young (SBN: 299809)  
 4 [jyoung@mahoney-law.net](mailto:jyoung@mahoney-law.net)  
**MAHONEY LAW GROUP, APC**  
 249 E. Ocean Boulevard, Suite 814  
 6 Long Beach, CA 90802  
 Telephone No.: 562-590-5550  
 7 Facsimile No.: 562-590-8400

9 Attorneys for Plaintiff ANITA TREJO, as an individual and on behalf of all  
 10 similarly situated employees

11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ANITA TREJO,  
 Plaintiff,  
 14  
 v.

15 LYNEER STAFFING SOLUTIONS,  
 16 LLC; CIERA STAFFING, LLC;  
 EMPLOYERS HR LLC; YUSEN  
 17 LOGISTICS (AMERICAS) INC.; and  
 DOES 1 through 50, inclusive,  
 18  
 Defendants.

Case No.: 2:19-cv-4132-DSF (JCx)

**CLASS ACTION**

**PLAINTIFF’S NOTICE OF  
 MOTION AND MOTION FOR  
 ENHANCEMENT PAYMENT,  
 ATTORNEYS’ FEES AND  
 REIMBURSEMENT OF COSTS  
 AND EXPENSES**

Assigned to;  
 Hon. Dale S. Fischer, Courtroom 7D

Date: June 6, 2022  
 Time: 1:30 p.m.  
 Courtroom: 7D

Complaint Filed: March 27, 2019

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

3 **PLEASE TAKE NOTICE** that on June 6, 2022, at the United States  
4 District Court for the Central District of California located at 350 W. 1st Street,  
5 Courtroom 7D, Los Angeles, California, Plaintiff Anita Trejo (“Plaintiff”),  
6 individually and on behalf of those similarly situated will, and hereby move this  
7 Court, to award Plaintiff an enhancement payment in the amount of seven  
8 thousand five hundred dollars (\$7,500.00) for her service to the Class as Class  
9 Representative, Class Counsel attorneys’ fees in the amount of two hundred eight  
10 thousand nine hundred one dollars and eighty-two cents (\$208,901.82), and  
11 reimbursement of costs in the thirteen thousand three hundred ninety-nine dollars  
12 and ninety-one cents (\$13,399.91).

13 This motion is made on the grounds that the requested award is fair,  
14 reasonable, and appropriate under the common fund doctrine, under either the  
15 percentage-of-the-fund method, or the lodestar method. The requested fee award  
16 represents one-third (1/3) of the Gross Settlement Amount, a percentage of the  
17 Gross Settlement Amount that is well within the range that courts in this Circuit  
18 approve.

19 Additionally, Class Counsel seek reimbursement of thirteen thousand three  
20 hundred ninety-nine dollars and ninety-one cents (\$13,399.91) in litigation costs  
21 and expenses they incurred in connection with the prosecution of this action. The  
22 costs and expenses for which Class Counsel seek reimbursement were reasonable  
23 and necessary to this litigation and were incurred for the benefit of the Class.

24 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the  
25 Memorandum of Points and Authorities in Support of Motion for Final Approval  
26 of Class Action Settlement; (3) the Declaration of Katherine J. Odenbreit; (4) the  
27 Declaration of Anita Trejo; (5) the Parties' Joint Stipulation for Class Action  
28 Settlement and Release and Addendum (“Settlement Agreement”); (6) the Notice

1 of Class Action Settlement; (7) the [Proposed] Order Granting Final Approval of  
2 Class Action Settlement; (8) the records, pleadings, and papers filed in this action;  
3 and (9) such other documentary and oral evidence or argument as may be  
4 presented to the Court at or prior to the hearing of this Motion.

5  
6 Dated: March 4, 2022

**MAHONEY LAW GROUP, APC**

7  
8 By: /s/Katherine J. Odenbreit  
9 Katherine J. Odenbreit, Esq.  
10 Attorneys for Plaintiff Anita Trejo as an  
11 individual and on behalf of all similarly  
12 situated employees  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Anita Trejo (“Plaintiff”) successfully resolved her and Class  
4 Members’<sup>1</sup> California Labor Code, Business and Professions Code, and Private  
5 Attorneys General Act (“PAGA”) claims, resulting in a six hundred twenty-six  
6 thousand seven hundred five dollars and forty-five cents (\$626,705.45) non-  
7 reversionary settlement with an average estimated recovery of one hundred forty-  
8 one dollars and thirty-one cents (\$141.31) per Settlement Class Member.  
9 (Declaration of Taylor Mitzner (“Mitzner Dec.”), ¶ 14.) Given Plaintiff’s  
10 successful efforts in achieving monetary payments for the members of the Class,  
11 particularly in the face of significant litigation risks and uncertainties as discussed  
12 *infra*, Plaintiff and Class Counsel seek the following awards: (1) an enhancement  
13 payment for Plaintiff in the amount of seven thousand five hundred dollars  
14 (\$7,500.00) for her service to the Class as Class Representative; (2) Class Counsel  
15 attorneys’ fees in the amount of two hundred eight thousand nine hundred one  
16 dollars and eighty-two cents (\$208,901.82); and (3) reimbursement of costs in the  
17 amount of thirteen thousand three hundred ninety-nine dollars and ninety-one  
18 cents (\$13,399.91).

19 Plaintiff seeks a modest enhancement payment in the amount of seven  
20 thousand five hundred dollars (\$7,500.00) to compensate her for her role in  
21 obtaining significant class-wide recovery and for providing a full general release  
22 of her claims. Such amount is fair and reasonable in light of the significant time  
23 and effort Plaintiff expended assisting with this class litigation and class-wide  
24 settlement, and the risks she took in order to vindicate the rights of over two  
25 thousand other workers. Plaintiff also served as a “private attorney general” in  
26 pursuing a Private Attorneys General Act cause of action against Defendants. As

27 <sup>1</sup> All Capitalized terms appearing in this Memorandum that are not defined herein have the  
28 same meanings assigned to them as provided in the Parties’ Settlement Agreement. (Odenbreit  
Dec., Ex A.)

1 such, Plaintiff earned the enhancement payment he seeks here. (*Rodriguez v. West*  
2 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958– 59.) The requested payment  
3 is in line with service awards that other courts in this Circuit have approved in  
4 similar wage and hour cases.

5 The requested attorneys’ fee award is reasonable under both the percentage-  
6 of-the-fund method and a lodestar cross-check. (*See In re Bluetooth Headset*  
7 *Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 942, 944; *Six (6)*  
8 *Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301,  
9 1311.) Many courts within this Circuit have approved attorneys’ fee awards of up  
10 to one-third of the common fund. (*See, e.g., In re Pacific Enterprises Securities*  
11 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming fee award of one-third of  
12 settlement).) The reasonableness of the fee request is further underscored by Class  
13 Counsel’s lodestar, one hundred sixty-seven thousand six hundred sixty-one  
14 dollars and fifty cents (\$167,661.50) to date. (Odenbriet Dec., ¶ 27). As detailed in  
15 the accompanying declaration of Katherine J. Odenbreit, Class Counsel spent  
16 more than 308.33 hours litigating this case, which does not include the additional  
17 time they will incur through final approval and distribution of settlement  
18 payments to Class Members. Class Counsel litigated this case without any  
19 guarantee of payment, and faced substantial risk that they would not be  
20 compensated for their time. (Odenbreit Dec., ¶ 6.) The hourly rates requested by  
21 Class Counsel are consistent with the market rates for attorneys of their level of  
22 skill and experience. (Odenbreit Dec., ¶ 28, Exs. C and D.) The requested award is  
23 thus fair, reasonable, and appropriate under the common fun doctrine, particularly  
24 in light of the meaningful results achieved and the significant risks presented.

25 Class Counsel are also entitled to recover their reasonable litigation  
26 expenses from the common fund. (*See Vincent v. Hughes Air West, Inc.* (9th Cir.  
27 1977) 557 F.2d 759, 769; *In re Anthem, Inc. Data Breach Litigation* (N.D. Cal.,  
28 Aug. 17, 2018, No. 15-MD-02617-LHK) 2018 WL 3960068, at \*28; *Lusby v.*

1 *GameStop Inc.* (N.D. Cal., Mar. 31, 2015, No. C12-03783 HRL) 2015 WL  
2 1501095, at \*5.) Here, Class Counsel seek reimbursement of thirteen thousand  
3 three hundred ninety-nine dollars and ninety-one cents (\$13,399.91) in reasonable  
4 litigation costs and expenses they have incurred in connection with the  
5 prosecution of this action. (Odenbreit Dec., ¶ 31, Exs. E-F.) Those costs and  
6 expenses include filing fees, copy and fax expenses, messenger expenses, postage,  
7 teleconference expenses, and legal research fees. (Odenbreit Dec., ¶ 31, Exs. E-F.)  
8 These expenses are of the type ordinarily billed to paying clients, and were  
9 incurred for the benefit of the Class. Class Counsel are therefore entitled to  
10 reimbursement of these expenses.

## 11 **II. FACTS AND PROCEDURE**

### 12 **A. Class Counsel Devoted Significant Time and Resources to** 13 **Litigating this Case on A Contingency Basis, Despite the Risks** 14 **Involved**

15 Over the course of the litigation, Class Counsel conducted extensive  
16 investigation into the claims asserted in this case. That investigation included the  
17 review, analysis and sampling of numerous records and other documents, and  
18 research and evaluation of claims and defenses. Plaintiff secured information and  
19 documentation concerning the claims set forth in the litigation, such as Defendants  
20 Lyneer Staffing Solutions, LLC, Ciera Staffing, LLC, Employers HR, LLC, and  
21 Yusen Logistics (Americas), Inc. (collectively referred to herein as “Defendants”)  
22 policies and procedures regarding the payment of wages, meal and rest breaks, as  
23 well as information regarding the number of putative class members and the mix  
24 of current versus former employees, Defendants’ written policies and handbook,  
25 the wage rates in effect, and length of employment for the average putative class  
26 member. Plaintiff retained her own expert to review and analyze these records to  
27 further Plaintiff’s evaluation of the Plaintiff’s class and PAGA claims and  
28 evaluation of settlement value. (Odenbreit Dec. ¶ 5.)

1 On March 27, 2019, Plaintiff, a former employee of Defendants, filed the  
2 Class Action in the Superior Court of California for the County of Los Angeles as  
3 a proposed class action on behalf of all current and former non-exempt California  
4 employees of Defendants, during the period of March 27, 2019 through the date of  
5 final judgment. Plaintiff alleged that Defendants (1) failed to pay all wages,  
6 including minimum wages and overtime wages; (2) failed to provide accurate  
7 itemized wage statements; (3) failed to pay wages upon termination of  
8 employment; and (4) engaged in unfair business practices. Plaintiff sought  
9 recovery under the California Labor Code, the applicable Industrial Welfare  
10 Commission Wage Order, and the California Business & Professions Code. On  
11 May 13, 2019 Defendant Yusen Logistics (Americas), Inc. filed a notice of  
12 removal, removing the lawsuit entitled *Anita Trejo v. Lyneer Staffing Solutions,*  
13 *LLC, Ciera Staffing, LLC, Employers HR, LLC, and Yusen Logistics (Americas),*  
14 *Inc.* Case No. 19STCV10411 to the United States District Court for the Central  
15 District of California pursuant to 1332(d), 1367(a), 1441(a), 1441(b), 1446, and  
16 1453. On May 30, 2020 Plaintiff filed the PAGA Action in the Superior Court of  
17 California for the County of Los Angeles Private Attorney’s General Act  
18 (“PAGA”). Defendants deny all of the allegations in the complaint and the  
19 theories of liability upon which this case was asserted. Defendants asserted  
20 affirmative defenses to each of the causes of action asserted therein.

21 Plaintiff’s claims were brought on behalf of herself and a putative class of  
22 all persons who were employed by Defendants in the State of California who, for  
23 the four (4) years prior to the filing of the class action to the present, have worked  
24 as non-exempt employees. As used in this class definition, the term “non-exempt  
25 employee” refers to those who Defendants have classified as non-exempt from the  
26 overtime wage provisions of the California Labor Code.

27 The Parties engaged in formal and informal discovery, as well as fostering a  
28 cooperative dynamic ahead of the substantive negotiations in private mediation.

1 Defendants provided to Plaintiff a sampling of documents, including, but not  
2 limited to time, and pay records for the putative class members, Defendants’  
3 written policies and handbook, and identified the number of employees  
4 comprising the putative class and/or aggrieved employees, as well as the relevant  
5 total workweeks and pay periods. (Odenbreit Dec. ¶¶ 5-6.)

6 Using the above information and records, Plaintiff and her counsel were  
7 able to reasonably assess liability on the part of Defendants and the resulting value  
8 of damages, paving the way for the proposed settlement terms.

9 **B. Plaintiff Devoted Significant Time and Resources to the**  
10 **Litigation**

11 Here, Plaintiff devoted significant time and resources to the litigation.  
12 Plaintiff spent a considerable amount of time attending multiple meetings with  
13 class counsel, preparing for and attending her deposition, spent a significant  
14 number of hours searching for, producing, and reviewing documents in Plaintiff’s  
15 possession, and reviewing documents produced by Defendants in this action.  
16 Plaintiff also participated in a multitude of telephone calls with class counsel and  
17 provided them with a wealth of information about his employment with Defendant  
18 and Defendants’ policies and procedures. (Declaration of Anita Trejo (“Trejo  
19 Dec.”), ¶10.) Due to such efforts, Plaintiff secured a six hundred twenty-six  
20 thousand seven hundred five dollars and forty-five cents (\$626,705.45) settlement  
21 for her fellow employees.

22 Moreover, Plaintiff agreed to a general release of all known and unknown  
23 claims, a broader release than that provided by the class members generally.  
24 (Settlement Agreement, Odenbreit Dec., Ex. A, sections 44, 45.) Despite her  
25 efforts and the broader release provided, the settlement is not contingent on the  
26 Court awarding the enhancement payment. (Odenbreit Dec., Ex. A, section 1.33.)  
27  
28

1           **C. Plaintiff and the Class Obtained a Highly Beneficial Settlement**  
2           **for Class Members**

3           The six hundred twenty-six thousand seven hundred five dollars and forty-  
4 five cents (\$626,705.45) non-reversionary settlement is a substantial result for the  
5 class, particularly in light of the substantial risks and uncertainties faced by  
6 Plaintiff. On average, Class Members stand to recover an average estimated Gross  
7 Recovery of one hundred forty-one dollars and thirty-one cents (\$141.31) per  
8 Settlement Class Member. (Mitzner Dec.), ¶ 14.)

9           Courts have long recognized the inherent risks and “vagaries of litigation,”  
10 and emphasized the comparative benefits of “immediate recovery by way of the  
11 compromise to the mere possibility of relief in the future, after protracted and  
12 expensive litigation.” (*National Rural Telecommunications Cooperative v.*  
13 *DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 526.) Proceeding to  
14 certification, and subsequently through trial, could add years or more to the  
15 resolution of this case.

16           Defendants deny all liability with regard to all of Plaintiff’s causes of  
17 action, and contends that Settlement Class Members were paid all wages,  
18 provided meal and rest periods as required under California law, and provided  
19 itemized wage statements. (Odenbreit Dec. ¶ 10.) In addition, Defendants  
20 contends its practices have been in compliance with applicable law as set forth  
21 above, and that Plaintiff has no basis for asserting a claim under PAGA.  
22 Defendants deny that, for any purpose other than settling this action, this matter is  
23 appropriate for class treatment. Defendants further contend that they have  
24 complied at all times with all applicable California laws, including the California  
25 Labor Code, the applicable California Wage Order(s), and UCL. Defendants  
26 contend that if this action were to be litigated further, Defendants would have  
27 strong defenses to class certification and on the merits. (Odenbreit Decl. ¶ 10.)  
28 Accordingly, Plaintiff’s claims and Defendants’ defenses give rise to a number of



1 critical, disputed factual and legal issues that go to the core of Plaintiff's claims  
2 and theories of liability and, by extension, to Plaintiff's entitlement to recover  
3 damages and penalties, and/or the proper measure of damages.

4 As is set forth in greater detail in Plaintiff's Motion for Preliminary  
5 Approval and the Declarations filed in support thereof (Dkt. Nos. 42, 43, and 44),  
6 while this is a strong case for class certification and for maintaining class status  
7 through trial, there is substantial risk that Plaintiff and the Class would not prevail  
8 on the merits should this case proceed to trial. At the very least, litigating these  
9 issues would require additional costly and complicated discovery, summary  
10 judgment practice, and, in all likelihood, trial. Whether Plaintiff would prevail  
11 remains uncertain, and appeals would almost certainly follow any ruling by this  
12 Court. Whatever the strength of the claims, Plaintiff nonetheless face numerous  
13 obstacles to recovery, including likely challenges to the use of representative  
14 testimony and expert witnesses to establish class-wide liability and aggregate  
15 damages, challenges to Plaintiff's methodology for calculating damages and  
16 penalties, and having to defeat Defendants' defenses. It is especially true here  
17 where Defendants deny liability, and when a party continues to deny liability,  
18 there is an inherent risk in continuing litigation. In *Thieriot v. Celtic Ins. Co.* (N.D.  
19 Cal., Apr. 21, 2011, No. C-10-04462-LB) 2011 WL 1522385, at \*5, the district  
20 court approved a settlement agreement in which the defendant specifically denied  
21 liability, noting that such denial of liability illustrated the risk to continued  
22 litigation. (*See also Mora v. Harley-Davidson Credit Corp.* (E.D. Cal., Jan. 3,  
23 2014, No. 1:08-CV-01453-BAM) 2014 WL 29743, at \*4 (granting final approval  
24 to settlement agreement where defendant denied any liability); *Cf. Greko v. Diesel*  
25 *U.S.A., Inc.* (N.D. Cal., Apr. 26, 2013, No. 10-CV-02576 NC) 2013 WL 1789602,  
26 at \*4 (“[E]ven with a strong case, litigation entails expense.”).)

27 While Plaintiff believes the class causes of action asserted would have  
28 prevailed on class certification and on the merits of their claims, the settlement

1 eliminates any risk that Class Members might not recover at all. Additionally,  
2 early resolutions save time and money that would otherwise go to litigation.  
3 Parties' resources, as well as the Court's, would be further incurred by continued  
4 litigation. If this action had settled following additional litigation, the settlement  
5 amount would likely have considered the additional costs incurred, such that there  
6 may have been less available for Class Members. Cost savings is one reason why  
7 California policy strongly favors early settlement. (*See Neary v. Regents of*  
8 *University of California* (1992) 3 Cal.4th 273, 277 (explaining the high value  
9 placed on settlements and observing that "[s]ettlement is perhaps most efficient  
10 the earlier the settlement comes in the litigation continuum.") Moreover, given  
11 that the class members in this case are primarily low wage workers, for whom  
12 receiving speedy remuneration is particularly important, the potential for years of  
13 delayed recovery is a significant concern.

14 Considered against the risks of continued litigation, and the importance of  
15 the employment rights and a speedy recovery to Class Members, the totality of  
16 relief provided under the Settlement Agreement is more than adequate and well  
17 within the range of reasonableness.

### 18 **III. ARGUMENT**

19 Class Counsel seek fees in the amount of one-third (1/3) or 33.33% of the  
20 Gross Settlement Amount, or two hundred eight thousand nine hundred one  
21 dollars and eighty-two cents (\$208,901.82). The amount requested is reasonable  
22 under both the percentage-of-the-fund method and a lodestar cross-check.

#### 23 **A. Class Counsel Are Entitled to an Award of Attorneys' Fees** 24 **Because the Litigation Recovered a Certain and Calculable** 25 **Fund for the Class Members**

26 Courts have long recognized that when counsel's efforts result in the  
27 creation of a common fund that benefits plaintiffs and unnamed class members,  
28 class counsel have an equitable right to be compensated from that fund as a whole.

1 *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (U.S. Supreme  
2 Court “has recognized consistently that a litigant or a lawyer who recovers a  
3 common fund ... is entitled to a reasonable attorney’s fee from the fund as a  
4 whole”); *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 967 (recognizing  
5 common fund doctrine). The common fund doctrine rests on the understanding  
6 that attorneys should normally be paid by their clients, and that unless attorneys’  
7 fees are paid out of the common fund, those who benefit from the fund will be  
8 unjustly enriched. (*Boeing Co., supra*, 444 U.S. at p. 478.) To prevent this unfair  
9 result, courts exercise their inherent equitable powers to assess attorneys’ fees  
10 against the entire fund, thereby spreading the cost of those fees among all those  
11 who benefit from it. (*Ibid.*)

12 The settlement of this litigation resulted in the recovery of six hundred  
13 twenty-six thousand seven hundred five dollars and forty-five cents  
14 (\$626,705.45). Because none of the Class Members paid fees to Class Counsel for  
15 their efforts during the litigation, equity requires Class Members to pay a fair and  
16 reasonable fee, based on what the market would traditionally require, no less than  
17 if they had hired private counsel to litigate their case individually. (*Id.* at p. 478–  
18 82.)

19 **B. The Requested Fee Is Reasonable Under the Percentage-of-**  
20 **the-Fund Method**

21 Where, as here, fees are requested from a common fund, the Court has  
22 discretion to use either the percentage-of-the-fund method or the lodestar method  
23 to evaluate the reasonableness of the fee amount requested. (*In re Bluetooth*  
24 *Headset Products Liability Litigation, supra*, 654 F.3d at p. 942.) In common fund  
25 cases, it is widely accepted for courts to award fees “based on a percentage of the  
26 fund bestowed on the class.” (*Blum v. Stenson* (1984) 465 U.S. 886, 900, n.16; *see*  
27 *In re Online DVD-Rental Antitrust Litigation* (9th Cir. 2015) 779 F.3d 934, 953  
28 (district court appropriately calculated the fee award as a percentage of the total

1 settlement fund, including notice and administrative costs and litigation expenses);  
 2 *Six (6) Mexican Workers, supra*, 904 F.2d at p. 1311 (“[A] reasonable fee under  
 3 the common fund doctrine is calculated as a percentage of the recovery.”); *State of*  
 4 *Fla. v. Dunne* (9th Cir. 1990) 915 F.2d 542, 545 (recognizing a “recent ground  
 5 swell of support for mandating a percentage-of-the-fund approach in common  
 6 fund cases”).)

7 Courts within this Circuit have awarded one-third of the common fund in  
 8 fees. *See, e.g., Bower v. Cycle Gear, Inc* (N.D. Cal., Aug. 23, 2016, No. 14-CV-  
 9 02712-HSG) 2016 WL 4439875, at \*7 (approving fee award of 30% of the  
 10 settlement fund, which was equivalent to class counsel’s lodestar with a multiplier  
 11 of 1.37); *In re Pac. Enterprises*, 47 F.3d at 378-79 (affirming fee award of 33% of  
 12 settlement); *Hester v. Vision Airlines, Inc.* (D. Nev., July 17, 2014, No. 2:09-CV-  
 13 00117-RLH) 2014 WL 3547643, at \*11 (awarding 30% from the common fund);  
 14 *Ching v. Siemens Industry, Inc., C11-Ching v. Siemens Industry, Inc.* (N.D. Cal.,  
 15 June 27, 2014, No. 11-CV-04838-MEJ) 2014 WL 2926210, at \*7–8 (awarding  
 16 30% from a gross settlement fund of \$425,000); *Elliott v. Rolling Frito-Lay Sales,*  
 17 *LP* (C.D. Cal., June 12, 2014, No. SACV 11-01730 DOC) 2014 WL 2761316, at  
 18 \*8 (awarding 30% from the gross settlement fund); *Barbosa v. Cargill Meat*  
 19 *Solutions Corp., Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. 2013) 297  
 20 F.R.D. 431 (awarding 33.3% of fund in wage-and-hour class action); *Estrella v.*  
 21 *Freedom Fin. Network, LLC, C09-Estrella v. Freedom Financial Network, LLC*  
 22 (N.D. Cal., Oct. 1, 2012, No. CV 09-03156 SI) 2012 WL 4645012, at \*3  
 23 (awarding 33⅓ percent of \$1.9 million settlement fund); *Stuart v. Radioshack*  
 24 *Corp., C07-Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499  
 25 EMC) 2010 WL 3155645, at \*6 (awarding 1/3 of settlement fund in wage and  
 26 hour class action and noting that “[t]his is well within the range of percentages  
 27 which courts have upheld as reasonable in other class action lawsuits”); *Vasquez*  
 28 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491–92 (awarding

1 33 $\frac{1}{3}$  percent in wage and hour class action); *Singer v. Becton Dickinson and Co.*  
2 (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at \*8–9  
3 (awarding 33 $\frac{1}{3}$  percent in attorneys’ fees); *In re Heritage Bond Litigation* (C.D.  
4 Cal., June 10, 2005, No. 02-ML-1475 DT) 2005 WL 1594403, at \*23 (awarding  
5 1/3 of common fund). Indeed, “[n]ationally, the average percentage of the fund  
6 award in class actions is approximately one third.” *Multi-Ethnic Immigrant*  
7 *Workers Organizing Network v. City of Los Angeles* (C.D. Cal., June 24, 2009,  
8 No. CV 07-3072 AHM FMMX) 2009 WL 9100391, at \*4.

9 As such, the Court should similarly find that Class Counsel’s request for  
10 attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount as  
11 reasonable.

12 **C. The Requested Fee is Reasonable Under the Lodestar Cross-**  
13 **Check**

14 **1. Class Counsel’s Lodestar Exceeds the Fee Amount**  
15 **Requested, and Is Based on Reasonable Hours and Rates**

16 While courts have discretion in common fund cases to calculate a fee award  
17 using either the percentage-of-the-fund approach or the lodestar approach, courts  
18 are encouraged to crosscheck both figures against one another to confirm the  
19 reasonableness of the award. *In re Bluetooth Headset Products Liability*  
20 *Litigation, supra*, 654 F.3d at p. 942, 944–45; *Vizcaino v. Microsoft Corp.* (9th  
21 Cir. 2002) 290 F.3d 1043, 1050 (“[W]hile the primary basis of the fee award  
22 remains the percentage method, the lodestar may provide a useful perspective on  
23 the reasonableness of a given percentage award.”).

24 Here, a lodestar cross-check confirms that the one-third (1/3) fee award  
25 requested is reasonable. As set forth in the accompanying declaration of Katherine  
26 J. Odenbreit, Class Counsel’s lodestar to date exceeds one hundred sixty-seven  
27 thousand six hundred sixty-one dollars and fifty cents (\$167,661.50), which does  
28 not include the time spent preparing for and attending the Final Approval Hearing,

1 facilitating administration of this Settlement, potentially responding to Class  
2 Member inquires regarding the Settlement, or the time that will be spent until  
3 distribution of settlement payments to Class Members. The hours and rates used to  
4 calculate Class Counsel’s lodestar are reasonable. Class Counsel have devoted  
5 more than 308.33 hours to this litigation. (Odenbreit Dec., ¶¶ 28-29, Exs. C-D.)

6 In calculating this lodestar hours figure, Class Counsel exercised billing  
7 judgment as they would for a fee-paying client, reducing hours to eliminate  
8 redundancies, inefficiencies, and other time not appropriately charged to a paying  
9 client. Moreover, because the detailed time report is submitted before the filing of  
10 this motion, they do not reflect additional work Class Counsel will have  
11 performed by the time this motion is heard, including attending the hearing and  
12 overseeing the settlement notice process—all time for which Class Counsel will  
13 not seek additional compensation.

14 The rates used in calculating Class Counsel’s lodestar are also reasonable.  
15 The lodestar should be calculated using hourly rates that are “the prevailing  
16 market rates in the relevant community.” (*Blum, supra*, 465 U.S. at p. 895.) Courts  
17 typically apply each attorney’s current rates for all hours of work regardless of  
18 when performed to account for the delay in payment resulting from the years it  
19 took to litigate the case. *See Missouri v. Jenkins by Agyei* (1989) 491 U.S. 274,  
20 282–84 (court should account for delay in payment by applying current rather than  
21 historic hourly rates); *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608  
22 F.3d 446, 453–54. Here, Class Counsel’s experience, reputation, and ability justify  
23 the rates charged. The experience of Class counsel is detailed in Plaintiff’s Further  
24 Statement Re: Adequacy of Plaintiff’s Counsel Pursuant to Court Order filed  
25 January 27, 2020 (DKT. No. 35). Plaintiff’s Counsel’s experience is further detailed  
26 in the Declaration of Katherine J. Odenbreit in Support of the Joint Motion for  
27 Preliminary Approval. (DKT. No. 53, ¶ 29, Exhibits E and F). Further, these rates  
28 are commensurate with those prevailing for attorneys with comparable skill and

1 experience litigating complex wage-and-hour class and collective actions.  
2 (Odenbreit Dec., ¶ 28.) These hourly rates, or their historical equivalents, have  
3 been paid to Class Counsel by paying clients, and have repeatedly been approved  
4 by other courts. (Odenbreit Dec., ¶¶ 28-29, Ex. C-D.)

5 **2. The Legal Principles Behind Risk Multipliers Further**  
6 **Support the Reasonableness of the Fee Requested**

7 In common fund cases, courts frequently apply multipliers to the lodestar to  
8 reflect the risks involved, the complexity of the litigation, and other relevant  
9 factors. *See Vizcaino, supra*, 290 F.3d at p. 1051 (courts “routinely enhance” the  
10 lodestar to reflect the risk of non-payment in common fund cases”) (internal  
11 quotation marks and citation omitted). Such an enhancement “mirrors the  
12 established practice in the private legal market of rewarding attorneys for taking  
13 the risk of nonpayment by paying them a premium over their normal hourly rates  
14 for winning contingency cases.” *Ibid.* For these reasons, courts routinely enhance  
15 lodestar amounts based on multipliers ranging from 2 to 4, or even higher. *See*  
16 *Ibid.* (approving a multiplier of 3.65); *Perkins v. LinkedIn Corporation* (N.D. Cal.,  
17 Feb. 16, 2016, No. 13-CV-04303-LHK) 2016 WL 613255, at \*15 (multiplier of  
18 1.45 was reasonable); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624  
19 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and collecting cases with cross-  
20 check multipliers ranging from 4.5 to 19.6); *Van Vranken v. Atlantic Richfield Co.*  
21 (N.D. Cal. 1995) 901 F.Supp. 294, 298 (noting that multipliers in the 3-4 range are  
22 common in class action lodestar awards).

23 As case law suggests, Class Counsel here is justified in seeking a risk  
24 multiplier. Here, Class Counsel would require an approximate 1.25 multiplier. The  
25 importance of assuring adequate representation for plaintiffs who could not  
26 otherwise afford competent attorneys justifies providing those attorneys who do  
27 accept matters on a contingent-fee basis a larger fee than if they were billing by  
28 the hour or on a flat fee.” *Collins v. American Freight System, Inc.* (W.D. Mo.

1 1983) 559 F.Supp. 1032, 1036 2d at 1047 (N.D. Cal. 2008). In this case, Class  
2 Counsel have invested more than 308.33 hours of work with no compensation as  
3 Mahoney Law Group, APC works on a contingency basis. (Odenbreit Dec., ¶ 29,  
4 Exs. C-D.) Moreover, Class Counsel have invested time and resources in the case  
5 despite facing the real possibility of no recovery. This factor also supports the  
6 award of Class Counsel's requested fees.

7 **D. Class Counsel are Entitled to Recover their Reasonable**  
8 **Litigation Costs**

9 Class Counsel also request reimbursement from the Gross Settlement  
10 Amount in the amount of thirteen thousand three hundred ninety-nine dollars and  
11 ninety-one cents (\$13,399.91) for litigation costs and expenses reasonably  
12 incurred. (Odenbreit Dec., ¶ 31, Exs. E-F.) As with attorneys' fees, these expenses  
13 should be paid from the common fund because all Class Members should share  
14 their fair share of the costs of the litigation, from which they received a benefit.  
15 The expenses for which Class Counsel seek reimbursement are the normal costs of  
16 litigation that are traditionally billed to paying clients. *See, e.g., Vincent, supra,*  
17 *557 F.2d at p. 769; Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (attorneys  
18 should recover reasonable out of pocket costs of the type ordinarily billed to  
19 paying clients). Class Counsel have incurred at least thirteen thousand three  
20 hundred ninety-nine dollars and ninety-one cents (\$13,399.91) in litigation costs  
21 and expenses to date, and will inevitably incur additional necessary costs through  
22 the conclusion of this matter for which they will not be reimbursed, including  
23 costs related to the motions for final approval, attorneys' fees, and enhancement  
24 payment, and overseeing the settlement administration process. The expenses for  
25 which Class Counsel seek reimbursement are detailed in the supporting  
26 declaration of Class Counsel, but generally include filing, service, mediation and  
27 expert fees. (Odenbreit Dec., ¶ 31, Exs. E-F.)

28 As set forth therein, all of these costs were necessary to the prosecution of



1 this litigation, and were the sort of expenses normally billed to paying clients, and  
 2 were made for the benefit of the class. Accordingly, they are reimbursable. *See*,  
 3 *e.g.*, *In re Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d  
 4 1166, 1177–78.

5 **E. The Court Should Approve the Requested Enhancement**  
 6 **Payment in Recognition of Plaintiff’s time and Effort and the**  
 7 **Risk She Undertook in Service to the Class**

8 Class representatives play a crucial role in bringing justice to those who  
 9 would otherwise be unable to vindicate their rights. *See Rodriguez, supra*, 563  
 10 F.3d at p. 958–59 (service awards may recognize a plaintiff’s “willingness to act  
 11 as a private attorney general”). In the Ninth Circuit, “[i]ncentive awards are fairly  
 12 typical in class action cases.” *Id.* at p. 958. “Numerous courts in the Ninth Circuit  
 13 and elsewhere have approved enhancement payments, also known as “service  
 14 awards,” of \$20,000 or more where, as here, the class representative has  
 15 demonstrated a strong commitment to the class.” *Garner v. State Farm Mut. Auto.*  
 16 *Ins. Co.* (N.D. Cal., Apr. 22, 2010, No. CV 08 1365 CW EMC) 2010 WL  
 17 1687832, at \*17 (collecting cases). In examining this commitment to the class and  
 18 the reasonableness of a requested service payment, courts must consider all  
 19 “relevant factors includ[ing] the actions the plaintiff has taken to protect the  
 20 interests of the class, the degree to which the class has benefitted from those  
 21 actions, . . . the amount of time and effort the plaintiff expended in pursuing the  
 22 litigation . . . and reasonabl[e] fear[s of] workplace retaliation.” *Staton, supra*, 327  
 23 F.3d at p. 977 (citation omitted).

24 Here, each of these factors weigh in favor of granting this motion. The  
 25 seven thousand five hundred dollars (\$7,500.00) that Plaintiff seeks is a  
 26 reasonable amount to compensate Plaintiff for the time she spent pursuing this  
 27 case, the risk involved in bringing this case as named Plaintiff, the delay resulting  
 28 from bringing this case on a class rather than an individual basis, the information

1 and insight she provided to class counsel to prosecute the case efficiently, her role  
2 in the settlement process, and the service rendered to the unnamed class members  
3 resulting from the settlement achieved in this case. As discussed in detail below  
4 and in Plaintiff’s declaration submitted herewith, Plaintiff contributed an  
5 exceptional amount of time and effort on behalf of the class.

6 **1. By Initiating This Action and Devoting Substantial Time to Assist**  
7 **with the Successful Prosecution and Settlement of the Act,**  
8 **Plaintiff Benefited the Class as a Whole**

9 Service awards are payments to class representatives for their service to the  
10 class in bringing the lawsuit. *See Rodriguez, supra*, 563 F.3d at p. 958–59. Class  
11 representatives bring critical factual knowledge to employment class actions,  
12 including information about employer policies and practices that affect wages. *See*  
13 *Wren v. RGIS Inventory Specialists* (N.D. Cal., Apr. 1, 2011, No. C-06-05778  
14 JCS) 2011 WL 1230826, at \*32–37 (recognizing Plaintiffs’ efforts in time spent  
15 meeting with class counsel and informing them of employers’ practices and  
16 procedures, as well as reviewing pleadings and motions, searching for and  
17 producing documents and responding to interrogatories).

18 Here, Plaintiff protected the interests of the class by bringing this action and  
19 spending numerous hours assisting in the prosecution and settlement of this case.  
20 Because of her efforts, the entire class will now benefit from the settlement of the  
21 case. Plaintiff now submits a declaration in support of this motion for an  
22 enhancement payment describing the tasks she performed as the named,  
23 representative Plaintiff and the details of her participation in assisting in the  
24 prosecution of this case. (*See generally* Trejo Dec.)

25 **2. The Risks Plaintiff Took Support Her Request for an**  
26 **Enhancement Payment**

27 Service awards are particularly appropriate in wage-and-hour actions where  
28 plaintiffs undertake a significant “reputational risk” by bringing suit against their

1 former employers. *Rodriguez, supra*, 563 F.3d at p. 958–59; *Brazil v. Dell Inc.*  
2 (N.D. Cal., Apr. 4, 2012, No. C-07-01700 RMW) 2012 WL 1144303, at \*2–3. In  
3 the workplace context, where workers are often blacklisted if they are considered  
4 “trouble makers,” employees who sue their employers are particularly vulnerable  
5 to retaliation and termination. *See In re High-Tech Employee Antitrust Litigation*  
6 (N.D. Cal., Sept. 2, 2015, No. 11-CV-02509-LHK) 2015 WL 5158730, at \*16–18  
7 (granting service awards based in part on the named plaintiffs’ risk of future  
8 workplace retaliation and diminished future employment prospects for being  
9 labeled “troublemakers” in their industry); *Nitsch v. DreamWorks Animation SKG*  
10 *Inc.* (N.D. Cal., June 5, 2017, No. 14-CV-04062-LHK) 2017 WL 2423161, at \*14  
11 (same); *Connolly v. Weight Watchers N. Am. Inc.*, No. *Connolly v. Weight*  
12 *Watchers North America Inc.* (N.D. Cal., July 21, 2014, No. 14-CV-01983-TEH)  
13 2014 WL 3611143, at \*4 (named plaintiffs assume “the risk of being stigmatized  
14 or disfavored by their current or potential future employers by suing their Apr. 8,  
15 2011) (awarding enhancements to named plaintiffs in recognition that “they risk  
16 their good will and job security in the industry for the benefit of the class as a  
17 whole”); *Ross v. U.S. Bank Nat. Ass’n* (N.D. Cal., Sept. 29, 2010, No. C07-  
18 02951SI) 2010 WL 3833922, at \*2 (enhancements based on “willingness to serve  
19 as representatives despite the potential stigma that might attach to them in the  
20 banking industry from taking on those roles”).

21 Here, Plaintiff undertook significant risk and burden in coming forward and  
22 filing suit against Defendants as named Plaintiff. *See Guippone v. BH S & B*  
23 *Holdings, LLC* (S.D.N.Y., Oct. 28, 2011, No. 09 CIV. 01029 CM) 2011 WL  
24 5148650, at \*7 (“Today, the fact that a plaintiff has filed a federal lawsuit is  
25 searchable on the internet and may become known to prospective employers when  
26 evaluating that person.”). Although Plaintiff could likely have confidentially  
27 resolved her individual claims, she was willing to risk exposure and act as the  
28 named Plaintiff to secure a remedy not only for herself, but for her fellow workers

1 who might be unwilling, afraid, or unable to bring their own case. The risk of  
2 retaliation and deterred future employment weighs in favor of the requested  
3 enhancement payment.

4 **3. The Reasonableness of Plaintiff's Request Favors Granting an**  
5 **Enhancement Payment**

6 The amount being requested, seven thousand five hundred dollars  
7 (\$7,500.00) for the only named Plaintiff, is reasonable in light of the factors courts  
8 balance to ascertain the reasonableness of service payments. Courts balance “the  
9 number of named plaintiffs receiving service payments, the proportion of the  
10 payments relative to the settlement amount, and the size of each payment.” *Staton,*  
11 *supra*, 327 F.3d at p. 977; *see also Alberto v. GMRI, Inc.* (E.D. Cal. 2008) 252  
12 F.R.D. 652, 669.

13 Here, the proportion of the requested incentive award to class members’  
14 individual recoveries is reasonable. *See In re Online DVD-Rental Antitrust*  
15 *Litigation, supra*, 779 F.3d at p. 947–48 (considering the same *Staton* factors and  
16 affirming service awards of \$5,000 for nine plaintiffs). The total enhancement  
17 payment requested is less than one and six-tenths percent (1.6%) of the Gross  
18 Settlement Amount. This is not a case where the representative plaintiff receives  
19 many thousands of dollars while the class members get a coupon or nominal  
20 damages. *See Cabiness v. Educational Financial Solutions, LLC* (N.D. Cal., June  
21 25, 2018, No. 16-CV-01109-JST) 2018 WL 3108991, at \*8 (indicating that the  
22 court would be unlikely to award a service payment in an amount that was  
23 “approximately 500 times the size of the average award for other class  
24 members.”). Here, pursuant to the plan of distribution, the average estimated  
25 Gross Recovery per Settlement Class Member is \$141.31. (Mitzner Dec., ¶ 14.)

26 In addition, Plaintiff agreed to execute a broader release than the releases  
27 that apply to other Class Members. (Odenbreit Dec., Ex. A, section 1.33.)  
28 Plaintiff’s release warrants additional compensation. *See Dent v. ITC Service*

1 *Group, Inc.* (D. Nev., Sept. 27, 2013, No. 2:12-CV-00009-JCM) 2013 WL  
2 5437331, at \*4 (awarding enhancement, in part, because plaintiff signed a general  
3 release); *Wade v. Kroger Co.* (W.D. Ky., Nov. 20, 2008, No. 3:01CV-699-R)  
4 2008 WL 4999171, at \*13 (awarding plaintiffs additional compensation because  
5 they agreed to a “release of all claims . . . that is broader than the release given by  
6 other members of this class”); *Carlson v. C.H. Robinson Worldwide, Inc.* (D.  
7 Minn., Sept. 18, 2006, No. CIV 02-3780 JNE/JJG) 2006 WL 2671105, at \*4  
8 (authorizing additional payments to plaintiff who “g[a]ve additional  
9 consideration—that is, a broader release of claims than the release to be signed by  
10 other class members”).

11 Finally, the service payment that Plaintiff seeks is in line with and, in some  
12 cases, is much lower than awards approved in class actions in this Circuit. *See,*  
13 *e.g., In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap*  
14 *Antitrust Litigation* (N.D. Cal., Dec. 6, 2017, No. 4:14-MD-2541-CW) 2017 WL  
15 6040065, at \*11 (awarding \$20,000 to each class representative); *Ridgeway v.*  
16 *Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 1003 (awarding  
17 \$15,000 to each of nine class representatives); *Wellens v. Sankyo* (N.D. Cal., Feb.  
18 11, 2016, No. C 13-00581 WHO (DMR)) 2016 WL 8115715, at \*4 (awarding  
19 \$25,000 to each of the six named Plaintiffs in an action alleging gender  
20 discrimination in the workplace “in light of their time and effort pursuing this  
21 litigation, the substantial benefit to the Class from the Settlement, and the risks  
22 that they have faced in representing the Class”); *Graham v. Overland Solutions,*  
23 *Inc.* (S.D. Cal., Sept. 12, 2012, No. 10-CV-0672 BEN BLM) 2012 WL 4009547,  
24 at \*8 (awarding \$25,000 to each named plaintiff for their time, effort, risks  
25 undertaken for the payment of costs in the event the action had been unsuccessful,  
26 stigma upon future employment opportunities for having initiated an action  
27 against a former employer, and a general release of all claims related to their  
28 employment); *Garner, supra*, 2010 WL at p. at \*17 (“Numerous courts in the

1 Ninth Circuit and elsewhere have approved service awards of \$20,000 or more”)  
2 (collecting cases); *Glass v. UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007,  
3 No. C-06-4068 MMC) 2007 WL 221862, at \*16–17 (approving payments of  
4 \$25,000 to each named plaintiff); *Van Vranken, supra*, 901 F.Supp. at p. 299–300  
5 (awarding \$50,000 to a lead plaintiff).

6 **4. Plaintiff Should Be Awarded a Service Payment to Encourage**  
7 **Private Attorneys General to Enforce Important Remedial**  
8 **Statutes**

9 Courts in this Circuit routinely grant service payments as sound policy that  
10 encourages “private attorneys general” to bring important civil rights and wage  
11 rights cases that would not otherwise be heard. (*Rodriguez, supra*, 563 F.3d at p.  
12 958–59.) Numerous federal courts have similarly found that service payments are  
13 justified based on the need to encourage litigants to bring class actions, furthering  
14 the public policy underlying the statutory scheme. *Thornton v. East Texas Motor*  
15 *Freight* (6th Cir. 1974) 497 F.2d 416, 420 (“We also think there is something to  
16 be said for rewarding those [employees] who protest and help to bring rights to a  
17 group of employees who have been the victims of [employer wrongdoing.]”); *see*  
18 *also, In re SmithKline Beckman Corp. Securities Litigation* (E.D. Pa. 1990) 751  
19 F.Supp. 525, 535 (approving \$5,000 award because named Plaintiff “rendered a  
20 public service” and “conferred a monetary benefit” on the shareholder class);  
21 *Tennille v. Western Union Company* (D. Colo., Dec. 31, 2013, No. 09-CV-00938-  
22 MSK-KMT) 2013 WL 6920449, at \*14 (recognizing that service awards are an  
23 efficient and productive way of encouraging members of a class to become class  
24 representatives, and in rewarding individual efforts taken on behalf of the class  
25 internal quotations and citations omitted). Without individuals who are willing to  
26 step forward and represent a class, the public policy goals of class actions will be  
27 undermined as fewer individuals would be willing to serve the greater good by  
28 investing their personal time and resources and exposing themselves to the

1 potential risks and harms for doing so.

2 Moreover, as a matter of public policy, class representatives should be  
3 rewarded for the personal sacrifices they made to vindicate the rights of others.  
4 Courts have recognized that serving as a named class representative requires  
5 personal sacrifice. *See, e.g., Barrera v. Home Depot U.S.A., Inc.* (N.D. Cal., May  
6 20, 2015, No. 12-CV-05199-LHK) 2015 WL 2437897, at \*2 (identifying financial  
7 and other risks as a factor to considering in awarding service payments). This  
8 Court should thus grant the service payment to Plaintiff in recognition of her  
9 compromises and service for the common good.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Plaintiff respectfully requests that the Court  
12 award Plaintiff an enhancement payment in the amount of seven thousand five  
13 hundred dollars (\$7,500.00), Class Counsel attorneys’ fees in the amount of two  
14 hundred eight thousand nine hundred one dollars and eighty-two cents  
15 (\$208,901.82), and reimbursement of costs in the amount of thirteen thousand  
16 three hundred ninety-nine dollars and ninety-one cents (\$13,399.91).

17  
18 Dated: March 4, 2022

**MAHONEY LAW GROUP, APC**

19 By: /s/ Katherine J. Odenbreit  
20 Katherine J. Odenbreit, Esq.  
21 Attorneys for Plaintiff Anita Trejo  
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