

1 CROWELL & MORING LLP
 2 S. Shane Sagheb (CSB No. 109878)
 3 Email: ssagheb@crowell.com
 4 515 South Flower Street, 40th Floor
 5 Los Angeles, CA 90071
 6 Telephone: (213) 622-4750
 7 Facsimile: (213) 622-2690

8 Attorneys for Defendant
 9 Gate Gourmet, Inc.

10 KLETTER LAW FIRM
 11 Cary Kletter (CSB No. 210230)
 12 Email: ckletter@kletterlaw.com
 13 Sally Trung Nguyen (CSB No. 267275)
 14 Email: snguyen@kletterlaw.com
 15 1900 S. Norfolk Street, Suite 350
 16 San Mateo, CA 94403
 17 Telephone: (415) 434-3400

18 Attorneys for Plaintiff
 19 Roberto Ortiz

20 EDWARD B. RASKIN (SBN 244936)
 21 SERAFINA RASKIN (SBN 244960)
 22 JOSHUA M. CAPLAN (SBN 245469)
 23 KASSINOVE & RASKIN LLP
 24 2600 Michelson Drive, Suite 830
 25 Irvine, California 92612
 26 Tel (949) 529-5700
 27 Fax (949) 529-5777

28 Attorneys for Defendant
 Chris Novak

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ROBERTO ORTIZ,
 Plaintiff,
 v.
 GATE GOURMET, INC., *et al.*,
 Defendants.

Case No. C 12-06455 KAW

**STIPULATED PROTECTIVE
 ORDER FOR STANDARD
 LITIGATION (MODIFIED)**

Assigned to the Hon. Kandis A.
 Westmore

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that
14 will be applied when a party seeks permission from the court to file material under
15 seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House
23 Counsel (as well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a
12 party to this action but are retained to represent or advise a party to this action and
13 have appeared in this action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.
7 However, the protections conferred by this Stipulation and Order do not cover the
8 following information: (a) any information that is in the public domain at the time
9 of disclosure to a Receiving Party or becomes part of the public domain after its
10 disclosure to a Receiving Party as a result of publication not involving a violation
11 of this Order, including becoming part of the public record through trial or
12 otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source
14 who obtained the information lawfully and under no obligation of confidentiality to
15 the Designating Party. Any use of Protected Material at trial shall be governed by a
16 separate agreement or order. Nothing contained herein shall in any way limit any
17 Party's ability to use any evidence (including Protected Material) in any way at the
18 trial of this case, subject to any procedures of the Court that are designed to ensure
19 that Protected Material is not disclosed or used in a manner that is inconsistent with
20 the purpose of this Order.

21 4. DURATION

22 Even after final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs. Final disposition shall be
25 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
26 or without prejudice; and (2) final judgment herein after the completion and
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
28

1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

5 Each Party or Non-Party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. The Designating Party must designate for
8 protection only those parts of material, documents, items, or oral or written
9 communications that qualify – so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (e.g., to unnecessarily encumber or retard the case development process or
15 to impose unnecessary expenses and burdens on other parties) expose the
16 Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection, that Designating Party must
19 promptly notify all other Parties that it is withdrawing the mistaken designation.

20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
21 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
22 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each

1 page that contains protected material. If only a portion or portions of the material on
2 a page qualifies for protection, the Producing Party also must clearly identify the
3 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
4 or Non-Party that makes original documents or materials available for inspection
5 need not designate them for protection until after the inspecting Party has indicated
6 which material it would like copied and produced. During the inspection and
7 before the designation, all of the material made available for inspection shall be
8 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine
10 which documents, or portions thereof, qualify for protection under this Order.
11 Then, before producing the specified documents, the Producing Party must affix the
12 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
13 portion or portions of the material on a page qualifies for protection, the Producing
14 Party also must clearly identify the protected portion(s) (e.g., by making
15 appropriate markings in the margins).

16 (b) for testimony given in deposition or in other pretrial or trial
17 proceedings, that the Designating Party identify on the record, before the close of
18 the deposition, hearing, or other proceeding, all protected testimony.

19 (c) for information produced in some form other than documentary
20 and for any other tangible items, that the Producing Party affix in a prominent place
21 on the exterior of the container or containers in which the information or item is
22 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
23 information or item warrant protection, the Producing Party, to the extent
24 practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive
27 the Designating Party’s right to secure protection under this Order for such
28 material. Upon timely correction of a designation, the Receiving Party must make

1 reasonable efforts to assure that the material is treated in accordance with the
2 provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a
6 Designating Party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption or
8 delay of the litigation, a Party does not waive its right to challenge a confidentiality
9 designation by electing not to mount a challenge promptly after the original
10 designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process by providing written notice of each designation it is challenging
13 and describing the basis for each challenge. To avoid ambiguity as to whether a
14 challenge has been made, the written notice must recite that the challenge to
15 confidentiality is being made in accordance with this specific paragraph of the
16 Protective Order. The parties shall attempt to resolve each challenge in good faith
17 and must begin the process by conferring directly (in voice to voice dialogue; other
18 forms of communication are not sufficient) within 10 days of the date of service of
19 notice. In conferring, the Challenging Party must explain the basis for its belief that
20 the confidentiality designation was not proper and must give the Designating Party
21 an opportunity to review the designated material, to reconsider the circumstances,
22 and, if no change in designation is offered, to explain the basis for the chosen
23 designation. A Challenging Party may proceed to the next stage of the challenge
24 process only if it has engaged in this meet and confer process first or establishes
25 that the Designating Party is unwilling to participate in the meet and confer process
26 in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
28 court intervention, the Designating Party shall file and serve a motion to retain

1 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
2 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
3 days of the parties agreeing that the meet and confer process will not resolve their
4 dispute, whichever is earlier. Each such motion must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and
6 confer requirements imposed in the preceding paragraph. Failure by the
7 Designating Party to make such a motion including the required declaration within
8 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
9 designation for each challenged designation. In addition, the Challenging Party
10 may file a motion challenging a confidentiality designation at any time if there is
11 good cause for doing so, including a challenge to the designation of a deposition
12 transcript or any portions thereof. Any motion brought pursuant to this provision
13 must be accompanied by a competent declaration affirming that the movant has
14 complied with the meet and confer requirements imposed by the preceding
15 paragraph.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Frivolous challenges, and those made for an improper purpose
18 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
19 expose the Challenging Party to sanctions. Unless the Designating Party has waived
20 the confidentiality designation by failing to file a motion to retain confidentiality as
21 described above, all parties shall continue to afford the material in question the
22 level of protection to which it is entitled under the Producing Party's designation
23 until the court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 case only for prosecuting, defending, or attempting to settle this litigation. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action,
12 as well as employees of said Outside Counsel of Record to whom it is reasonably
13 necessary to disclose the information for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
15 A;

16 (b) the officers, directors, and employees (including House
17 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
18 litigation and who have signed the “Acknowledgment and Agreement to Be
19 Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to
21 whom disclosure is reasonably necessary for this litigation and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial
25 consultants, mock jurors, and Professional Vendors to whom disclosure is
26 reasonably necessary for this litigation and who have signed the “Acknowledgment
27 and Agreement to Be Bound” (Exhibit A);

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
4 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
5 to depositions that reveal Protected Material must be separately bound by the court
6 reporter and may not be disclosed to anyone except as permitted under this
7 Stipulated Protective Order.

8 (g) the author or recipient of a document containing the information
9 or a custodian or other person who otherwise possessed or knew the information.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL,” that Party must:

15 (a) promptly notify in writing the Designating Party. Such
16 notification shall include a copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or
18 order to issue in the other litigation that some or all of the material covered by the
19 subpoena or order is subject to this Protective Order. Such notification shall
20 include a copy of this Stipulated Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be
22 pursued by the Designating Party whose Protected Material may be affected.

23 If the Designating Party timely seeks a protective order, the Party served with
24 the subpoena or court order shall not produce any information designated in this
25 action as “CONFIDENTIAL” before a determination by the court from which the
26 subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material – and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this action
2 to disobey a lawful directive from another court.

3 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a
6 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
7 produced by Non-Parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be
9 construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party’s confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party’s
13 confidential information, then the Party shall:

- 14 (1) promptly notify in writing the Requesting Party and the
15 Non-Party that some or all of the information requested is
16 subject to a confidentiality agreement with a Non-Party;
- 17 (2) promptly provide the Non-Party with a copy of the
18 Stipulated Protective Order in this litigation, the relevant
19 discovery request(s), and a reasonably specific description
20 of the information requested; and
- 21 (3) make the information requested available for inspection
22 by the Non-Party.

23 (c) If the Non-Party fails to object or seek a protective order from this
24 court within 14 days of receiving the notice and accompanying information, the
25 Receiving Party may produce the Non-Party’s confidential information responsive
26 to the discovery request. If the Non-Party timely seeks a protective order, the
27 Receiving Party shall not produce any information in its possession or control that
28 is subject to the confidentiality agreement with the Non-Party before a

1 determination by the court. Absent a court order to the contrary, the Non-Party
2 shall bear the burden and expense of seeking protection in this court of its Protected
3 Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best
9 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
10 person or persons to whom unauthorized disclosures were made of all the terms of
11 this Order, and (d) request such person or persons to execute the “Acknowledgment
12 and Agreement to Be Bound” that is attached hereto as Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
22 of a communication or information covered by the attorney-client privilege or work
23 product protection, the parties may incorporate their agreement in the stipulated
24 protective order submitted to the court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7 12.3 Filing Protected Material. Without written permission from the
8 Designating Party or a court order secured after appropriate notice to all interested
9 persons, a Party may not file in the public record in this action any Protected
10 Material. A Party that seeks to file under seal any Protected Material must comply
11 with Civil Local Rule 79-5. Protected Material may only be filed under seal
12 pursuant to a court order authorizing the sealing of the specific Protected Material
13 at issue. Pursuant Civil Local Rule 79-5, a sealing order will issue only upon a
14 request establishing that the Protected Material at issue is privileged, protectable as
15 a trade secret, or otherwise entitled to protection under the law. If a Receiving
16 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
17 5(d) is denied by the court, then the Receiving Party may file the information the
18 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
19 the court.

20 12.4 Advance Production of Protected Material. The Parties agree that to
21 expedite discovery herein, they may produce Protected Material in advance of the
22 Court's approval of this Protective Order. With respect to any Protected Material
23 produced in advance of the Court's approval of this Protective Order, the parties
24 shall be bound by the terms of this Stipulated Protective Order as if it had been
25 approved by the Court prior to such production.

26 13. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in
28 paragraph 4, each Receiving Party must return all Protected Material to the

1 Producing Party or destroy such material. As used in this subdivision, “all
2 Protected Material” includes all copies, abstracts, compilations, summaries, and any
3 other format reproducing or capturing any of the Protected Material. Whether the
4 Protected Material is returned or destroyed, the Receiving Party must submit a
5 written certification to the Producing Party (and, if not the same person or entity, to
6 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
7 appropriate) all the Protected Material that was returned or destroyed and (2)
8 affirms that the Receiving Party has not retained any copies, abstracts,
9 compilations, summaries or any other format reproducing or capturing any of the
10 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
11 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
13 reports, attorney work product, and consultant and expert work product, even if
14 such materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in
16 Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 14, 2013 CROWELL & MORING

By /s/ S. Shane Sagheb
S. Shane Sagheb
Attorneys for Defendant
GATE GOURMET, INC.

Dated: October 14, 2013 KASSINOVE & RASKIN LLP

By /s/ Joshua M. Caplan
Joshua M. Caplan
Attorneys for Defendant
CHRIS NOVAK

Dated: October 14, 2013 KLETTER LAW FIRM

By /s/ Cary Kletter
Cary Kletter
Attorneys for Plaintiff
ROBERTO ORTIZ

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: October 17, 2013

 Kandis Westmore
Hon. Kandis A. Westmore
United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Northern District of
7 California on [date] in the case of *Roberto Ortiz v. Gate Gourmet, Inc., et al.*, No. C
8 12-06455 KAW. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order, and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Northern District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

27 LAACTIVE-601275082.2

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