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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LUBEN ROMANOV, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

AMAZON.COM SERVICES LLC
a Delaware limited liability
company; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 2:20-cv-02692 SB (KSx)

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Date: March 25, 2022

Time: 8:30 a.m.

Ctrm: 6C

Judge: Stanley Blumenfeld, Jr.

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1 **I. INTRODUCTION**

2 Plaintiff Luben Romanov, individually and on behalf of the Conditionally
3 Certified Class, moves for final approval of a \$700,000 non-reversionary settlement
4 (“Gross Settlement Amount”), which will disburse \$371,532.91 (“Net Settlement
5 Amount”) to 4,981 Class Members employed in California by Amazon.com
6 Services, LLC, (“Amazon” or “Defendants”), as Delivery Associates sometime
7 during the period from January 23, 2016 through August 21, 2021. Declaration of
8 Diana M. Khoury, (“Khoury Decl.”), ¶11.

9 On October 20, 2021, the Court preliminarily approved the Settlement. Dkt.
10 Nos. 52, 53. On December 10, 2021, the Court-approved Notice Packet (consisting
11 of the Notice of Class Action Settlement, Change of Address form, and pre-printed
12 return envelope) was mailed to 4,983 Class Members via first-class U.S. mail. The
13 Notice informed Class Members of their rights and benefits under the Settlement,
14 including the estimated amount of their Settlement Payments, and of the February 8,
15 2022 deadline to return requests for exclusion from the Settlement, disputes, and
16 written objections. An extended deadline of February 28, 2022 was provided to those
17 Class Members whose Notice Packets were remailed to an updated mailing address.
18 Khoury Decl. ¶¶12, 37. See, also Simpluris Declaration, Dkt. 54-13.

19 Class Member support for the Settlement has been strong. Through the present,
20 (three days prior to the extended response deadline), no disputes or objections have
21 been returned as to any term of the Settlement, and only two Class Members have
22 requested exclusion. Supplemental Declaration of Mary Butler on behalf of
23 Simpluris, Inc., (“Supp. Simpluris Decl.”), ¶¶5-7. Following the grant of final
24 approval, and the Effective Date of settlement, 4,981 Class Members will receive
25 payments averaging \$77.07, and highest payments of \$500.90. Supp. Simpluris Decl.
26 ¶¶9, 11; Khoury Decl. ¶¶13, 34, 39.

27 The Class has embraced the Settlement as one which is fair, adequate and
28 reasonable. Class Counsel respectfully requests that the Settlement now be finally

1 approved, and that the Class Representative Service Payment, Class Counsels'
2 attorneys' fees and litigation costs, and the administrator's expenses be awarded in
3 the sums requested and supported by Class Counsels' companion motion filed on
4 January 25, 2022. Dkt. 54.

5 **II. PLAINTIFF'S ALLEGATIONS AND AMAZON'S DEFENSES**

6 Plaintiff alleges Class Members worked 15 to 30 minutes prior to the start of
7 each shift to inspect their vehicles, the tires and mirrors, gas, and oil, clean the
8 vehicle, check the packages, and then load them on the truck for that day's delivery,
9 and from time to time, attend regular security and safety trainings. Class Members
10 continued to work after clocking out to complete required tasks, such as arranging
11 the bins and racks in the vehicle, inspect the vehicle, and meet with Amazon's
12 logistics' team to discuss undelivered packages which took another 10 to 15 minutes.
13 This pre-and post-shift work was unpaid. Khoury ¶14.

14 Plaintiff also contends Amazon scheduled their workdays with numerous
15 time-consuming deliveries and lengthy delivery routes preventing them from taking
16 off-duty meal and rest breaks. Delivery Associates were required to complete all
17 daily pick-ups, deliveries, and other work-related duties before ending their shifts,
18 and typically had no time for off-duty or uninterrupted meal periods and rest breaks.
19 If Class Members did not complete their scheduled deliveries, they were subject to
20 potential discipline of up to and including termination. Khoury Decl. ¶15.

21 Plaintiff also contends that Delivery Associates were required to use their
22 personal cell phones for such things as maintaining communication with Amazon's
23 dispatch, management, warehouse, and with customers, both during and after
24 scheduled shifts, and for receiving orders to re-deliver undelivered packages, and
25 taking pictures of packages, all without reimbursement. Khoury Decl. ¶16.

26 Amazon denies all allegations alleged in the operative complaint, and further
27 denies it owes Plaintiff and the Class for unpaid wages or work expenses. Amazon
28 contends that it maintains compliant wage and hour and working time policies that

1 expressly prohibit off-the-clock work and expressly require all Delivery Associates
2 to accurately record all hours worked. It contends that if a Delivery Associate failed
3 to accurately record their hours worked, they were required to report this to their
4 manager so that the Delivery Associate could be paid for all hours worked. Amazon
5 contends that, beyond its compliant policies, Delivery Associates did not have the
6 opportunity to perform unpaid pre-work because Delivery Associates could not
7 access any delivery packages, vehicles or perform any other work before having
8 clocked in, or after having clocked out. Amazon contends the same is true for the
9 alleged unpaid post-work.

10 Amazon contends that its meal and rest break policies also adequately
11 informed the Delivery Associates of the need to take meal and rest breaks and to not
12 perform any work during these breaks. In addition to its comprehensive and
13 compliant meal and rest break policies, Amazon contends that it did not schedule
14 Delivery Associates for deliveries that prevented them from taking off-duty meal
15 and rest breaks. To the contrary, Amazon contends that a Delivery Associate's
16 delivery schedule accounted for non-working time for the Delivery Associate to take
17 their meal and rest breaks. Amazon contends that Delivery Associates had
18 significant discretion regarding when and where to take their meal and rest breaks,
19 and that they did not face potential discipline for failing to complete all scheduled
20 deliveries during a shift.

21 Amazon also contends that Delivery Associates were reimbursed for any
22 work-related use of their personal mobile devices, and Amazon usually provided
23 Delivery Associates with work mobile devices to empower Delivery Associates to
24 perform their work duties. Amazon contends it provided Delivery Associates with
25 the necessary materials to perform their duties, including cleaning supplies for the
26 delivery vehicles.

27 ///

28 ///

1 **III. BRIEF SUMMARY OF LITIGATION**

2 On January 17, 2020, Plaintiff sent a letter to Amazon and to the California Labor
3 and Workforce Development Agency (“LWDA”) notifying them of his intention to
4 bring a representative action for civil penalties for various violations of the
5 California Labor Code, (“Labor Code”) as provided for by the Private Attorneys
6 General Act, (“PAGA”) Labor Code § 2698, *et seq.*¹ Khoury Decl. ¶17.

7 On January 23, 2020, Plaintiff filed a class action complaint in the Los
8 Angeles County Superior, Case No. 20STCV02837 alleging Amazon violated the
9 Labor Code by failing to pay minimum and overtime wages owed; premium wages
10 for non-compliant, interrupted and on-duty meal and rest breaks; business-related
11 expenses for personal cell phone usage; timely final wages, and accurate wage
12 statements; and based on these violations, unlawful, unfair, and/or fraudulent
13 business practices. Khoury Decl. ¶20.

14 On March 23, 2020, Amazon removed the case on the basis of diversity
15 pursuant to the Class Action Fairness Act. Dkt. No. 1. On March 30, 2020, Amazon
16 answered the complaint. Dkt. No. 11. On March 31, 2020, the Court issued its Order
17 Setting Scheduling Conference set for June 18, 2020. Dkt. No. 12. The Joint Rule
18 26(f) Report was filed, after which the Court vacated the scheduling conference and
19 set deadlines for expert witness designation, discovery certification briefing,
20 dispositive motions, private mediation etc. Dkt. No. 19. Khoury Decl. ¶21.

21 On July 28, 2020, a First Amended Complaint was filed alleging additional
22

23 ¹ Since serving Plaintiff’s letter, and as required by the PAGA, Plaintiff’s Counsel
24 has given notice of the proposed Settlement to the LWDA by service of Plaintiff’s
25 Motion for Preliminary Approval and the Plaintiff’s Counsels’ Motion for
26 Attorneys’ Fees, Litigation Costs, etc., Dkt. Nos. 46-15, 47-3; 54-7, 54-17. Khoury
27 Decl. ¶18. The Final Approval Motion will be provided to the LWDA on the date it
28 is filed with the Court. Khoury Decl. ¶43, Exh. 1. To date, the LWDA has not
contacted any of Plaintiff’s Counsel regarding the Settlement and proposed PAGA
Payment by phone or written communication. Khoury Decl. ¶19.

1 civil penalties pursuant to PAGA, and adding Cohelan, Khoury and Singer as co-
2 counsel for Plaintiff and the putative Class. Dkt. Nos. 24, 25. On August 17, 2020,
3 Amazon filed its Amended Answer. Dkt. No. 26. Khoury Decl. ¶22.

4 **IV. INVESTIGATION AND DISCOVERY**

5 The Parties conducted extensive discovery and investigative efforts in order
6 to reach resolution of this litigation. On June 18, 2020, the Parties served their Initial
7 Disclosures identifying their respective positions, and potential witnesses possessing
8 information relevant to the claims alleged and documents, among other things.
9 Khoury Decl. ¶23.

10 On September 4, 2020, Plaintiff served Amazon with two sets of Special
11 Interrogatories, Requests for Admission, Requests for Production of Documents,
12 and a deposition notice for Amazon's Person Most Knowledge pursuant to Fed. R.
13 Civ. P. 30(b)(6). Amazon served its answers and objections to all discovery on
14 October 28, 2020. Khoury Decl. ¶24. On March 10, 2021, Plaintiff was served with
15 Special Interrogatories and Requests for Production Documents. *Id.*

16 After several meet and confer efforts to obtain Class Member contact
17 information, and supplemental responses and documents from Amazon, the Parties
18 discussed the possibility of attending mediation and agreed to do so on a Class-wide
19 basis. To that end, pursuant to the Parties' stipulation, the Court entered a protective
20 order allowing Amazon to provide documents and information subject to
21 confidentiality protections. Dkt. No. 35. Khoury Decl. ¶25.

22 To evaluate Amazon's liability exposure, Plaintiff's Counsel reviewed
23 documents produced by Amazon that included Plaintiff's personnel file containing
24 Amazon's employee handbook (eff. 2019), policies and procedure materials,
25 Plaintiff's time punch details, and Plaintiff's earnings statements, among other
26 relevant documents. Khoury Decl. ¶26.

27 For purposes of mediation, Amazon produced the estimated number of Class
28 Members, the number of former Class Members; the number of PAGA Members;

1 the estimated number of Class Pay Periods; the estimated number of PAGA Pay
2 Periods; the estimated number of shifts worked by the Class; the estimated average
3 hourly rate; the total premiums paid for non-compliant meal and rest breaks, and the
4 fact that the Delivery Associate position in California had existed from only mid-
5 2018 through November 2020. Khoury Decl. ¶. 27

6 Amazon produced the names and telephone numbers for 50 randomly selected
7 Delivery Associates. Based on a sample set of calls to and from Class Members,
8 Class Counsel obtained anecdotal information about the Delivery Associates' job,
9 hours worked in a shift, routes, duties, and responsibilities and the obligations for
10 package pick-up and delivery by the end of their work shifts; the types of tasks
11 performed pre-shift and post-shift; about whether they were able to take, on eligible
12 shifts, off-duty and uninterrupted meal and rest breaks; whether they were
13 compensated when they did not or could not take a compliant break; and whether
14 they were reimbursed for using their personal cell phones. Khoury Decl. ¶28.

15 **V. MEDIATION**

16 Prior to mediation, the Parties engaged in extensive investigation, and
17 discovery, and had discussions concerning the relative merits of Plaintiff's claims
18 and Amazon's defenses to them to assess the likelihood of class certification.
19 Khoury Decl. ¶29. All information and data produced by Amazon as well as
20 information obtained from Class Member interviews was given to Class Counsel's
21 damages' consultant to review and analyze, and to assist Class Counsel with the
22 creation of a Class-wide damage model for purposes of engaging in a meaningful
23 and informed mediation. Khoury Decl. ¶30.

24 On April 23, 2021, the Parties attended a day-long mediation conducted
25 virtually by Michael D. Young, a well-regarded, and experienced wage and hour
26 class action mediator facilitating the informed and arms'-length negotiations.
27 Khoury Decl. ¶31. Taking all discussions and negotiations into consideration, the
28 Parties reached agreement on the principle terms of the proposed Settlement, and

1 diligently continued to negotiate the balance of the terms contained in the
2 Agreement. Khoury Decl. ¶32.

3 **VI. KEY TERMS OF THE PRELIMINARY APPROVED SETTLEMENT**

4 Following a full day of informed negotiations facilitated by an experienced
5 mediator, and evaluating the Class claims against Amazon’s defenses, and risks of
6 an adverse ruling on certification, the Parties agreed the Action could be settled for
7 the Gross Settlement Amount of \$700,000² (“GSA”), no part of which would revert
8 to Amazon under any circumstances. In addition to the GSA, Amazon agreed to pay
9 the employer-sided taxes due on the portion of the Class Members’ Settlement
10 Payments allocated to wages. SA, ¶I.Q. The GSA includes, subject to the Court’s
11 approval: (a) attorneys’ fees of \$233,333.33³ to compensate Class Counsel for work
12 performed and to be performed to secure final Court approval, and litigation
13 expenses of \$10,133.76 (estimated at \$12,500); (c) a Class Representative Service
14 Payment of \$10,000 in consideration of Plaintiff’s prosecution of the Action, service
15 as the sole representative for the Class, work performed, risks undertaken for the
16 payment of costs, benefits conferred on absent Class Members, and a general release;
17 (d) administration expenses to Simpluris, Inc., of \$25,000; and (e) a PAGA Civil
18 Penalty Payment of \$50,000 of which \$37,500 (75%) will be paid pursuant to the
19 PAGA to the LWDA and \$12,500 (25%) will be distributed proportionately to all
20 PAGA Members. SA, ¶ III. A. B.; Khoury Decl. ¶33.

21 After all Court-approved deductions from the GSA, the remaining Net
22 Settlement Amount, \$371,532.91, will be distributed entirely to Participating Class
23 Members on a proportionate basis without the need to return a claim form. SA, III.

24
25 ² The reasonableness of the Settlement consideration is detailed at length in the Joint
26 Supplemental Brief filed in support of Plaintiff’s Motion for Preliminary Approval,
Dkt. No. 50, pages 1-9.

27 ³ Plaintiff consented in writing to attorneys’ fees of up to one-third percent of any
28 recovery to be distributed to Plaintiff’s Counsel: 60% to Cohelan, Khoury & Singer,
20% to The Phelps Law Group, and 20% to The Carter Law Firm. Khoury Decl.
¶34.

1 A. Khoury Decl. ¶34. Eligible PAGA Members will also receive a proportionate
2 share of \$12,500 PAGA Penalty Payment allocated to them which will be included
3 in the Settlement Payment. Participating Class Members will receive average
4 payments of \$77.07 and highest payments of \$500.90⁴. Supp. Simpluris Decl. ¶¶10,
5 11; Khoury Decl. ¶¶13, 36.

6 **VII. PRELIMINARY APPROVAL, NOTICE, AND CLASS RESPONSE**

7 **A. Preliminary Approval**

8 On August 9, 2021, Plaintiff moved for Preliminary Approval. Dkt. No. 46.
9 On October 1, 2021, the Parties appeared before the Court on Plaintiff's Preliminary
10 Approval Motion, after which the hearing was continued to October 22, 2021, to
11 allow the Parties to file a supplemental brief by October 12, 2021. Dkt. No. 48. The
12 Court requested additional briefing regarding the reasonableness of the Settlement
13 considerations, undelivered notice packets, Plaintiff's Counsel's estimated hours
14 and lodestar, and Plaintiff's estimated time devoted to this litigation. Khoury Decl.
15 ¶37.

16 On October 12, 2021, the Joint Supplemental Brief was filed, after which the
17 Court vacated the hearing, and granted the Preliminary Approval Motion. Dkt. Nos.
18 50-53. The Court found on a preliminary basis that: (a) the Settlement was fair,
19 adequate and within the range of reasonableness which could ultimately be given
20 final approval by this Court; and that (b) the Settlement Agreement was
21 presumptively valid, subject only to objections that may be raised at the Final
22 Approval Hearing. Dkt. No. 53. Khoury Decl. ¶38. The Court preliminarily
23 approved Plaintiff Luben Romanov as the Class Representative, Simpluris as the
24 Administrator, Cohelan, Khoury & Singer, The Carter Law Firm, and the Phelps
25 Law Group as Class Counsel, and approved the Notice of Class Action Settlement,
26 and the method of dissemination to the Class. *Id.*

27 ⁴ Plaintiff Romanov's Settlement Payment is estimated at \$68.75, less than the
28 average payment under the Settlement. Simpluris Decl. ¶12.

1 **B. Notice to the Class and the Class’ Response**

2 On December 10, 2021 the Court-approved Notice of Class Action Settlement
3 was mailed to the Class together with a Change of Address Form and pre-printed
4 return envelope, (Notice Packet). Dkt. 54-13, Exh. A. The Notice informed Class
5 Members of the facts giving rise to the litigation, the proposed Settlement, the cash
6 benefits to be received without a claim form in exchange for a release of claims
7 alleged in the Action, the estimated individualized Settlement Payment each could
8 expect to receive upon final approval of the Settlement, and of the Final Approval
9 Hearing date and time. The Notice also advised Class Members of their rights to
10 submit written objections and/or to appear at the final approval hearing, to dispute
11 the information on which their Settlement Payments were calculated, and to request
12 exclusion by the February 8, 2022 deadline. Simpluris Decl. ¶¶5-7; Khoury Decl.
13 ¶¶12, 39. Class Members that received remailed Notice Packets were provided
14 additional time, through February 28, 2022, to respond to the Notice. Simpluris Decl.
15 ¶5-7; Khoury Decl. ¶¶12, 40.

16 Through the present, no objections or disputes have been returned, and only
17 two individuals have requested exclusion from the Settlement resulting in a 99.9%
18 participation rate. Simpluris Decl. ¶¶5-7; Khoury Decl. ¶¶13, 41.

19 **VIII. CLASS CERTIFICATION SHOULD BE GRANTED FOR PURPOSES**
20 **OF FINAL APPROVAL.**

21 The Court determined at preliminary approval that the Class met the
22 requirements for class certification under Rule 23(a)’s numerosity, typicality,
23 commonality, and adequacy requirements, and Rule 23(b)(3)’s predominance and
24 superiority standards, and conditionally certified the Class. Preliminary Approval
25 Order, Dkt. No. 53, ¶¶ 3–6.

26 ///

27 ///

28 ///

1 **IX. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED**

2 **A. Class Action Settlements are Subject to Court Review and**
3 **Approval Under the Federal Rules of Civil Procedure**

4 Rule 23(e) of the Federal Rule of Civil Procedure provides that "[a] class action
5 shall not be dismissed, settled, or compromised without the approval of the Court,
6 and notice of the proposed dismissal, settlement or compromise shall be given as the
7 Court directs." The Ninth Circuit has stated that in order to approve a final settlement
8 in a class action, the district court must find that the proposed settlement is
9 fundamentally fair, adequate, and reasonable. *Id.* at Rule 23(e)(1)(C); *Staton v.*
10 *Boeing Co.*, 327 F. 938, 952 (9th Cir. 2003).

11 **B. The Settlement Is Fair, Adequate, and Reasonable**

12 The decision whether a Settlement is fair, reasonable, and adequate is
13 committed to the Court's sound discretion. *Dunleavy v. Nadler*, 213 F.3d 454, 458
14 (9th Cir. 2000) (citing *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1238
15 (9th Cir. 1998); Manual for Complex Litigation (4th ed. 2004) § 21.61 at 308,
16 *Officers for Justice v. Civil Serv. Comm'n. of the City and County of San Francisco*
17 (9th Cir. 1982) 688 F. 2d 615, 625, cert. denied (1983) 459 U.S. 1217.)

18 Although the Court has discretion to determine whether a proposed class
19 Settlement is fair, the Ninth Circuit has "long deferred to the private consensual
20 decision of the parties." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir.
21 2009) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)). "[T]he
22 court's intrusion upon what is otherwise a private consensual agreement negotiated
23 between the parties to a lawsuit must be limited to the extent necessary to reach a
24 reasoned judgment that the agreement is not the product of fraud or overreaching by,
25 or collusion between, the negotiating parties, and that the Settlement, taken as a
26 whole, is fair, reasonable and adequate to all concerned." *Officers for Justice v. Civil*
27 *Serv. Comm'n.*, 688 F.2d at 625. "[I]n evaluating whether the Settlement is fair and
28 adequate, the Court's function is not to second guess the Settlement's terms." *Garner*

1 v. *State Farm Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 U.S. Dist. Lexis
2 49477, *21 (N.D. Cal. Ap. 22, 2010).

3 Rule 23(e) settlement approval has three distinct steps: (1) preliminary
4 approval of the settlement; (2) notice of the settlement to Class Members; and (3) a
5 final fairness hearing at which Class Members may be heard regarding the settlement
6 and at which evidence and argument may be considered. *Murillo v. Pac. Gas & Elec.*
7 *Co.*, 266 F.R.D. 468, 473 (E.D. Cal. 2010). This procedure safeguards Class
8 Members' due process rights and enables the Court to fulfill its role as the guardian
9 of class interests. See, William Rubenstein, Alba Conte & Herbert Newberg, 4
10 *Newberg on Class Actions* (5th ed. 2014) ("Newberg"), §§ 13:39, *et seq.*

11 **C. Class Notice Has Been Effectuated and Comports with Rule 23 and**
12 **Due Process**

13 Before final approval of a class action can issue, notice of the Settlement must
14 be provided to the Class. Fed. R. Civ. P. 23(e)(1). Rule 23 requires that the Class
15 receive "the best notice practicable under the circumstances, including individual
16 notice to all members who can be identified through reasonable effort." Fed. R. Civ.
17 P. 23(c)(2)(B). Notice to the Class must be "reasonably calculated under all the
18 circumstances, to apprise interested Parties of the pendency of the action and afford
19 them an opportunity to present their objections." *Mullane v. Central Hanover Bank*
20 *and Trust Co.*, 339 U.S. 306, 314 (1950); *Saulic v. Symantec Corp.*, 596 F. Supp.2d
21 1323, 1327 (C.D. Cal. 2009).

22 The Court approved the Class Notice and found it fairly and adequately
23 advised the Class and PAGA Members of the terms of the proposed Settlement, the
24 benefits available to them, of the Final Approval Hearing date, and the right to appear
25 at the hearing, among other things. Preliminary Approval Order, Dkt. No. 53. The
26 Court found the "Notice clearly comports with all constitutional requirements
27 including those of due process." *Id.*, ¶8. The Court further found the method of giving
28 notice to the Class was effective in notifying them of their rights with respect to the

1 class action and to the Settlement, and directed the Administrator to follow the
2 procedures and deadlines set forth in the Settlement Agreement, and in its
3 Preliminary Approval Order. *Id.*, ¶¶9, 10.

4 **D. The Settlement is Entitled to the Presumption of Fairness**

5 “[I]n the Ninth Circuit, a court affords a presumption of fairness to a
6 Settlement if: ‘(1) the negotiations occurred at arms’ length; (2) there was sufficient
7 discovery; (3) the proponents of the Settlement are experienced in similar litigation;
8 and (4) only a small fraction of the class objected.’” (cite omitted) *Rodriguez v. West*
9 *Publishing Corp.*, No. CV-05-3222 R(MCx) 2007 U.S. Dist. LEXIS 74849 at 32-33
10 (C.D. Cal. Sept. 10, 2007).

11 The Preliminary Approval Motion thoroughly analyzed the terms of the
12 Settlement in light of the *Rodriguez* factors, and established with the support of the
13 Supplemental Briefing [Dkt. 50], that the proposed Settlement is in the Class’ best
14 interest, is adequate and reasonable, and entitled to a presumption of fairness. Dkt.
15 No. 46-1, 4:2-5:11; 12:4-20:27. In granting preliminary approval, the Court found
16 the first three *Rodriguez* factors satisfied, leaving the fourth factor, the number of
17 objectors, unknown until after the Class had had an opportunity to respond to the
18 Class Notice. Subject only to the Class’ reaction to the Notice, the Court preliminarily
19 presumed the Settlement was fundamentally fair, adequate and within the range of
20 reasonableness which could ultimately be given final approval by this Court.
21 Preliminary Approval Order, Dkt. No. 53, ¶¶1, 3, 8.

22 Since the mailing of the Notice Packets, not a single member of the Class has
23 objected to any term of the Settlement and only two individuals have opted out.
24 Simpluris Decl. ¶7. The lack of objections supports the presumption the Settlement
25 is fair, adequate and reasonable. *Martin v. AmeriPride Servcs.*, 2011 U.S. Dist. Lexis
26 61796 at *21 (S.D. Cal. June 9, 2011); *In re Omnivision Techs.*, 559 F. Supp.2d,
27 1036, 1043 (N.D. Cal. 2007), (“By any standard, the lack of objection of the Class
28 Members favors approval of the Settlement.”); see also *Brown v. American Honda*

1 *Motor Co., Inc.*, 2010 U.S. Dist. Lexis 145475, at *49 (C.D. Cal. July 29, 2010)
2 (comparatively low number of opt-outs indicates class members favor settlement and
3 find it fair). The lack of objections also provides persuasive evidence the Settlement
4 is reasonable. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal. 1979).

5 Since the mailing of the Notice Packets to the Class, nothing has changed to
6 negate the presumption of fairness. With the Class' favorable reaction to the
7 Settlement, Class Counsel remains convinced the Settlement is in the Class' best
8 interest based on a detailed knowledge of the issues presented in the Action and the
9 negotiations. The length and risks of trial and the perils of litigation that affect the
10 value of the claims were all carefully weighed as described in the Supplemental
11 Briefing in Support of Preliminary Approval (Dkt. No. 50). The affirmative defenses
12 asserted by Defendant, the uncertainty of obtaining or maintaining Rule 23
13 certification, the prospect of a potential adverse summary judgment ruling, the
14 difficulties of complex litigation, the lengthy process of establishing damages and
15 various possible delays and appeals, were also carefully considered by Class Counsel
16 in arriving at the proposed Settlement. Khoury Decl. ¶42.

17 **X. CONCLUSION**

18 Plaintiff respectfully requests the Court enter an order granting Plaintiff's
19 unopposed Motion for Order Granting Final Approval and Entering Judgment, and
20 the approving Class Counsels' request for attorneys' fees and litigation costs, the
21 Class Representative Service Payment, and the Settlement Administrator's expenses

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1 as requested in the companion Motion for Order Granting Award of Attorneys' Fees
2 and Costs, and Class Representative Service Payment filed January 25, 2022. Dkt.
3 No. 54.

4 Respectfully submitted,

5 **COHELAN KHOURY & SINGER**
6 **THE CARTER LAW FIRM**
7 **THE PHELPS LAW GROUP**

8 Dated: February 25, 2022

9 By: /s/ Diana M. Khoury

10 Diana M. Khoury
11 Attorneys for Plaintiff Luben Romanov,
12 individually and on behalf of the
13 Conditionally Certified Class
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