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15 himself and all others similarly situated

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

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

21 Plaintiff,

v.

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

25 Defendants.

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

CLASS ACTION

**DECLARATION OF MICHAEL D.
SINGER IN SUPPORT OF MOTION
FOR ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE AND
SETTING OF FINAL APPROVAL
HEARING DATE**

Date: October 1, 2021

Time: 8:30 a.m.

Ctrm: 6C

1 I, Michael D. Singer, declare as follows:

2 1. I am the Managing Partner at the law firm of Cohelan Khoury & Singer,
3 co-counsel of record for Plaintiff and the Proposed Class. I submit this declaration
4 in support of Plaintiff's Motion for Order Granting Preliminary Approval of Class
5 Action Settlement. The following facts are within my personal knowledge and if
6 called to testify I could and would competently testify to them.

7 2. I am a 1984 Hastings graduate, admitted to the California State Bar in
8 1984 and the Colorado State Bar in 2001. I have been admitted to practice before
9 the following courts: U.S. Supreme Court; Ninth Circuit Court of Appeals;
10 Southern, Central, Northern, and Eastern Districts of California; and all California
11 State Courts.

12 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan &
13 Khoury, a Partnership of Professional Law Corporations, and within a few years
14 began to focus on class actions. I joined Cohelan & Khoury in 2000 and was named
15 partner in 2003. In 2009, Cohelan & Khoury became Cohelan Khoury & Singer.
16 Our firm represents plaintiffs in complex, class and representative action litigation,
17 including wage and hour, labor and employment, antitrust, consumer protection,
18 construction defect and other public interest type class and representative actions.
19 Attached as Exhibit 3 is a true and correct copy of my firm's curriculum vitae.

20 4. I was admitted as a fellow to the College of Labor and Employment
21 Attorneys in 2020, and I was named to the Daily Journal 2012, 2013, and 2018 list
22 of Top California Labor and Employment Attorneys. I, along with Isam Khoury, a
23 founding Partner of the firm, and Partner Diana M. Khoury, have also been selected
24 by our peers based on ethics, experience and reputation as Super Lawyers in Civil
25 Litigation by the Southern California Super Lawyers Magazine for the years 2012
26 through the present.

27 5. Cohelan Khoury & Singer has been certified by the State Bar of
28 California to provide the Mandatory Continuing Legal Education activity entitled

1 “Litigating California Class Actions” and has conducted MCLE certified seminars
2 on this topic. Senior Partner, Timothy D. Cohelan, is the author of Cohelan on
3 California Class Actions (1997-2021, updated annually), part of Thomson Reuters
4 Expert Series updated annually. I am a contributing author on the CEB publication
5 California Wage and Hour Law: Compliance and Litigation (2010-2021 updated
6 annually), in which I wrote the opening chapter overview on California Wage and
7 Hour laws, including the public policy underpinnings for those laws, and the Private
8 Attorneys General Act (PAGA) Claim chapter. I am also a contributing author to
9 the CEB Practitioner (2020), including guidelines for oral argument and forms for
10 PAGA litigation. I have served as a columnist for the California State Bar,
11 Litigation Section on wage and hour litigation and have contributed articles on wage
12 and hour and class action issues through the years to numerous California
13 publications. Prior to COVID, I typically lectured several times per year for
14 continuing education courses on wage and hour and class action issues at events in
15 San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years,
16 I served as wage and hour amicus co-chair and liaison for the California
17 Employment Lawyers Association, drafting, reviewing, and coordinating amicus
18 filings on wage and hour issues in the California Supreme Court and Courts of
19 Appeal. I have been engaged in the practice of labor and employment law since
20 2000, handling well over 300 wage and hour class and PAGA actions and several
21 individual labor cases. I have litigated several types of employment actions,
22 including complex ERISA employee welfare benefit plan cases, as well as wage
23 and hour class actions before Federal and State Courts in California. In 2014, I tried
24 a wage and hour class action involving claims for illegally deducted wages and
25 unreimbursed expenses in the matter of *Dilts v Penske Logistics LLC, Inc.* I
26 successfully appealed the trial court ruling in *Dilts* finding state laws preempted by
27 the FAAAA for truck drivers. I have participated in over 50 appellate cases and
28 argued writs and appeals before several California District Courts of Appeal,

1 successfully arguing the landmark *Vaquero* appeal for plaintiffs in the Second
2 District Court of Appeal, *Vaquero v. Stoneledge Furniture, LLC* (2017) 9
3 Cal.App5th 98 (requiring employers separately pay commission sales employees
4 for rest periods). As lead counsel in *Brinker Restaurant Corp. v. Superior Court*
5 [formerly reported at (2008)165 Cal.App.4th 25], I argued before the Fourth District
6 Court of Appeal in May 2008 on transfer from the California Supreme Court, and
7 co-authored the briefing in the successful Supreme Court appeal. I've also argued
8 federal appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In
9 addition, I have drafted numerous appellate briefs as the appellant, respondent, or
10 amicus curiae in various employment class and individual actions. My firm has
11 successfully tried multiple class cases, obtained appellate reversals of class
12 certification denials (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908),
13 certified multiple consumer and wage and hour class.

14 6. As a part of our overall firm philosophy lawyers perform community
15 service and pro bono work. Firm volunteer work includes service through the Legal
16 Aid at Work, San Diego Volunteer Lawyer Program, the San Diego County Bar
17 Foundation and Consumer Attorneys of San Diego. I have served on the Legal Aid
18 at Work Board of Directors since 2010. Mr. Cohelan served as the Chair of the San
19 Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board
20 as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro
21 Tem of the San Diego Superior Court. Since admission to the California Bar.
22 Partner Diana M. Khoury has been a member of the San Diego County Bar
23 Association, Consumer Attorneys of San Diego, Consumer Attorneys of California,
24 and American Association for Justice serving and chairing various committees
25 through the years for these organizations. For six years from 2010 through 2015,
26 Ms. Khoury served on the Board of Directors for Consumer Attorneys of San Diego.
27 Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego
28 County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar

1 Association providing access to justice to the underserved and impoverished in the
2 San Diego County region. Partner Jeff Geraci is a past recipient of the Wiley W.
3 Manuel Award for Pro Bon Service. Associate Kristina De La Rosa has volunteered
4 for the California Rule Legal Assistance, Inc. Our firm's recent pro bono victories
5 include a settlement which prohibits the City of San Diego from targeting homeless
6 people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City*
7 *of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement
8 had the effect of increasing the number of available shelter beds in San Diego.

9 7. Cohelan Khoury & Singer has been certified Class Counsel in the
10 following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego
11 Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*,
12 Alameda Superior Court Case No. RG11580548; *Arellano, et al. v. Container*
13 *Connection of Southern California, Inc.*, Los Angeles Superior Court Case No.
14 BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT*
15 *PRACTICES LITIGATION*, United States District Court, District of Kansas MDL
16 Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
17 United States District Court, Southern District of California Case No. 13CV1901;
18 *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern
19 District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless*
20 *Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No.
21 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case
22 No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court,
23 Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire*
24 *Centers of California, Inc.*, Sacramento Superior Court Case No. 2007-30000003;
25 *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
26 *PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets San*
27 *Mateo Superior* Case No. CIV530955; *Wilcox v Albertsons*, San Diego Superior
28 Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc.*

1 *d/b/a The Orange County Register*, Orange County Superior Court Case No.
2 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District
3 Court, Southern District of California Case No. 10CV0672 (FLSA Conditional
4 Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles Superior
5 Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et*
6 *al.*, San Diego Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*,
7 Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY*
8 *MUTUAL OVERTIME CASES*, Los Angeles Superior Court Case No. JCCP 4234;
9 *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United
10 States District Court, Central District of California Case No.11CV07196 (FLSA
11 Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San
12 Diego Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's*
13 *Hospital-San Diego*, San Diego Superior Court Case No. 337-2015-00022978;
14 *Schneider, et al. v. Catholic Healthcare West*, San Francisco Superior Court Case
15 No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior
16 Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego
17 Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT
18 CASES, Los Angeles Superior Court Case No. JCCP 4363; *Stevenson Aibangbee*
19 *v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No.
20 BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No.
21 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County
22 Superior Co Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et*
23 *al.*, United States District Court, Central District of California Case No. 12CV8590;
24 *Vaquero v. Stoneledge Furniture LLC*, Los Angeles Superior Court Case No.
25 BC522676; *Vazquez v. Kraft Heinz Foods Company*, Unites States District Court,
26 Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon*
27 *Company*, United States District Court, Southern District of California Case No.
28 10CV0634; and *Weigele v. FedEx Ground Package System, Inc.*, United States

1 District Court, Southern District of California Case No. 06CV1330, among others,
2 as well as being appointed Class Counsel in connection with well over 200 class
3 action settlements.

4 8. As Class and PAGA Representative Counsel, Cohelan Khoury &
5 Singer has actively commenced, prosecuted and concluded numerous state and
6 federal class and representative actions. Since 2016, Cohelan Khoury & Singer has
7 played a central role in the resolution of over 200 such cases, including the
8 following, which have received court approval: (a) *Arellano, et al. v. Container*
9 *Connection of Southern California, Inc.*, Los Angeles Superior Court, Case No.
10 BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles
11 County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v.*
12 *Conair Corporation*, United States District Court, Southern District of California,
13 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United
14 States District Court, Central District of California, Case No. 18-cv-00415, Hon.
15 David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior
16 Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart*
17 *Supermarkets*, San Mateo County Superior Court, Case No. CIV530955, Hon.
18 Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles
19 County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v.*
20 *Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No.
21 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
22 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis*
23 *Armored US, LLC*, San Bernardino County Superior Court, Case No.
24 CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los
25 Angeles Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et*
26 *al. v. Management & Training Corporation, et al.*, United States District Court,
27 Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T.
28 Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court

1 Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham*
2 *Resort Development Corporation, et al.*, United States District Court, Southern
3 District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena*
4 *v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No.
5 BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country*
6 *Club*, Los Angeles Superior Court, Case No. BC566493, Hon. William F.
7 Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara
8 County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r)
9 *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No.
10 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*,
11 San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald
12 Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-
13 CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC,
14 Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v)
15 *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles Superior Court,
16 Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*,
17 Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G.
18 Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego Superior
19 Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady*
20 *Children's Hospital-San Diego*, San Diego Superior Court Case No. 337-2015-
21 00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San
22 Francisco Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa)
23 *Schwartz v Bank of the West*, San Francisco Superior Court, Case No. CGC-14-
24 538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of
25 California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al.*
26 *v. Stoneledge Furniture, LLC*, Los Angeles Superior Court Case No. BC522676,
27 Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC,
28 Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes;

1 (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court
2 Case No. BC487290, Hon. William F. Highberger; among others.

3 9. Plaintiff seeks preliminary approval of a non-reversionary, pre-
4 certification wage and hour Class Action and Private Attorneys' General Act
5 ("PAGA") Settlement of \$700,000 by Plaintiff Luben Romanov, individually, and
6 on behalf of the estimated 4,984 Class Members employed by Defendant
7 Amazon.com Services LLC ("Amazon" or "Defendant") in California as Delivery
8 Associates at any time during the period from January 23, 2016 through the date
9 the Court grants preliminary approval of this Agreement or August 21, 2021 (the
10 "Class Period"), whichever occurs first. Attached as Exhibit 1 is a true and correct
11 copy of the Class and Representative Action Settlement Agreement ("Agreement").

12 10. The proposed Settlement is non-reversionary and Class Members will
13 be paid based on the number of eligible Pay Periods worked during the Class Period,
14 unless they exclude themselves from the Settlement. A claim form will not be
15 required to participate in the Settlement.

16 11. Pursuant to the terms memorialized in the Class and Representative
17 Action Settlement Agreement, ("Agreement"), Plaintiff seeks by this Motion, the
18 following: 1) preliminary approval of the proposed class action settlement, and that
19 it is fair, adequate, and reasonable based on the terms of the Agreement, including
20 payment by Defendant of the \$700,000 Gross Settlement Amount ("GSA") for the
21 benefit of 4,984 Class Members; 2) conditional certification of the Class for
22 settlement purposes only; 3) appointment of Plaintiff's Counsel as Class Counsel,
23 and preliminary approval of the reasonable attorneys' fees of \$233,333.33 and
24 litigation costs of up to \$12,500.00 from the GSA; 4) appointment of Plaintiff Luben
25 Romanov as the Class Representative, and preliminary approval of the Service
26 Payment to Plaintiff of \$10,000.00 from the GSA, as compensation for the burden,
27 responsibility, time, effort, and risk involved in coming forward on behalf of the
28 Class; 5) appointment of Simpluris, Inc. as the Administrator, and preliminary

1 approval of up to \$25,000.00 from the GSA for administration of the Settlement; 6)
2 approval of the allocation of civil penalties of \$50,000 from the GSA, with 75% to
3 be paid to the California Labor and Workforce Development Agency and 25% to
4 be distributed to PAGA Members, as prescribed by Labor Code section 2699 *et*
5 *seq.*; and, 7) approval of the proposed Notice of Class Action Settlement (“Class
6 Notice”), and directing its distribution to the Class.

7 12. Plaintiff Luben Romanov was employed by Defendant from May 15,
8 2019 through August 19, 2019 as a non-exempt, hourly paid Delivery Associate
9 providing package pick-up and delivery services exclusively for Amazon at its
10 warehouse in the Thousand Oaks area of California, earning \$17.25 per hour.

11 13. Amazon is headquartered in Washington state and with its principal
12 place of business in Seattle, Washington. During the Class Period, Amazon
13 employed Delivery Associates such as Plaintiff and the Class to pick up and deliver
14 packages ordered online from Amazon.com, to businesses and consumers
15 throughout California. Amazon’s Delivery Associate position was in existence for
16 a short period of time, from mid-2018 through November 2020.

17 14. The Class is defined as all individuals employed by Amazon as
18 Delivery Associates in California any time during the period from January 23, 2016
19 through the date the Court grants preliminary approval of this Agreement or August
20 21, 2021, whichever occurs first. There are an estimated 4,984 Class Members who
21 were employed for an estimated 76,632 Pay Periods during the Class Period.

22 15. PAGA Members, a subgroup of the Class, are defined as all individuals
23 who worked any time during the PAGA Period (November 13, 2018 through the
24 date of Preliminary Approval of this Agreement, or August 21, 2021, whichever
25 occurs first). There are an estimated 4,977 PAGA Members who were employed
26 for an aggregate 75,996 Pay Periods.

27 16. On January 17, 2020, Plaintiff sent a letter to Defendant and to the
28 California Labor and Workforce Development Agency (“LWDA”) notifying them

1 of his intention to bring a representative action for civil penalties for various
2 violations of the California Labor Code, as provided for by the Private Attorneys
3 General Act, (“PAGA”) Labor Code § 2698, *et seq.*

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

11 18. On March 23, 2020, Amazon removed the case on the basis of diversity
12 pursuant to the Class Action Fairness Act. On March 30, 2020, Amazon answered
13 the complaint. On March 31, 2020, the Court issued its Order Setting Scheduling
14 Conference set for June 18, 2020. The Joint Rule 26(f) Report was filed, after which
15 the Court vacated the scheduling conference and set deadlines for expert witness
16 designation, discovery certification briefing, dispositive motions, private mediation
17 etc.

18 19. On July 28, 2020, a First Amended Class and Representative Action
19 was filed alleging additional civil penalties pursuant to the PAGA, and adding the
20 law firm of Cohelan, Khoury and Singer as co-counsel for Plaintiff. On August 17,
21 2020, Defendant filed its Amended Answer.

22 20. On June 18, 2020, Plaintiff and Defendant served their Initial
23 Disclosures identifying the numerous potential witnesses possessing information
24 relevant to the claims alleged.

25 21. On September 4, 2020, Plaintiff served Defendant with two sets of
26 Special Interrogatories, Requests for Admission, Requests for Production of
27 Documents, and a deposition notice for Amazon’s Person Most Knowledge
28 pursuant to Fed. R. Civ. P. 30(b)(6). Amazon served its answers and objections to

1 all discovery on October 28, 2020. On March 10, 2021, Defendant served Plaintiff
2 with Special Interrogatories and Requests for Production Documents.

3 22. After several meet and confer efforts to obtain Class Member contact
4 information, and supplemental responses and documents from Amazon, the Parties
5 discussed the possibility of attending an early mediation and then agreed to do so
6 on a Class-wide basis on April 23, 2021. To that end, pursuant to the Parties'
7 stipulation, the Court entered a protective order allowing Amazon to provide
8 documents and information subject to confidentiality protections.

9 23. To evaluate Amazon's liability exposure, Plaintiff reviewed documents
10 produced by Defendant, that included Plaintiff's personnel file, and included
11 Amazon's employee handbook (eff. 2019), policies and procedure materials,
12 Plaintiff's time punch details, and Plaintiff's earnings statements, among other
13 relevant documents.

14 24. For purposes of mediation, Amazon produced the estimated number of
15 Class Members - 4,984; the number of former Class Members - 4,984; the number
16 of PAGA Members - 4,977; the estimated number of Class Pay Periods - 76,632;
17 the estimated number of PAGA Member Pay Periods - 75,996; the estimated
18 number of shifts worked by the Class - 282,006; the estimated average hourly rate
19 - \$16.96; the total premiums paid for non-compliant meal and rest breaks -
20 \$1,124,696.65, and the fact that the Delivery Associate position in California
21 existed only from approximately mid-2018 through November 2020.

22 25. Amazon also produced the names and telephone numbers for 50
23 randomly selected Delivery Associates. Based on a sample set of calls to and from
24 the Class Members, Class Counsel obtained anecdotal information about the
25 Delivery Associates' job, the hours worked in a shift, their routes, their duties, and
26 responsibilities and obligations for package pick-up and delivery by the end of their
27 shifts; the types of tasks performed pre-shift and post-shift; about whether they were
28 able to take, on eligible shifts, off-duty and uninterrupted meal and rest breaks;

1 whether they were compensated when they did not or could not take a compliant
2 break; and whether they were reimbursed for using their personal cellphones,
3 among other things.

4 26. All information obtained from the data and Class Member interviews
5 was provided to Class Counsel's damages' consultant to review and analyze and to
6 assist Class Counsel with the creation of a Class-wide damage model for purposes
7 of engaging in a meaningful and informed mediation.

8 27. On April 23, 2021, the Parties attended a day-long mediation conducted
9 virtually by Michael D. Young, a well-regarded, and experienced wage and hour
10 class action mediator facilitating the arms'-length negotiations.

11 28. By the end of the day, taking all discussions and negotiations into
12 consideration, the Parties reached agreement on the principle terms of the proposed
13 Settlement, and diligently continued to negotiate the balance of the terms contained
14 in the Agreement.

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

23 30. Plaintiff also contends Amazon scheduled their workdays with
24 numerous time-consuming deliveries and lengthy delivery routes preventing them
25 from taking off-duty meal and rest breaks. Delivery Associates were required to
26 complete all daily pick-ups, deliveries, and other work-related duties before ending
27 their shifts, and typically had no time for off-duty or uninterrupted meal periods and
28

1 rest breaks. If Class Members did not complete their scheduled deliveries, they were
2 subject to potential discipline of up to and including termination.

3 31. Plaintiff also contends that Delivery Associates were required to use
4 their personal cell phones for such things as maintaining communication with
5 Amazon's dispatch, management, warehouse, and with customers, both during and
6 after scheduled shifts, and for receiving orders to re-deliver undelivered packages,
7 and taking pictures of packages, all without reimbursement.

8 32. The Parties agreed the Action may be settled for the Gross Settlement
9 Amount of \$700,000 ("GSA"), no part of which may revert to Amazon under any
10 circumstances. Amazon also agreed to pay separately and in addition to the GSA
11 any employer-side taxes due on the portion of the Individual Settlement Payments
12 allocated to wages. The GSA includes, subject to the Court's approval:
13 (a) attorneys' fees of \$233,333.33 to compensate Class Counsel for work performed
14 and remaining to be performed in securing final Court approval, and litigation
15 expenses of up to \$12,500; (c) a Class Representative Service Payment of up to
16 \$10,000 in consideration of Plaintiff's prosecution of the Action, service as the sole
17 representative for the Class, work performed, risks undertaken for the payment of
18 costs, benefits conferred on absent Class Members, and a general release of all
19 claims; (d) Administration expenses to Simpluris, Inc., of up to \$25,000, (e) the
20 LWDA Payment of \$37,500 (75% of the \$50,000 PAGA Civil Penalty Payment)
21 pursuant to the PAGA, and (e) the total Individual PAGA Payments of \$12,500
22 (25% of the \$50,000 PAGA Civil Penalty Payment).

23 33. Plaintiff consented in writing to attorneys' fees of up to one-third
24 percent of any recovery to be distributed to Plaintiff's Counsel as follows: 60% to
25 Cohelan, Khoury & Singer, 20% to The Phelps Law Group, and 20% to The Carter
26 Law Firm.

27 34. After all Court-approved deductions from the GSA, the remaining the
28 "Net Settlement Amount" ("NSA") estimated at \$369,166.67 will be distributed to

1 Participating Class Members without the necessity of returning a claim form.

2 35. With an estimated 76,632 Pay Periods worked by the Class, they will
3 receive an estimated \$4.82 per Pay Period. On average, Class Members will receive
4 a payment estimated at \$74.07, ($\$369,167 / 4,984$), plus a share of Individual PAGA
5 Payments, if eligible.

6 36. The number of Pay Periods each Class Member possesses is readily
7 available from Amazon's records, and the Administrator can apply the formula in a
8 fair and transparent manner. This method allocates the funds based on tenure and
9 represents the fairest method of distribution and does not grant preferential
10 treatment to any Class Member.

11 37. Any uncashed Settlement checks will be transmitted by the
12 Administrator after 180 days of issuance to the State of California, Controller,
13 Unclaimed Property Division for further handling on behalf of the Class Member
14 whose check was voided and the amount attributable to that Class Member.

15 38. Following preliminary approval, the Court-appointed Administrator,
16 will conduct a search of the National Change of Address database to update Class
17 Member addresses, and then mail a Notice of Class Action Settlement ("Notice"),
18 Change of Address form, and pre-printed return envelope (collectively, "Notice
19 Packet") to each member of the Class identified by Amazon's business and
20 employment records at the address provided or as updated.

21 39. The Notice informs Class Members of their right to (1) participate in
22 the proposed Settlement without the need to return a claim form; (2) request
23 exclusion; (3) object to the Settlement, and (4) dispute the number of Pay Periods
24 worked upon which their Settlement Payment will be based, as well as the manner
25 and timing for each election. The Notice includes the claims to be released in
26 exchange for a Settlement Payment, the Class Member's individual number of Pay
27 Periods, and the estimated amount of their Settlement Payment if they do not
28

1 request exclusion. The Notice also provides the date, time and place for the Final
2 Approval hearing.

3 40. Plaintiff recognized and considered the inherent risks and uncertainty
4 of litigation, including: (i) denial of certification; (ii) if certified, decertification
5 may be granted; (iii) a grant of summary judgment or summary adjudication; (iv)
6 the need for a unanimous jury; (v) the possibility of an unfavorable, or less
7 favorable, result at trial; (vi) the possibility post-trial motions may result in an
8 unfavorable, or less favorable, result than trial; and, (vii) the possibility of an
9 unfavorable, or less favorable result on appeal, and the certainty that process would
10 be lengthy.

11 41. Plaintiff's claims involve complex disputed legal and factual issues.
12 While Plaintiff believes in the strength of his claims, Amazon's defenses create a
13 significant possibility Class claims would not be certified or would fail on the
14 merits, as set forth below.

15 42. Continued litigation would take substantial time, create risk of no
16 recovery, and possibly confer no Class benefit. By contrast, the proposed
17 Settlement will yield a prompt, certain, and substantial Class recovery, without
18 additional time or judicial resources.

19 43. In the face of these uncertainties, the Parties agreed to a compromise, a
20 non-reversionary Settlement of \$700,000 which will benefit 4,984 Class Members.
21 The recovery is certain and substantial, with an estimated average payout of \$74.07.

22 44. The Parties thoroughly investigated and evaluated the case and engaged
23 in sufficient discovery to support Settlement.

24 45. In addition to the information and data produced by Defendant,
25 formally and informally, Class Counsel conducted Class Member interviews to
26 obtain anecdotal information about the Delivery Associates' job, the hours worked
27 in a shift, their routes, and their duties, responsibilities and obligations for package
28 pick-up and delivery by the end of their shifts; the types of tasks performed pre-

1 shift and post-shift; about whether they were able to take, on eligible shifts, off-duty
2 and uninterrupted meal and rest breaks; whether they were compensated when they
3 did not or could not take a compliant break; and whether they were reimbursed for
4 using their personal cellphones, among other things.

5 46. With more than a full day of intense negotiations facilitated by an
6 experienced and knowledgeable mediator, the case is clearly at a stage supporting
7 settlement.

8 47. Settlement was reached through compromise of disputed claims after
9 extensive investigation, substantial exchange of information, exhaustive analysis,
10 and arms'-length negotiations, and months of continued negotiations to reach
11 agreement on all terms of the Settlement.

12 48. Class Counsel The Phelps Law Group, The Law Firm of Roger R.
13 Carter, and Cohelan, Khoury & Singer have significant wage and hour class action
14 experience and have obtained certification and settlement approval in dozens of
15 cases.

16 49. Defendant's counsel, Morgan, Lewis & Bockius LLP, is extremely
17 knowledgeable and experienced in wage and hour law and class action litigation.

18 50. Class Counsel believe the proposed Settlement is in the Class' best
19 interest based on detailed knowledge of the factual and legal issues present. Counsel
20 considered, among other risks, adverse class certification, decertification, or
21 summary judgment rulings, loss or lesser outcome at trial, post-trial, and appeal,
22 and other perils of litigation that affect the value of all claims.

23 51. Based on informal Class Members interviewed and the experience of
24 the Class Representative, Luben Romanov, it was assumed that the Class worked
25 an average of 15 to 30 minutes pre-shift and 10 to 15 minutes post-shift each day
26 for which they were not paid. Plaintiff used the conservative estimate of 25 minutes
27 per day in its damage assessment resulting in an aggregate of 117,500 unpaid hours
28 during the Class Period. With an average rate of \$16.96 damages and an overtime

1 rate of \$25.44, damages were calculated at approximately \$2,990,000, without
2 interest.

3 52. Given that no actual records were available to document these “off the
4 clock” claims and the inherent difficulties in prevailing on such claims, Plaintiff
5 estimated the probability of prevailing on a certification motion at 50%, and the
6 probability at trial at 50%, resulting in a 75% discount of realistic maximum
7 exposure of approximately \$747,500.

8 53. To meet all the demands of their jobs, Class Members who were
9 interviewed conveyed an inability to take uninterrupted off duty meal periods in
10 over 60% of their shifts. In many cases, time punches would be entered for a lunch,
11 but with harried employees, they continued on job tasks while “clocked out” and
12 received calls and communications from management, that required replies during
13 those breaks. Assuming a 60% violation rate for failing to provide compliant meal
14 periods, a maximum liability exposure was estimated at \$2,869,700 (169,204
15 violations x \$16.96 hour); and a similar alleged 60% violation rate for noncompliant
16 rest breaks resulting in an estimated exposure of \$2,869,700.

17 54. Defendant contends that Class Members were instructed to take their
18 meal and rest breaks on eligible workdays, and that written meal and rest breaks
19 policies made clear Class Members were required to take them. Defendant also
20 contends that it did not schedule Delivery Associates for deliveries that prevented
21 them from taking off-duty meal and rest breaks, but rather created delivery
22 schedules that accounted for non-working time for the Delivery Associate to take
23 their meal and rest break. Defendant contends that Delivery Associates had
24 significant discretion regarding when and where to take their meal and rest breaks,
25 and they did not face any pressure from Amazon to work through their breaks, and
26 did not face potential discipline for failing to complete all scheduled deliveries
27 during a shift. Defendant further contends that to the extent a Delivery Associate’s
28 time records reflected a potential meal period violation, Amazon automatically paid

1 that Delivery Associate a meal period premium. Amazon contends it paid Class
2 Members meal period premiums totaling \$1,124,696.65 during the Class Period. In
3 light of the fact that a substantial portion of both the meal and rest period claims
4 would have to rely on potential survey data rather than actual time punches
5 recorded, the maximum exposure for non-compliant meal periods was discounted
6 by 25% for risk of loss at certification, and 25% for risk of loss at trial to \$1,434,850.
7 The rest period claim was likewise discounted by 75% to account for the fact that
8 rest breaks are not recorded, to \$717,425.

9 55. Plaintiff estimates that \$30 of each monthly phone bill was incurred as
10 a result of handling worked-related calls and other tasks which was not reimbursed.
11 Maximum exposure on this claim was estimated at \$574,740, by dividing the
12 number of Pay Periods by four to arrive at the number of months which were then
13 multiplied by \$30 ($76,632 / 4 = 19,158 \times \30) for a maximum exposure of \$574,740.

14 56. This claim was discounted as Defendant contends it provided
15 communication devices for Delivery Associates, and it reimbursed Delivery
16 Associates for the work-related use of their personal device. For purposes of
17 negotiation, this claim was reduced by 50% to approximately \$280,000.

18 57. The Labor Code § 226 wage statement violation for failure to pay all
19 wages due, and premium payments for non-compliant rest and meal breaks, was
20 calculated based on this derivative theory of liability at \$3,400,000, by determining
21 the number of Pay Periods in the one-year statute of limitations period applicable
22 to penalties - 68,000, and multiplying that number by the \$50 penalty applicable
23 for each pay period.

24 58. As this claim is derivative, it not only requires Plaintiff to prevail on
25 the underlying claims, but also to show that Amazon knowingly and intentionally
26 failed to pay wages, and overcoming Amazon's good faith defense it did not act
27 intentionally.

28 59. Amazon would claim an offset for the \$1,124,696.65 in premium wages

1 paid for non-compliant meal and rest breaks. Accordingly, and for all of these
2 reasons, this claim was discounted by 75% to \$850,000.

3 60. Waiting time penalties were calculated by assuming that each Class
4 Member, a former employee, was entitled to recover a maximum penalty at their
5 regular rate of pay, multiplied by a 8.0 hour shift by 30 days, i.e., \$20,286,874.

6 61. Plaintiff's counsel believed there was no more than a 25% probability
7 of prevailing based on difficulties in certifying and proving the underlying
8 violations and, particularly showing willfulness.

9 62. Since it is unlikely that every former employee suffered unpaid wages,
10 and because such claims for unpaid wages are subject to class certification
11 obstacles, and proof of the underlying claims, the realistic damages exposure was
12 estimated at \$5,071,718.50 (4,984 employees x \$16.96 x 8 hours, x 30 days x 75%
13 discount).

14 63. Prior to the Final Approval Hearing, Class Counsel will file a motion
15 for reimbursement of litigation expenses of up to \$12,500 and an award of fees not
16 to exceed \$233,333.33 (33-1/3% of GSA). The motion will detail hours expended
17 and litigation expenses advanced.

18 64. Class Counsel will also request reimbursement of costs advanced,
19 which are presently \$9,185.85.

20 65. There are 4,984 Class Members, making joinder impossible.

21 66. Class treatment is the superior method for resolving the claims of the
22 Class and achieves judicial economy by avoiding multiple suits, and protects the
23 rights of those who may be unable to present individual claims

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67. This motion was provided to the LWDA, via its website on the date the Motion was filed with the Court.) Attached as Exhibit 2 is a true and correct copy of the LWDA confirmation of receipt.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on this 9th day of August, 2021 in San Diego, California.

s/ Michael D. Singer
Michael D. Singer

ATTESTATION REGARDING ELECTRONIC SIGNATURES

I, J. Jason Hill, attest pursuant to Central District Local Rule 5-4.3.4(a)(2)(i) that Michael D. Singer, on whose behalf this filing is submitted, concurs in the filing's content and has authorized this filing. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 9, 2021

COHELAN KHOURY & SINGER

s/J. Jason Hill
J. Jason Hill, Esq.
Attorneys for Plaintiff Luben Romanov