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14 Counsel for Plaintiff Luben Romanov, and
the Conditionally Certified Class

15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA**

17
18 LUBEN ROMANOV, on behalf of
19 himself and all others similarly
situated,

20 Plaintiff,

21 v.

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

25 Defendants.

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

CLASS ACTION

**DECLARATION OF DIANA M.
KHOURY IN SUPPORT OF MOTION
FOR ORDER GRANTING AWARD
OF ATTORNEYS' FEES AND
COSTS, AND CLASS
REPRESENTATIVE SERVICE
PAYMENT**

Date: March 25, 2022

Time: 8:30 a.m.

Ctrm: 6C

Judge: Stanley Blumenfeld, Jr.

1 I, Diana M. Khoury, declare as follows:

2 1. I am a Partner at the law firm of Cohelan Khoury & Singer, co-counsel
3 of record for Plaintiff and the Conditionally Certified Class. I submit this declaration
4 in support of Plaintiff's Motion For Order Granting Award of Attorneys' Fees and
5 Costs, and Class Representative Service Payment. The following facts are within my
6 personal knowledge and if called to testify I could and would competently testify to
7 them.

8 2. I am a 1986 Western State University College of Law graduate and was
9 admitted to the California State Bar in June, 1987. I am admitted to practice in all
10 state courts in California and in the all federal courts in California.

11 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan &
12 Khoury, a Partnership of Professional Law Corporations, and within a few years
13 began to focus on class actions. In 2009, Cohelan & Khoury became Cohelan
14 Khoury & Singer. Our firm represents plaintiffs in complex, class and representative
15 action litigation, including wage and hour, labor and employment, antitrust,
16 consumer protection, construction defect and other public interest type class and
17 representative actions.

18 4. I am AV – Preeminent rated by Martindale-Hubbell. For the years, 2012
19 through the present, I, together with my partners Isam C. Khoury and Michael D.
20 Singer, have been selected by our peers based on ethics, experience and reputation
21 as Super Lawyers in Civil Litigation by the Southern California Super Lawyers
22 Magazine for the years. Mr. Singer was admitted as a fellow to the College of Labor
23 and Employment Attorneys in 2020, and named to the Daily Journal 2012, 2013,
24 and 2018 list of Top California Labor and Employment Attorneys.

25 5. Cohelan Khoury & Singer has been certified by the State Bar of
26 California to provide the Mandatory Continuing Legal Education activity entitled
27 "Litigating California Class Actions" and has conducted MCLE certified seminars
28 on this topic. Senior Partner, Timothy D. Cohelan, is the author of Cohelan on

1 California Class Actions (1997-2021, updated annually), part of Thomson Reuters
2 Expert Series updated annually. Michael D. Singer is a contributing author on the
3 CEB publication California Wage and Hour Law: Compliance and Litigation (2010-
4 2021 updated annually), in which he wrote the opening chapter overview on
5 California Wage and Hour laws, including the public policy underpinnings for those
6 laws, and the Private Attorneys General Act (PAGA) Claim chapter. He is also a
7 contributing author to the CEB Practitioner (2020), including guidelines for oral
8 argument and forms for PAGA litigation. Mr. Singer has served as a columnist for
9 the California State Bar, Litigation Section on wage and hour litigation and has
10 contributed articles on wage and hour and class action issues through the years to
11 numerous California publications. Prior to COVID, he typically lectured several
12 times per year for continuing education courses on wage and hour and class action
13 issues at events in San Diego, Orange County, Los Angeles, and San Francisco. For
14 over twelve years, Mr. Singer has served as wage and hour amicus co-chair and
15 liaison for the California Employment Lawyers Association, drafting, reviewing,
16 and coordinating amicus filings on wage and hour issues in the California Supreme
17 Court and Courts of Appeal. He has been engaged in the practice of labor and
18 employment law since 2000, handling well over 200 wage and hour class and PAGA
19 actions and several individual labor cases. He has litigated several types of
20 employment actions, including complex ERISA employee welfare benefit plan
21 cases, as well as wage and hour class actions before Federal and State Courts in
22 California. In 2014, Mr. Singer, along with Partner J. Jason Hill, tried a wage and
23 hour class action involving claims for illegally deducted wages and unreimbursed
24 expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the
25 trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck
26 drivers.

27 6. Since admission to the California State Bar, I have been a member of
28 the San Diego County Bar Association, Consumer Attorneys of San Diego,

1 Consumer Attorneys of California, and American Association for Justice serving on
2 numerous committees throughout the years for these organizations. For six years
3 from 2010 through 2015, I served on the Board of Directors for Consumer Attorneys
4 of San Diego, and chaired numerous committees during those terms.

5 7. As a part of our overall firm philosophy lawyers perform community
6 service and pro bono work. Firm volunteer work includes service through the Legal
7 Aid at Work, San Diego Volunteer Lawyer Program, the San Diego County Bar
8 Foundation and Consumer Attorneys of San Diego. Partner Jeff Geraci is past
9 recipient of the Wiley W. Manuel Award for Pro Bono Service, and during law
10 school interned for the ACLU and Equal Rights Assistance assisting on impact
11 litigation class action lawsuits. Mr. Singer has served on the Legal Aid at Work
12 Board of Directors since 2011. Mr. Cohelan served as the Chair of the San Diego
13 Volunteer Lawyers Program from 2015-2018, and currently sits on the Board as past
14 Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of
15 the San Diego Superior Court. Since admission to the California Bar, Partner Our
16 firm's recent pro bono victories include a settlement which prohibits the City of San
17 Diego from targeting homeless people for illegal lodging tickets under Penal Code
18 Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN
19 (WMC).) The *Spencer* settlement had the effect of increasing the number of
20 available shelter beds in San Diego.

21 8. Cohelan Khoury & Singer has been certified Class Counsel in the
22 following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego
23 County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*,
24 Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v.*
25 *Container Connection of Southern California, Inc.*, Los Angeles County Superior
26 Court Case No. BC500675; *Bank Of America Wage And Hour Employment*
27 *Practices Litigation*, United States District Court, District of Kansas MDL Case No.
28 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States

1 District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v.*
2 *Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of
3 California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et*
4 *al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans*
5 *v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415;
6 *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of
7 California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California,*
8 *Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al. v.*
9 *PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS L.A.S.C.*
10 Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo County
11 Superior Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior
12 Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a*
13 *The Orange County Register*, Orange County Superior Court Case No. 03CC08756;
14 *Graham, et al. v. Overland Solutions, Inc.*, United States District Court, Southern
15 District of California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks*
16 *v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No.
17 B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego
18 County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit
19 Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *Liberty Mutual*
20 *Overtime Cases*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell,*
21 *et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States
22 District Court, Central District of California Case No.11CV07196 (FLSA
23 Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San
24 Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady*
25 *Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-
26 2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco
27 County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care,*
28 *Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v.*

1 *California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-
2 00083992; Steroid Hormone Product Cases, Los Angeles County Superior Court
3 Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los
4 Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange
5 County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home*
6 *Mortgage, Inc.*, Orange County Superior Co Case No. 03CC05747; *Vaquero v.*
7 *Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District
8 of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los
9 Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods*
10 *Company*, United States District Court, Southern District of California Case No. 16-
11 CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern
12 District of California Case No. 10CV0634; and *Weigele v. FedEx Ground Package*
13 *System, Inc.*, United States District Court, Southern District of California Case No.
14 06CV1330, among others, as well as being appointed Class Counsel in connection
15 with well over 200 class action settlements.

16 9. As Class and PAGA Representative Counsel, Cohelan Khoury &
17 Singer has actively commenced, prosecuted and concluded numerous state and
18 federal class and representative actions. Since 2016, Cohelan Khoury & Singer has
19 played a central role in the resolution of over 200 such cases, including the
20 following, which have received court approval: (a) *Arellano, et al. v. Container*
21 *Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case
22 No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los
23 Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c)
24 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of
25 California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v.*
26 *TSYS*, United States District Court, Central District of California, Case No. 18-cv-
27 00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles
28 County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f)

1 *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No.
2 CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE,*
3 *Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle;
4 (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
5 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home*
6 *Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v.*
7 *Loomis Armored US, LLC*, San Bernardino County Superior Court, Case No.
8 CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles
9 County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al.*
10 *v. Management & Training Corporation, et al.*, United States District Court,
11 Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller;
12 (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No.
13 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort*
14 *Development Corporation, et al.*, United States District Court, Southern District of
15 California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang*
16 *Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John
17 Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles
18 County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q)
19 *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior
20 Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark*
21 *Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310,
22 Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County
23 Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v.*
24 *Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC,
25 Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District
26 of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v*
27 *Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case
28 No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento

1 County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x)
2 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court
3 Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's*
4 *Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-
5 00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San
6 Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela
7 Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court,
8 Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC,
9 Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd;
10 (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior
11 Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods*
12 *Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon.
13 William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County
14 Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

15 10. We consider ourselves experienced and qualified to evaluate class
16 claims and viability of the defenses. That experience and those qualifications
17 allowed our firm to assist in achieving an efficient resolution of the claims in this
18 matter in exchange for the non-reversionary Gross Settlement Amount of \$700,000,
19 which includes: (1) settlement Payments to Participating Class Members; (2)
20 attorneys fees of up to \$233,333.33 (one-third of the Gross Settlement Amount) to
21 compensate Class Counsel for work performed and remaining to be performed in
22 securing final approval; (3) reimbursement of litigation costs up to \$12,500
23 (presently at \$10,133.76); (4) administration costs of \$25,000; (5) a Class
24 Representative Service Payment of \$10,000 to Plaintiff Luben Romanov for
25 prosecuting the claims in the Action, work performed on behalf of the Class, risks
26 undertaken for payment of costs, and the payments to be paid to the Participating
27 Class Members; and (6) a PAGA Payment to the Labor Workforce and Development
28 Agency ("LWDA" of \$37,500 (75% of \$50,000). In addition to the GSA, Defendant

1 agreed to pay the employer-side taxes due on the portion of the Class Members'
2 Settlement Payments allocated to wages.

3 11. After all Court-approved deductions from the GSA, the remaining Net
4 Settlement Amount estimated at \$371,532.91 will be distributed entirely to
5 Participating Class Members on a proportionate basis based on the number of
6 eligible Pay Periods worked during the Class Period, from January 23, 2016 through
7 August 21, 2021.

8 12. The Class is defined as all individuals employed by Amazon as
9 Delivery Associates in California any time during the January 23, 2016 through
10 August 21, 2021 Class Period. There are 4,983 Class Members employed 78,262
11 Pay Periods (any workweek in which a Class Member was employed by Defendant
12 as a Delivery Associate in California during the Class Period) during the Class
13 Period.

14 13. PAGA Members, a subgroup of the Class, are defined as all individuals
15 employed any time during the November 13, 2018 through August 21, 2021 PAGA
16 Period. There are 4,981 PAGA Members employed 77,657 Pay Periods during the
17 PAGA Period.

18 14. By this motion, Class Counsel seeks an award of attorneys' fees in the
19 sum of \$233,333.33 representing one-third of the GSA. This sum is reasonable and
20 appropriate based on the substantial hours expended to achieve this result, the
21 litigation risks and complexities of prosecuting these types of cases, the contingent
22 nature of any fee, their experience in handling cases of this type, the fees commonly
23 awarded in these cases, and the vindication of the Class' rights by securing a
24 \$700,000.00 non-reversionary Settlement.

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

1 16. Class Counsel respectfully submit the remaining factors are Class
2 Counsel's skill and considerable wage and hour class action experience; the novelty
3 and complexity of the issues regarding the wage and hour claims at issue in this
4 litigation; the significant risk of non-payment due to Class Counsel's undertaking
5 this litigation on a purely contingent basis over two (2) years ago; and the lack of
6 any objections through the present. Accordingly, Plaintiff respectfully requests that
7 the Court award the requested attorneys' fees and reimbursement of their litigation
8 costs.

9 17. Class Counsel also requests a Class Representative Service Payment of
10 \$10,000.00 to the named Plaintiff in consideration of his initiation and prosecution
11 of the Action, representation of the Class, work performed, and risks undertaken for
12 payment of costs in the event the case had not concluded successfully, benefits
13 conferred on absent class members, and general releases of all claims; and a payment
14 of \$25,000.00 to Simpluris, Inc., the appointed administrator.

15 18. To produce the favorable results on behalf of the Class and to bring
16 this matter to final approval, Class Counsel will have expended **476.9 (444.4**
17 **current and 32.5 future)** attorney and para-professional hours since the inception
18 of this case through the present resulting in a lodestar fee of **\$324,579.50**. Attached
19 as Exhibit 1 is a true and correct copy of the Consolidated Summary of Class
20 Counsel's Hours and Costs for my firm as well as co-Class Counsel; Exhibit 2 (A-
21 E) is a true and correct copy of Cohelan Khoury & Singer's Time Records for each
22 attorney and paralegal that worked on this case.

23 19. On January 17, 2020, Plaintiff sent a letter to Amazon and to the
24 California Labor and Workforce Development Agency ("LWDA") notifying them
25 of his intention to bring a representative action for civil penalties for various
26 violations of the California Labor Code, ("Labor Code") as provided for by the
27 Private Attorneys General Act, ("PAGA") Labor Code § 2698, *et seq.*

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

8 21. On March 23, 2020, Amazon removed the case on the basis of
9 diversity pursuant to the Class Action Fairness Act. Dkt 1. On March 30, 2020,
10 Amazon answered the complaint. Dkt 11. On March 31, 2020, the Court issued its
11 Order Setting Scheduling Conference set for June 18, 2020. Dkt 12. The Joint Rule
12 26(f) Report was filed, after which the Court vacated the scheduling conference and
13 set deadlines for expert witness designation, discovery certification briefing,
14 dispositive motions, private mediation etc.

15 22. On July 28, 2020, a First Amended Class and Representative Action
16 was filed alleging additional civil penalties pursuant to PAGA, and adding Cohelan,
17 Khoury and Singer as co-counsel for Plaintiff and the putative Class. Dkt 24, 25.
18 On August 17, 2020, Amazon filed its Amended Answer. Dkt 26.

19 23. On June 18, 2020, the Parties served their Initial Disclosures
20 identifying their respective positions, and potential witnesses possessing
21 information relevant to the claims alleged and documents, among other things.

22 24. On September 4, 2020, Plaintiff served Amazon with two sets of
23 Special Interrogatories, Requests for Admission, Requests for Production of
24 Documents, and a deposition notice for Amazon's Person Most Knowledge
25 pursuant to Fed. R. Civ. P. 30(b)(6). Amazon served its answers and objections to
26 all discovery on October 28, 2020. On March 10, 2021, Plaintiff was served with
27 Special Interrogatories and Requests for Production Documents.

1 25. After several meet and confer efforts to obtain Class Member contact
2 information, and supplemental responses and documents from Amazon, the Parties
3 discussed the possibility of attending mediation and agreed to do so on a Class-wide
4 basis. To that end, pursuant to the Parties' stipulation, the Court entered a protective
5 order allowing Amazon to provide documents and information subject to
6 confidentiality protections. Dkt 35.

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

12 27. For mediation, Amazon produced the estimated number of Class
13 Members, the number of former Class Members; the number of PAGA Members;
14 the estimated number of Class Pay Periods; the estimated number of PAGA Pay
15 Periods; the estimated number of shifts worked by the Class; the estimated average
16 hourly rate; the total premiums paid for non-compliant meal and rest breaks, and
17 the fact that the Delivery Associate position in California had existed from only
18 mid-2018 through November 2020.

19 28. Amazon also produced the names and telephone numbers for 50
20 randomly selected Delivery Associates. Based on a sample set of calls to and from
21 Class Members, Class Counsel obtained anecdotal information about the Delivery
22 Associates' job, hours worked in a shift, routes, duties, and responsibilities and the
23 obligations for package pick-up and delivery by the end of their workshifts; the
24 types of tasks performed pre-shift and post-shift; about whether they were able to
25 take, on eligible shifts, off-duty and uninterrupted meal and rest breaks; whether
26 they were compensated when they did not or could not take a compliant break; and
27 whether they were reimbursed for using their personal cell phones.

1 29. All information and data produced by Amazon as well as from Class
2 Member interviews were provided to Class Counsel's damages' consultant to
3 review and analyze, and to assist Class Counsel with the creation of a Class-wide
4 damage model for purposes of engaging in a meaningful and informed mediation.

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

8 31. Taking all discussions and negotiations into consideration, the Parties
9 reached agreement on the principle terms of the proposed Settlement, and diligently
10 continued to negotiate the balance of the terms contained in the Agreement.

11 32. On August 9, 2021, Plaintiff moved for Preliminary Approval. Dkt.
12 46. On October 1, 2021, the Parties appeared before the Court on Plaintiff's
13 Preliminary Approval Motion, after which the hearing was continued to October
14 22, 2021, to allow the Parties to file a supplemental brief by October 12, 2021. Dkt.
15 48. The Court requested additional briefing regarding the reasonableness of the
16 Settlement considerations, undelivered notice packets, Plaintiff's Counsel's
17 estimated hours and lodestar, and Plaintiff's estimated time devoted to this
18 litigation.

19 33. On October 12, 2021, the Joint Supplemental Brief was filed, after
20 which the Court vacated the hearing, and granted the Preliminary Approval Motion.
21 Dkts. 50-53. The Court found on a preliminary basis that: (a) the Settlement was
22 fair, adequate and within the range of reasonableness which could ultimately be
23 given final approval by this Court; and that (b) the Settlement Agreement was
24 presumptively valid, subject only to objections that may be raised at the Final
25 Approval Hearing. Dkt.53. The Court preliminarily approved Plaintiff Luben
26 Romanov as the Class Representative, Simpluris as the Administrator, Cohelan,
27 Khoury & Singer, The Carter Law Firm, and the Phelps Law Group as Class
28 Counsel, and approved the Notice of Class Action Settlement, and the method of

1 dissemination to the Class.

2 34. On December 10, 2021 the Notice of Class Action Settlement, Change
3 of Address form and pre-printed return envelope (“Notice Packet”) were mailed to
4 all Class Members giving them through February 8, 2022 to postmark and return
5 requests for exclusion, disputes of the information on which Settlement Payments
6 would be calculated, and written objections (although Class Members may appear
7 at the Final Approval Hearing without written objections).

8 35. An extended deadline of February 28, 2022 was provided to those
9 whose Notice Packets were returned as undelivered, and remailed to an updated
10 mailing address. Through the present, no objections, disputes, or requests for
11 exclusion have been returned to the Administrator.

12 36. Class Counsel here seek an upward adjustment of the benchmark, to
13 one-third of the common fund based on: (1) the monetary recovery obtained for the
14 Class; (2) Class Counsel’s efforts in zealously and successfully prosecuting this
15 case; (3) Class Counsel’s wage and hour class action experience and the skill
16 demonstrated; (4) the novelty and complexity of the issues in this litigation; (5) the
17 significant risk of non-payment due to Class Counsel’s purely contingent
18 representation, while incurring significant out-of-pocket costs for two years; and
19 (6) the lack of any objections to the settlement, including to Class Counsel’s fee
20 request.

21 37. In the face of the risks and uncertainties associated with continued
22 litigation of Plaintiff’s claims, and Amazon’s vigorous denials and affirmative
23 defenses, Class Counsel successfully negotiated a common fund of \$700,000 for
24 the benefit of the Class. Following final approval and the effective date of
25 Settlement, certain and fair payments will be issued to the Class because of
26 Plaintiff’s and Class Counsel’s efforts, without which the Class would have
27 received nothing.

1 38. Class Counsel submits the Settlement provides a fair recovery for the
2 Class in light of Amazon's affirmative defenses which create a significant possibility
3 Class claims would not be certified or would fail on the merits. Analysis of this
4 factor militates heavily in favor of approving the fee request.

5 39. Class Counsel believe the proposed Settlement is in the Class' best
6 interest based on detailed knowledge of the factual and legal strengths and
7 weaknesses of Plaintiff's case, and the risks, expense, complexity and likely
8 duration of further litigation, i.e., adverse class certification, decertification,
9 summary judgment, and loss or a lesser outcome at trial, post-trial, and appeal, and
10 other perils of litigation affecting the value of all claims.

11 40. Plaintiff may have a meritorious case, but Amazon represented it
12 would continue to vigorously contest the validity of the main claims in the same
13 manner it has since the inception of the case, asserting Plaintiff faced significant
14 obstacles in obtaining certification of his off-the-clock claim because
15 contemporaneous records do not exist, as well as the need for individualized inquiry
16 due to the variance between Plaintiff and the Class' experiences. Amazon also
17 contends Plaintiff's claims for non-compliant rest and meal breaks also fail because
18 Amazon provided Class Members with written rest and meal break policies
19 directing them to take timely, duty-free meal and rest breaks, as well the fact that
20 Amazon paid premiums of \$1,124,696 to the Class for non-compliant breaks.

21 41. While Plaintiff believes his claims have merit, he nevertheless
22 recognizes the outcome of any litigation is rarely certain. Even if Plaintiff had
23 prevailed, the odds of a favorable verdict being reversed on appeal are not remote
24 enough to ignore.

25 42. Class Counsel have significant wage and hour and class action
26 experience. Counsel have been appointed Class Counsel in over two hundred cases,
27 and successfully certified classes in numerous contested motions for certification.

1 43. Class Counsel vigilantly safeguarded the interests of the Class by
2 thoroughly investigating the claims, conducted formal and informal discovery,
3 interviewed Class Members, and prepared this case for mediation, by entering into
4 a stipulative protective order to obtain the necessary information and data to create
5 a Class-wide damage model, retained a damages' consultant, and attended a day-
6 long mediation facilitated by an experienced wage and hour mediator, and then
7 settled the claims for valuable consideration despite the serious challenges
8 described here, and in the Joint Supplemental Brief.

9 44. Plaintiff faced great risks in this litigation, including: (1) denial of
10 certification; (2) if certification obtained, of decertification; (3) summary judgment
11 or adjudication; (4) the need for a unanimous jury; (5) the possibility of an
12 unfavorable, or less favorable, result at trial; (6) the possibility post-trial motions
13 may result in an unfavorable, or less favorable, result than trial; and, (7) the
14 possibility of an unfavorable, or less favorable result on appeal.

15 45. While Plaintiff believes in the strength of the claims, Amazon's
16 defenses created a possibility class claims would not be certified or would fail on
17 the merits

18 46. For two years, Class Counsel undertook all risks of this litigation on a
19 contingent basis. Class Counsel accepted the risks of dispositive motions, obtaining
20 (and maintaining) certification, proving liability and damages at trial, and surviving
21 post-trial motions and appeals that could take years to conclude. They have litigated
22 the case for two years, and faced the possibility of litigation for many more years,
23 incurring hundreds of thousands of dollars in attorney and staff time and costs,
24 without pay or reimbursement. To meet their responsibility to the Class, Class
25 Counsel had to assure at all times they had sufficient resources to prosecute this
26 action.

27 47. Many contingent fee cases result in no compensation to Plaintiff's
28 counsel because cases are dismissed at the pleadings stage, lost at certification,

1 summary judgment or after a trial on the merits, or reversed on appeal. Many hard-
2 fought lawsuits ultimately produce no fee because of discovery of facts unknown
3 when the case was commenced, changes in the law while the case is pending or
4 decisions of judges or juries following a trial on the merits, despite tremendous
5 efforts by Plaintiff's counsel.

6 48. Unlike counsel for Defendants who are paid a fair-market hourly rate
7 and paid regularly, Class Counsel has received no compensation for their services
8 in prosecuting this case for two years nor have they received reimbursement of their
9 expenses of over \$10,000 to prosecute the case. The significant outlay of cash and
10 personnel resources has been completely at risk and wholly dependent upon
11 obtaining a recovery for the Class. In this atmosphere, the contingent nature of the
12 representation takes on an even greater risk and fully warrants judicial approval of
13 the fee request before the Court.

14 49. As stated above, Class Counsel will have worked **476.9** hours to bring
15 this matter to final approval and calculate the lodestar fee on those hours at
16 **\$324,579350** based on rates currently earned in the market place. Although a
17 multiplier of Class Counsel's lodestar fee would be warranted, it is not necessary
18 as the lodestar fee greatly exceeds the amount sought. All of the work performed
19 by Class Counsel to secure the Settlement was reasonable and necessary. This effort
20 is reflected in the results achieved for the Class.

21 50. Included in these hours is an anticipated 32.5 hours to draft the
22 Motion for Final Approval, interact with the Simpluris regarding its final
23 declaration, resolve opt outs, and disputed claims, prepare for and attend the Final
24 Approval Hearing, and upon Final Approval, interact with Defense counsel and
25 Simpluris to approve settlement payment documents and mailing of settlement
26 checks, respond to Class Member inquiries, handle uncashed checks, etc.

27 51. Class Counsel's skill and experience support their hourly rates, and are
28 in line with rates typically approved in wage and hour class action litigation in

1 California and have been approved by state and federal courts in California.

2 52. Class Counsel's practice is limited exclusively to litigating class
3 actions on behalf of consumers and wage and hour employees, and have been
4 appointed Class Counsel or co-Class Counsel in over 200 such cases.

5 53. As leading attorneys in the field, Class Counsel continually monitors
6 prevailing market rates of defense and plaintiff law firms and sets the billing rates
7 to follow those attorneys and staff of comparable skill, qualifications and
8 experience. Other wage and hour attorneys working as Class Counsel before
9 California courts charge comparable if not higher rates. Attached hereto as Exhibit
10 3 is a true and correct copy of the 2014 National Law Journal survey of hourly
11 billing rates for Partners and Associates.

12 54. The Settlement provides for reimbursement of costs up to \$12,500.00.
13 Class Counsel's litigation expenses to date total \$10,133.76. Attached as Exhibit 4
14 is a true and correct copy of Cohelan Khoury & Singer's Itemization of Costs
15 expended in this matter.

16 55. Class Counsel seek payment of \$25,000 to Simpluris for its work in
17 noticing the Class, and administration of the Settlement as described in its
18 declaration filed herewith, and as set forth in the Settlement Agreement. The Parties
19 have no objection to this payment, and no objections have been asserted by any
20 Class Member.

21 56. As set forth more fully in the Declaration of my co-counsel Marc
22 Phelps, Class Counsel requests a Class Representative Service Payment on behalf
23 of Plaintiff in an amount of \$10,000. Plaintiff spent considerable time pursuing the
24 litigation. By bringing this action, Plaintiff has risked loss of future employment
25 opportunities because prospective employers may conduct background checks to
26 determine if applicants have filed lawsuits and some employers may consider filing
27 a class action costing his former employer hundreds of thousands of dollars a
28 disqualifying factor.

57. Unlike other Class Members, Plaintiff also faced the financial risk of a judgment entered for costs had Amazon prevailed in this litigation.

58. The Administrator reported that Plaintiff's estimated participating settlement payment is approximately \$66.49.

59. This motion was provided to the LWDA, via its website on the date the Motion was filed with the Court. Attached as Exhibit 5 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 January 24, 2022 in San Diego, California.

s/ Diana M. Khoury
Diana M. Khoury