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8 individually, on behalf of all others similarly situated, and as a proxy for the LWDA

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 LEILANI KRYZHANOVSKIY, PATRICIA
12 SALAZAR ,individually, on behalf of all others
13 similarly situated, and as a proxy for the
14 LWDA;

15 Plaintiff,

16 v.

17 AMAZON.COM SERICES, INC., a Delaware
18 corporation; AMAZON.COM SERVICES,
19 LLC, a Delaware limited liability company; and
DOES 1-100, inclusive,

20 Defendants.

Case No.: 2:21-cv-01292-BAM

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: January 26, 2024
Time: 9:00 a.m.
Location: Courtroom 8, 6th Floor
Judge: Hon. Barbara A. McAuliffe

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1 **I. INTRODUCTION**

2 Following two (2) years of active litigation, including motion practice and formal discovery,
3 Plaintiffs Leilani Kryzhanovskiy (“Kryzhanovskiy”) and Patricia Salazar (“Salazar”) (collectively,
4 “Plaintiffs”) negotiated a resolution of pending wage and hour claims asserted on behalf of themselves
5 and other similarly situated current and former employees of Defendants Amazon.com Services, LLC
6 and Amazon.com Services, Inc. (collectively, “Defendants” or “Amazon”) that provides a total Gross
7 Settlement Fund¹ of \$3,000,000 (\$2,900,000 allocated to resolve Class Claims) to be shared amongst
8 just over 3,200 (3,232) individuals. Because of the specific factual underpinnings of the claims
9 asserted—and the limited group of people impacted—the Settlement Class was narrowly circumscribed
10 to include:

11 All current and former non-exempt employees of Defendants in California between July 22,
12 2017 and November 7, 2023 who received a Signing Bonus and/or On Sign Bonus in the same
13 workweek as he/she worked overtime, including doubletime (the “Settlement Class”). SA ¶¶ 6,
14 36.

15 The anticipated Net Settlement Amount, after the deduction of Settlement Administration Costs
16 (\$25,000), PAGA Settlement Amount (\$100,000), the Class Representative Enhancement Payment to
17 Kryzhanovskiy (\$10,000), the Class Representative Enhancement Payment to Salazar (\$7,500), and the
18 Class Counsel Award (\$100,000,000 in fees and \$30,000 in costs), is \$1,827,500. SA ¶ 18; JDB Dec.
19 ¶¶ 58, 80. This Net Settlement Amount will be distributed on a pro-rata basis to Settlement Class
20 Members based on total workweeks worked within the Class Period, with Settlement Class Members
21 whose employment ended within the Class Period (i.e. prior to November 7, 2023) credited with four
22 (4) additional workweeks. SA ¶ 48. It is expected the Settlement will result in the average *actual/net*
23 *recovery* of more than \$550 (\$565.44) per Settlement Class Member.² JDB Dec. ¶ 58.

24 In order to facilitate dissemination of notice of the Parties’ Settlement and, ultimately,
25 distribution of the monetary recovery it engenders, Plaintiffs seek preliminary approval of the
26 negotiated resolution from this Court. The Settlement confers cognizable monetary benefits on
27 Settlement Class Members, benefits that are not likely to be realized through any other avenue. Since

28 ¹ Capitalized terms shall have the meanings defined in the Parties’ Class Action Settlement Agreement and Release
attached as **Exhibit 1** to the Declaration of Jenny D. Baysinger (“JDB Dec.”) filed concurrently herewith.

² The expected average gross value per Settlement Class Member is \$897.28. JDB Dec. ¶¶ 52, 57.

1 the Settlement is fair, adequate, and reasonable, and was negotiated at arm's length with the assistance
2 of experienced wage and hour class action mediator Lisa Klerman, Esq., it should be preliminarily
3 approved so that Class Members have an opportunity to weigh in on its propriety.

4 **II. SUMMARY OF THE CASE**

5 **A. Brief Procedural History and The Current Class Claims**

6 On July 22, 2021, Kryzhanovskiy filed the initial Class Action Complaint for Damages in this
7 court. Dkt. 1. Initially, class claims for failure to pay overtime, furnish accurate wage statements,
8 violation of the Equal Pay Act, and unfair business practices were asserted. *Id.* Kryzhanovskiy also
9 asserted a number of individual claims. *Id.*; JDB Dec. ¶ 7. After claims to assess and collect civil
10 penalties pursuant to the PAGA ripened, Kryzhanosvkiy filed a First Amended Class and
11 Representative Action Complaint for Damages and Civil Penalties on August 20, 2021. Dkt. 9.
12 Amazon filed a motion to dismiss in September 2021 that was ultimately denied, in its entirety, in June
13 2022. Dkt. 11, 21. A Second Amended Class and Representative Action Complaint for Damages and
14 Civil Penalties (the "SAC") was filed November 29, 2023 in order to 1) add Plaintiff Salazar as a
15 named party, 2) add a class-wide claim for waiting time penalties, and 3) remove the class-wide
16 allegations for violation of the Equal Pay Act. Dkt. 46; JDB Dec. ¶ 34. Presently, the class and
17 representative claims asserted in the operative SAC are 1) failure to pay overtime, 2) failure to furnish
18 accurate wage statements, 3) failure to timely pay all wages due upon separation, 4) unfair business
19 practices, and 5) a claim to assess and collect civil penalties pursuant to the PAGA. *Id.* The SAC also
20 alleges the Kryzhanovskiy Individual Claims. Dkt. 46; SA at Recitals; JDB Dec. ¶ 34.

21 **1. The Settlement Class**

22 Plaintiffs negotiated the Settlement on behalf of, and seek to represent, a specific and narrow
23 group of individuals—all current and former non-exempt California employees who received a Signing
24 Bonus and/or an On Sign Bonus during a workweek when he/she also worked overtime hours during
25 the Class Period. SA ¶ 36. There are believed to be 3,232 Settlement Class Members who collectively
26 worked 146,483 workweeks during the Class Period. SA ¶ 60. Plaintiffs and Class Counsel negotiated
27 an escalator clause to protect Settlement Class Members such that if the number of Class Members or
28 workweeks increases by more than 10%, the GSF will increase by a proportional amount. SA ¶ 60.

1 **B. Kryzhanovskiy's Individual Claims**

2 The Kryzhanovskiy Individual Claims consist of claims for 1) gender discrimination, 2)
3 violation of the Equal Pay Act, 3) FEHA retaliation, 4) Labor Code retaliation, 5) failure to timely
4 provide payroll records, and 6) failure to timely provide personnel records. Dkt. 1, 9, 46. During the
5 mediation, the Kryzhanovskiy Individual Claims were separately negotiated and resolved in exchange
6 for a payment *separate from the GSF* of \$25,000 and an increase of \$1.12 to her hourly wage. SA ¶ 44;
7 JDB Dec. ¶¶ 28, 31. The negotiated resolution of the Kryzhanovskiy Individual Claims is not
8 contingent on approval of the Settlement Agreement and in no way impacts the class claims or the
9 GSF. JDB Dec. ¶¶ 28, 31. The Class Notice informs Settlement Class Members about the existence of
10 Kryzhanovskiy's individual settlement. SA, Exh. A. ¶ 3.F.

11 **C. Other Related Cases**

12 There are three (3) other pending cases with class claims that potentially overlap, to some
13 extent, with the claims implicated by the Settlement: *Juan Trevino v. Golden State FC, LLC*, Eastern
14 District of California Case No. 1:18-cv-00120-DAD-BAM (the "Trevino Consolidated Class Action");
15 *Christian Porter v. Amazon.com Services, LLC*, Central District of California Case No. 2:20-cv-09496-
16 JVS-SHK (the "Porter Class Action"); and *Terrance Clayborn v. Amazon.com Services, LLC*, Central
17 District of California Case No. 5:20-cv-02368-JVS-SHK (the "Clayborn Class Action"). Both the
18 Porter Class Action and the Clayborn Class Action are presently stayed in favor of the Trevino
19 Consolidated Class Action. The Class Notice specifically informs Settlement Class Members about the
20 existence of the other pending matters, the fact some of the claims in those matters may overlap with
21 claims being resolved by the SA, and thus that some claims in the Trevino Consolidated Class Action,
22 the Porter Class Action, and the Clayborn Class Action may be eliminated or otherwise affected by this
23 Settlement. SA Exh. 1, ¶ 2.

24 **D. Defendants Vigorously Deny Plaintiffs' Allegations**

25 Defendants vigorously deny Plaintiffs' allegations in their entirety, contend they complied with
26 the law, and assert numerous affirmative defenses. Specifically, Defendants suggest Signing Bonuses
27 and/or On Sign Bonuses were not includable in the "regular rate of pay" and/or that they properly
28 considered all necessary items in the "regular rate of pay." JDB Dec. ¶¶ 59-62. Perhaps more

1 importantly, Defendants contend they were entitled to offset any wage underpayments by voluntary
2 overpayments that were made throughout the Class Period. JDB Dec. ¶¶ 60-61, 63. Even if,
3 Defendants were unsuccessful in their attempt to secure offset, they may be able to use the defense to
4 erode the willfulness necessary to underscore imposition of waiting time penalties. JDB Dec. ¶¶ 64-66.
5 Defendants also contend the wage statements technically comply with Labor Code section 226(a) and
6 that there was no requisite injury suffered by any “technical” violations that may have existed. JDB
7 Dec. ¶¶ 67-69. Defendants also intended to contest class certification and seek summary adjudication
8 which, if successful, could have eviscerated Plaintiffs’ claims and/or significantly reduced any possible
9 recovery for the Settlement Class.

10 **E. Identifying the Claims, Marshalling the Evidence, Creating a Damages Model, and**
11 **Developing a Strategy for Mediation**

12 Through independent inquiry, research, formal and informal discovery, Class Counsel
13 thoroughly and diligently investigated and pursued the Class Claims. This process has included, but not
14 been limited to, (1) obtaining and reviewing Plaintiffs’ personnel files, payroll records, and time records
15 through formal and informal discovery; (2) researching Defendants, the scope of their operations (both
16 within and outside of California) and their relationship with one another; (3) identifying, researching,
17 and pleading the appropriate claims, including amending the Lawsuit to assert additional claims as they
18 ripened and/or were discovered; (4) exhausting administrative remedies; (5) identifying, requesting,
19 securing, and reviewing pertinent policies, practices, and procedures; (6) identifying, requesting, and
20 securing the payroll and time records for a statistically significant sampling of 10% of the Class; (7)
21 propounding formal and informal discovery to secure relevant policy documents and numerical
22 information regarding the size of the class and the scope of the claims, (8) retaining an expert to analyze
23 the payroll and time data provided by Defendants and personally conducting spot checks to ensure the
24 accuracy of the damages calculations; (9) researching and evaluating the scope of additional and/or
25 previous actions and their potential impact on the Class Claims; (10) creating a reliable damages model;
26 (11) developing and implementing a strategy for mediation and settlement; and (12) securing Plaintiff
27 Salazar’s participation in order to ensure that potential waiting time penalty claims would also be
28 appropriately addressed through the Settlement. JDB Dec. ¶ 12.

1 **F. Settlement Negotiations**

2 Between August 2021 and the mediation in August 2023, as part of the Parties’ formal and
3 informal discovery, Defendants provided critical numerical information, hundreds of pages of
4 documents, and time and payroll data for a 10% sampling of putative class members. JDB Dec. ¶¶ 16-
5 19, 21, 23. Counsel investigated the applicable law as applied to the facts discovered regarding
6 Plaintiffs’ claims asserted on a class-wide basis, the defenses thereto, and the damages and penalties
7 potentially available. In conjunction with those same negotiations, the Parties spoke at length about the
8 strengths and weaknesses of each sides’ claims and defenses, the certifiability of any potential class(es),
9 and the scope of Defendants’ potential liability. JDB Dec. ¶ 24. Plaintiff retained an expert to examine
10 the data and determine the extent of potential damages. JDB Dec. ¶¶ 25-26, 41, 43.

11 On August 31, 2023, the Parties participated in good faith in arms’ length settlement discussions
12 at a remote mediation with Lisa Klerman, Esq. JDB Dec. ¶ 33. After the Parties reached an impasse
13 regarding the Class claims, Ms. Klerman made a mediator’s proposal that was ultimately accepted on
14 September 8, 2023. JDB Dec. ¶¶ 30-31. On December 13, 2023, after months of further negotiations,
15 the Parties executed the Settlement Agreement. JDB Dec. ¶¶ 31-33, Exh. 1³.

16 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

17 **A. Monetary and Non-Monetary Relief Under the Settlement**

18 Pursuant to the SA, Defendants will pay \$3,000,000 (“GSF”) to resolve the claims of
19 Participating Settlement Class Members. SA ¶¶ 14, 40. The GSF will be deposited into a Qualified
20 Settlement Fund within 30 calendar days of the Effective Date and does not include Employer-side
21 Taxes, which will be separately paid by Defendants. SA ¶¶ 13, 14, 40. After deducting the costs of
22 administering the Settlement, the PAGA Settlement Amount, Enhancement Payments to Plaintiff, and
23 the Class Counsel Award, \$1,827,500 is expected to be available for distribution to participating
24 Settlement Class Members. SA ¶ 18; JDB Dec. ¶¶ 58, 80, 87.

25 ///

26 ///

27 _____

28 ³ There was no fraud or collusion at the mediation with Lisa Klerman or the in the subsequent settlement negotiations, all of which were adversarial and conducted at arms’ length. JDB Dec. ¶ 33.

1 **B. Notice to Class**

2 The Class Notice will be mailed to Class Members within 45 days after the Court's entry of the
3 Order of Preliminary Approval. SA ¶¶ 53-54; Exhibit A.

4 **C. Participation in the Settlement**

5 Each Participating Class Member is entitled to a share of the NSA without the need to complete
6 a claim form. Class Members will receive a Class Notice informing them of the terms of the
7 Settlement, the right to opt-out or object, and an estimate of his/her share. All Settlement Class
8 Members will be entitled to an Individual Settlement Payment unless he/she opts out. SA ¶¶ 48.

9 **D. Calculation and Taxation of Individual Settlement Payments**

10 Within 30 calendar days of the Court's entry of the order granting Preliminary Approval,
11 Defendants shall provide the Settlement Administrator with each Class Member's: (i) name, (ii) last
12 known mailing address and telephone number, (iii) social security number, (iv) dates of employment,
13 (v) number of workweeks worked during the Class Period, and (vi) any other information needed to
14 calculate the Individual Settlement Payments. SA ¶¶ 5, 53. Individual Settlement Payments shall be
15 based upon the number of workweeks worked by Settlement Class Members during the Class Period.
16 SA ¶ 48. Settlement Class Members whose employment has ended will be credited with four (4)
17 additional workweeks. *Id.*; JDB Dec. ¶ 38.

18 For purposes of taxes and required withholdings, (1) 50% of each Individual Settlement
19 Payment shall constitute penalties (for which an IRS Form 1099 shall be issued) and (2) 50% of each
20 Individual Settlement Payment shall constitute wages. SA ¶ 70. Employer-side Taxes will be paid
21 separately by Defendants (in addition to the GSF). SA ¶¶ 14, 40.

22 **IV. SCOPE OF RELEASE AND FINAL JUDGMENT**

23 As of the Effective Date and Defendants' full funding of the GSF, participating Settlement
24 Class Members shall forever and completely release and discharge Defendants and Released Parties
25 from the Released Claims.⁴ SA ¶¶ 28, 30.

26 _____
27 ⁴ Participating Settlement Class Members release Defendants and the Released Parties from all claims, actions, demands,
28 causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts
and legal theories asserted in the operative complaint of the Action, or which relate to the primary rights asserted in the
operative complaint, including without limitation claims for (1) failure to pay overtime under California Labor Code §§

1 Additionally, Plaintiffs, on behalf of themselves, the LWDA, and the Settlement Class, release
2 Defendants and Released Parties from the Released PAGA Claims.⁵ SA ¶ 29. The Released Claims
3 and Released PAGA Claims were narrowly tailored to track the factual basis of claims advanced and do
4 not include a Civil Code section 1542 waiver. JDB Dec. ¶ 72.

5 **V. SETTLEMENT ADMINISTRATION**

6 Class Counsel solicited bids from several national settlement administration companies. After
7 negotiating to obtain the most reliable and cost-effective service possible, the Parties selected Atticus
8 Class Action Administration as Administrator. SA ¶ 35; JDB Dec. ¶¶ 85-86. The Administrator's
9 declared fees and costs will be paid out of the GSF and shall not exceed \$25,000. SA ¶ 34.

10 **VI. PAYMENT TO THE LWDA**

11 The Settlement contemplates a PAGA Payment of \$100,000, of which 75% (\$75,000) will be
12 paid to the LWDA and the remaining 25% (\$25,000) will be part of the NSA. SA ¶ 22.

13 **VII. ENHANCEMENT PAYMENTS TO PLAINTIFFS**

14 Kryzhanovskiy will apply for an enhancement payment in the amount of \$10,000, or 0.33% of
15 the GSF. Salazar, who became involved later in the litigation process, will apply for an enhancement
16 payment of \$7,500, or 0.25% of the GSF. SA ¶¶ 7, 43. Class Members will be apprised of Plaintiffs'
17 requests, the ability to review moving papers on the Court's and the Administrator's websites, and the
18 right to object. SA, Exh. A ¶ 3.D.

19 **VIII. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS**

20 Class Counsel will request attorneys' fees in the amount of one-third of the GSF, presently
21 \$1,000,000, to be allocated 90% to Mayall Hurley, P.C. and 10% to the Law Office of Mark S. Adams.
22 as well as declared litigation costs not more than \$30,000. SA ¶¶ 2, 4, 42. Class Members will be
23

24 510, 558, 1194, and 1198, (2) failure to furnish accurate wage statements under California Labor Code § 226(a), (3) failure
25 to pay sick leave in violation of Labor Code § 248.5, (4) waiting time penalties in violation of Labor Code §§ 201–203,
and (5) unlawful business practices under Unfair Competition Law including Business and Professions Code sections
17200 *et seq.* The period of the Released Class Claims shall extend to the limits of the Class Period. SA ¶ 28.

26 ⁵ The Released PAGA Claims are all claims for civil penalties pursuant to PAGA based on the facts and legal theories
27 asserted in the operative complaint of the Action, or which relate to the primary rights asserted in the operative complaint,
including without limitation PAGA claims for (1) failure to pay overtime under California Labor Code §§ 510, 558, 1194,
28 and 1198, (2) failure to furnish accurate wage statements under California Labor Code § 226(a), (3) failure to pay sick leave
in violation of Labor Code § 248.5, and (4) waiting time penalties in violation of Labor Code §§ 201– 203. The period of
the Released PAGA Claims shall extend to the limits of the PAGA Period. SA ¶ 29.

1 apprised of Class Counsel's request, the ability to review the moving papers on the Court's and the
2 Administrator's websites, and the right to object to the request if they so desire. SA Exh. A, ¶ 3.E.

3 **IX. FINAL APPROVAL HEARING**

4 The Settlement contemplates a Final Approval Hearing and that, if the Court is satisfied the SA
5 is fair, adequate, and reasonable, it will enter an Order of Final Approval approving the Settlement in a
6 manner substantially consistent with its terms and intent and enter Judgment. SA ¶¶ 79-80.

7 **X. PROPOSED IMPLEMENTATION SCHEDULE.**

8 Defendant to provide Class List to the Administrator.	Within 30 days of the Court's entry of the Order of Preliminary Approval.
9 Administrator to mail Class Notice.	Within 15 calendar days of its receipt of the Class List.
10 Deadline for Class Members to object to or opt out of the Settlement.	Within 60 calendar days after the mailing of the Class Notice.
11 Plaintiff to file Motion for Attorneys' Fees, Costs and Enhancement Payments.	Not less than 35 calendar days prior to Final Approval hearing.
12 Deadline for Plaintiffs to file Motion for Final Approval.	Not less than 35 calendar days before the Final Approval hearing.
13 Final Approval Hearing.	Not less than 100 days after the Court's execution of the Order Granting Preliminary Approval.

15 **XI. PROVISIONAL AND CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

16
17 Federal Rule of Civil Procedure ("FRCP") 23 requires that all class action settlements satisfy
18 two primary prerequisites before a court may grant certification for purposes of preliminary approval:
19 (1) that the settlement class meets the requirements for class certification if it has not yet been certified
20 (Fed. R. Civ. P. 23(a) and (b); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)); and (2)
21 that the settlement is fair, reasonable, and adequate (Fed. R. Civ. P. 23(e)(2)). Here, both requirements
22 for preliminary approval of this class action settlement are satisfied.

23 **A. The Settlement Class Satisfies FRCP 23(a) and (b)**

24 To be certified, a settlement class must meet the following criteria: (1) numerosity, (2) typicality
25 of the class representatives' claims, (3) adequacy of representation, (4) predominance of common
26 issues, and (5) superiority. Fed. R. Civ. P. 23(a); see also *Hanlon*, 150 F.3d 1019. Here, all of these
27 factors for provisional certification of the Class are met.

28 ///

1 **1. Rule 23(a)(1) - Numerosity**

2 Whenever a class is so numerous that joinder of individual members would be impracticable,
3 the numerosity requirement is met. While there is no hard and fast threshold, federal courts generally
4 numerosity when a class includes at least forty individuals. *Rannis v. Recchia*, 380 Fed.Appx. 646, 651
5 (9th Cir, 2010). There are an estimated 3,232 Settlement Class Members, which far exceeds the 40-
6 person threshold. SA ¶ 60. Numerosity is met.

7 **2. Rule 23(a)(2) – Commonality**

8 The commonality requirement is met if there are questions of law and fact common to the class.
9 *Hanlon*, 150 F.3d 1019. Here, the claims of Plaintiffs and the Class Members all flow from the same
10 factual and legal issues, i.e., Defendants’ alleged uniform failure to include other remuneration—
11 specifically Signing Bonuses and/or On Sign Bonuses—when calculating overtime and redeemed sick
12 pay, resultant failure to timely pay all wages due and owing at separation, and provision of uniform
13 itemized wage statements missing critical necessary information required by Labor Code section
14 226(a). The claims implicate common question, including whether the Signing Bonuses, On Sign
15 Bonuses, or other remuneration was required to be included in the regular rate, whether those items
16 were properly calculated when/if they were included (i.e. whether it was acceptable to credit On Sign
17 bonuses and true up related overtime every *other* pay period instead of weekly), and whether Amazon
18 is entitled to credits or setoffs for overpayments of wages made. JDB Dec. ¶¶ 42, 47-48, 60-66.
19 Claims based on a regular rate theory, such as the ones asserted here, are routinely recognized to satisfy
20 the commonality requirement. *Clarke v. AMN Svcs., LLC*, 987 F.3d 848, 852, 858 (9th Cir. 2021),
21 *Gonzalez v. HUB Int’l Ltd.*, 2021 WL 3261634 * 7 (C.D. Cal. 2021); *Evans v. Wal-Mart Stores, Inc.*,
22 2019 WL 7169791 * 6-7 (C.D. Cal. 2019); *Vega v. Weatherford U.S.*, 2016 WL 8730720 * 6 (E.D. Cal.
23 2016). The commonality requirement is met for the Settlement Class here.

24 **3. Rule 23(a)(3) – Typicality**

25 The typicality requirement is met if the named representatives’ claims are typical of those of the
26 class, though “they need not be substantially identical.” *Hanlon*, 150 F. 3d 1020. Plaintiffs’ claims are
27 typical of the claims of the Class because they arise from the same factual basis and are based upon the
28 same legal theories. SA ¶ 91; JDB Dec. ¶¶ 42, 47-48, 60-71; see also *Wehner v. Syntex Corp.*, 117

1 F.R.D. 641, 644 (N.D. Cal. 1987). Plaintiffs each worked for Amazon during the Class Period, were
2 subjected to the same uniform policies, received a Signing Bonus and/or On Sign Bonus that was not
3 included in her regular rate for overtime and/or sick pay, and, if she were not serving as Class
4 Representative, each would be a member of the Settlement Class. Plaintiff Kryzhanovskiy continues to
5 be employed by Amazon, while Plaintiff Salazar's employment has ended. As such, Plaintiff Salazar
6 also possesses the potential derivative waiting time penalty claim asserted.

7 **4. Rule 23(a)(4) – Adequacy**

8 In order for class certification to be proper, it must be shown the class representatives can and
9 will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of
10 two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any
11 conflicts of interest with other class members and (2) will the named plaintiffs and their counsel
12 prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d 1020; *Staton v. Boeing Co.*,
13 327 F.3d 938, 957 (9th Cir. 2003); *Lao v. H&M Hennes & Mauritz, L.P.*, 2018 WL 3753708 * 9 (N.D.
14 Cal. 2018). Here, neither Plaintiff has any conflicts of interest with other class members, each is a
15 member of the Settlement Class, and each Class Representative and Class Counsel have and will
16 vigorously pursue the collective interests of the Class. JDB Dec. ¶¶ 90-92.

17 While Kryzhanovskiy possessed the Kryzhanovskiy Individual Claims, unique from those held
18 by the Class and negotiated and resolved separately from the Class Claims, such fact does not render
19 her an inadequate representative. *Roberts v. Electrolux Home Products, Inc.*, 2014 WL 4568632 *9
20 (C.D. Cal. 2014) (noting that individual settlement amounts paid to named class representatives for
21 unique harms suffered did not undermine adequacy); *Campbell v. Best Buy Stores, L.P.*, 2015 WL
22 12744268 * 5 (C.D. Cal. 2015). Foundationally, adequacy does not preclude a class representative
23 from having interests unique to or different from those of other Class Members; only *adverse* interests
24 are prohibited. *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 168 (9th Cir. 2004). It is routinely
25 recognized that a class representative's pursuit and settlement of separate individual claims is not
26 inherently incompatible with his/her adequate representation of class interests. *Roberts*, 2014 WL
27 4568632 * 9. There is nothing inappropriate about Kryzhanovskiy's individual settlement here. The
28 individual claims arise out of circumstances unique to Kryzhanovskiy—namely claims for alleged

gender discrimination, gender pay inequity, retaliation, and failure to timely provide records—that are *not* suitable for class treatment. Kryzhanovskiy negotiated her individual claim separately from the Settlement, although both claims were discussed at mediation. JDB Dec. at ¶¶ 7, 28, 31. Kryzhanovskiy did not attempt to leverage the Class Claims to improve her individual settlement and the individual settlement *is not* contingent on approval of the Settlement of Class Claims. *Id.* ¶ 31; SA ¶ 44. Class Members will be fully informed of the existence of the settlement of the Kryzhanovskiy Individual Claims and will have the opportunity to opt-out and/or object to the Settlement, including to Kryzhanovskiy’s adequacy, and to protect his/her individual interest by doing so. SA, Exh. A ¶ 3.F; *Hanlon*, 150. F.3d 1021.

Throughout this case Plaintiffs and Class Counsel have demonstrated their commitment to vigorously prosecuting this lawsuit on behalf of the Class. Adequacy is further underscored by Class Counsel’s experience in wage and hour cases and reflected in the substantial benefits they have and will continue to confer upon Settlement Class Members through this litigation, including securing the GSF. JDB Dec. ¶¶ 92, 97-99.

B. Common Issues Predominate and Classwide Treatment is Superior

“In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2), or (3).” *Hanlon*, 150 F.3d 1022. Rule 23(b)(3) outlines the propriety of class certification whenever common questions of law and fact predominate over questions affecting only individual class members and class action treatment is superior to other methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 622 (1997). Factually, the policies and practices alleged to underscore the Class Claims apply class-wide and Defendants’ liability can be determined by facts, and applicable law, common to all Settlement Class Members—common issues undeniably predominate.

There is similarly no question that resolving the claims of Settlement Class Members through this single action is superior to individual litigation or any alternative resolution methods that may exist. The value of the claims to each individual Settlement Class Member is relatively insignificant—

1 less than \$5,000—and likely insufficient to incentivize individual action. *Wolin v. Jaguar Land Rover*
2 *N.A., LLC*, 617 F.3d 1168, 1175-1176 (9th Cir. 2010); JDB Dec. ¶ 50. Such a small amount is not
3 likely to motivate individual representation and prosecution and may be cost-prohibitive for individual
4 Settlement Class Members. See *Leyva v. Medline Indus.*, 716 F.3d 510, 515 (9th Cir. 2013)
5 (recognizing that claims worth less than \$10,000 are unlikely to be pursued individually); *In re Google*
6 *LLC Street View Electronic Communications Litigation*, 611 F.Supp.3d 872, 885 (N.D. Cal. 2020).
7 The danger of inconsistent rulings absent class-wide treatment further underscores that a class action is
8 the superior method for resolving the claims. Class treatment is, by far, the superior procedure in this
9 case. *Gonzalez v. Xtreme Manufacturing, LLC*, 2022 WL 14746411 * 9 (E.D. Cal. 2022). On balance,
10 class treatment provides the best, most cognizable avenue for all Settlement Class Members to secure
11 fair, adequate, and reasonable recovery.

12 **XII. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED**

13 **A. Legal Standards for Preliminary Approval of Class Action Settlements**

14 The purpose of the preliminary evaluation of a proposed class action settlement is to determine
15 whether it is within the range of possible approval, and thus whether notice to the class of its terms and
16 conditions and the scheduling of a formal fairness hearing are warranted. *Spann v. J.C. Penney Corp.*,
17 314 F.R.D. 312, 319 (C.D. Cal. 2016); 4 Newberg on Class Actions (4th Ed. 2002) § 11.25. In
18 assessing class action settlements, this Court has broad discretion to determine whether a settlement is
19 fair under the circumstances of the case. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th
20 Cir. 1992). Indeed, the Court need only find that the settlement falls within the range of possible final
21 approval, also described as the “reasonable range.” *Cordy v. USS-Posco Indus.*, 2013 WL 4028627 *3
22 (N.D. Cal. 2013); 4 Newberg on Class Actions § 11:25. To make this fairness determination, courts
23 consider several relevant factors, including “the strength of the plaintiffs’ case; the risk, expense,
24 complexity and likely duration of further litigation; the risk of maintaining class action status
25 throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage
26 of the proceedings; [and] the experience and views of counsel . . .” *Hanlon*, 150 F.3d 1026 (citations
27 omitted). The Settlement here satisfies all of the legal standards for preliminary approval.

28 ///

1 **B. The Settlement Terms are Fair, Reasonable, and Adequate**

2 A number of factors, including (1) the extent of discovery completed and stage of the
3 proceedings, (2) the strength of Plaintiffs’ case and the risk, expense, complexity, and likely duration of
4 further litigation, (3) the risk of maintaining class action status throughout trial, (4) the value offered
5 through the Settlement, and (5) the experience and views of Class Counsel inform a Court’s evaluation
6 of whether a proposed class action settlement is fundamentally fair, adequate, and reasonable. See
7 *Staton*, 327 F.3d 959, citing *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003). “A presumption of
8 fairness arises where (1) settlement is reached through arms-length negotiations; (2) investigation and
9 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
10 similar litigation; and (4) the percentage of objectors is small. *In re Heritage Bond Litig.*, 2004 WL
11 7339813 * 2 (C.D. Cal. 2004), citing *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801-1802 (Cal.
12 1996). Here, the Settlement was the product of protracted arm’s length negotiations after formal
13 discovery and provision of payroll data for a statistically significant sampling of Settlement Class
14 Members, and affords each Class Member a gross recovery of nearly 30% of his/her realistic damages
15 and net realization of nearly 20% of those realistic damages. JDB Dec. ¶¶ 21-23, 33, 57-58. It should
16 be approved as fair, adequate, and reasonable.

17 **1. The Settlement Was Negotiated After Formal Discovery And A Thorough**
18 **Investigation of The Issues**

19 Plaintiffs and their counsel conducted formal, substantive discovery, informally received
20 relevant numerical data, formally received complete time and payroll records for 315 Settlement Class
21 Members, and engaged an expert to assist in analyzing the data prior to engaging in any settlement
22 negotiations with Defendants. JDB Dec. ¶¶ 19-23, 25-26. There can be no question that “meaningful
23 discovery” was completed and Class Counsel had sufficient information to fully evaluate the claims
24 and make competent, informed decisions regarding the benefits and burdens of continued litigation
25 versus settlement. *In re Heritage Bond Litig.*, 2004 WL 7339813 *3. The level of discovery completed
26 prior to the Settlement operates in favor of approval.

27 ///

28 ///

1 **2. The Settlement Resulted From Non-Collusive, Arm’s Length Negotiations**

2 Settlement in this matter was only reached after a full-day mediation, provision of a mediator’s
3 proposal at the end of that session, *and* months of additional discussion thereafter. See *In re Apple*
4 *Computer, Inc. Derivative Litig.*, 2008 WL 4820784 * 3 (N.D. Cal. 2008). Ms. Klerman’s involvement
5 in the negotiation process as a neutral mediator “weighs considerably against any inference of a
6 collusive settlement.” *Ibid.* The adversarial and protracted nature of the negotiation process further
7 supports the fairness, adequacy, and reasonableness of the Settlement. Class Counsel’s extensive
8 experience in wage and hour class action matters and opinion regarding the propriety of the Settlement
9 also weighs strongly in favor of its approval. JDB Dec. ¶¶ 57, 70, 97-99; *Bellinghausen v Tractor*
10 *Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015).

11 **3. Considering the Strengths of The Class Claims Balanced Against The Risks**
12 **and Expense of Litigation, The Settlement Is Fair, Adequate, and**
13 **Reasonable**

14 The Settlement provides for the cognizable payment of \$3,000,000 (\$2,900,000 allocated to
15 resolve Class Claims) in resolution of the Released Claims. The GSF represents real and appreciable
16 recovery, particularly considering the Released Class Claims are limited to alleged failures to calculate
17 and pay overtime, failures to calculate and pay redeemed sick leave, and derivative waiting time and
18 wage statement violations. SA, Recitals at p. 3:8, ¶ 28. The portion of the GSF allocated to resolve
19 class claims represents 18% of the *maximum* recovery available to the Class. JDB Dec. at ¶ 57. More
20 tellingly, the Settlement affords Settlement Class Members gross recovery of nearly 30% of their
21 realistic recovery and a net recovery of nearly 20%. *Id.* ¶¶ 57-58. These percentage recoveries are
22 cognizable and well within the range routinely approved by courts reviewing negotiated class action
23 settlements.⁶

24 Defendants asserted numerous legal and factual grounds to defend against the Class Claims
25 and/or certification of such claims, including, but not limited to, 1) that the Signing and On Sign
26 Bonuses were discretionary, 2) that the bonuses were properly included in the regular rate of pay for
27 overtime and sick leave, 3) that Defendants voluntarily overpaid certain wages and were entitled to an

28 ⁶ Further underscoring the reasonableness of the Settlement is its comparison to other recently approved wage and hour settlements by Amazon. The Settlement implicates considerably more narrow claims while also providing a greater average recovery per Class Member. JDB Dec. ¶¶ 74-76.

1 offset of those overpayments against any underpayments to the Class, 4) that any net failures to pay
2 wages were not sufficiently willful to justify imposition of waiting time penalties, 5) that the wage
3 statements actually comply with the Labor Code, and 6) that no one was injured by any technical
4 omission on the wage statements. JDB Dec. ¶¶ 59-69. While Class Counsel is confident certification
5 and success on the merits could have been attained, continued litigation was guaranteed to be costly,
6 time consuming, and uncertain in outcome. By contrast, the Settlement ensures timely relief and
7 recovery for Class Members and is superior to other recently approved settlements. Accordingly, the
8 Settlement is well within the range of reasonableness. JDB Dec. ¶¶ 57, 70, 73.

9 ***a. Defendants' Maximum and Realistic Liability To The Class***

10 With the help of an expert, performing individual calculations and spot checks to ensure the
11 accuracy of those results, and accounting for various litigation risks and the defenses and arguments of
12 Defendants, Class Counsel developed a damages model illustrating both Defendants' maximum
13 exposure and the realistic potential recovery for the claims asserted by each respective Class. Under
14 Class Counsel's damages model, Defendants face a maximum of \$6,046,937 in underpaid overtime and
15 sick pay wages, \$7,885,152 in statutory waiting time penalties, and \$1,932,500 in Labor Code section
16 226(e) penalties. JDB Dec. at ¶¶ 42-49. In total, Defendants face \$15,864,589 in potential damages
17 and statutory penalties to the Class—the Settlement requires payment of nearly 20% of that *maximum*
18 exposure. JDB Dec. ¶¶ 51-52.

19 Because 100% success in litigation is unrealistic, Class Counsel also determined a reasonable,
20 but much more realistic estimate, for the potential recovery of each Class. Under this more measured
21 approach, Class Counsel (1) applied a one-third discount to the underpaid OT/DT claim to account for
22 the possibility that substantial offsets would be applied based on overpayments of wages to Class
23 Members in other contexts (including overpayments in connection with On Sign Bonuses because those
24 bonuses were factored into OT/DT whenever they were actually paid [every other period] and since the
25 value of each payment was twice the workweek value of the proportional bonus share, it often resulted
26 in substantial overpayments), leaving \$3,403,048; (2) applied no discount to the sick pay claim, leaving
27 \$942,365; (3) applied a 50% discount to the waiting time penalty claim to account for the potential that
28 some of the Class Members who are also former employees would be unable to demonstrate any

1 compensable wages that were actually unpaid during employment, leaving \$3,942,576, (4) applied a
2 25% discount to the wage statement claim to account for the potential that injury could not be
3 demonstrated for derivative violations and due to the technical nature of the alleged deficiencies in the
4 wage statements, leaving \$1,449,375. JDB Dec. ¶ 55.

5 The GSF represents a cognizable 29.78% of Defendants’ realistic exposure; 18.76% *actual net*
6 *recovery* to the Class. JDB Dec. ¶¶ 57-58. This is an extremely positive result and District courts have
7 found comparable settlement to be fair and reasonable, especially when taking into account the
8 uncertainties involved with litigation. See e.g., *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965
9 (9th Cir. 2009) (approving settlement amounting to 30% of the realistic damages estimated by the class
10 expert; court noted that even if the plaintiffs were entitled to treble damages the settlement would be
11 approximately 10% of estimated damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th
12 Cir. 2000) (settlement equal to 16.67% of potential recovery was fair). Indeed, “it is well-settled law
13 that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the
14 settlement inadequate or unfair.” *Officers for Justice v. Civil Service Com’n of City and County of San*
15 *Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Of course, “the very essence of a settlement is
16 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Linney v. Cellular Alaska*
17 *P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). As such, “[t]he fact that a proposed settlement may only
18 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
19 settlement is grossly inadequate and should be disapproved.” *Id.*

20 Considering the nature of the claims, the damages, and the risks attendant to further litigation,
21 the Settlement fairly, adequately, and reasonably serves the collective best interests of the Class.

22 **C. The Court Should Order Dissemination of the Notice**

23 Rule 23(c)(2)(B) provides that the Court must direct the best notice practicable under the
24 circumstances to class members, including individual notice to all members who can be identified
25 through reasonable effort. Rule 23(e) requires notice of a proposed settlement inform class members of
26 the following: (1) the nature of the pending litigation; (2) the general terms of the proposed settlement;
27 (3) that complete information is available from the court files; and (4) that any class member may
28 appear and be heard at the fairness hearing. 3 Newberg on Class Actions § 8:32.

1 **1. The Class Notice is Accurate and Informative**

2 The Class Notice, Exhibit A to the Settlement, will be sent to all Class Members, informs them
3 of the terms of the Settlement, and is neutrally worded so as to avoid prejudice. The Class Notice
4 meets all requirements of procedural due process and Rule 23(e) by (1) identifying the Parties; (2)
5 describing the claims and the Class Action in a straightforward manner; (3) succinctly describing the
6 essential terms of the Settlement, including Plaintiffs' proposed Enhancement Awards and the amount
7 Class Counsel will request for attorneys' fees and costs; (4) disclosing that Kryzhanovskiy also
8 received a separate amount to resolve the Kryzhanovskiy Individual Claims; (5) identifying the
9 existence of other cases; (6) identifying the limited claims to be released; (7) identifying all parties
10 against whom claims are being released; (8) providing information on how to participate in, opt out of
11 or object to the Settlement; (9) clearly providing all applicable deadlines for such action; (10)
12 informing Class Members of the consequences of excluding themselves; and (11) advising Class
13 Members that, if they choose to participate and the Settlement is approved, they will be bound by the
14 resulting judgment. Further, the Class Notice clearly explains the manner in which Class Members can
15 obtain further information (e.g., from Class Counsel, through the Court's website, or the
16 Administrator's website) and that the Final Approval Hearing may be moved without further notice.
17 SA ¶¶ 20, 32-33, 54-56; Exh. A. In short, the Class Notice provides Class Members with all
18 information necessary to make an informed decision.

19 **2. The Class Notice Satisfies Due Process**

20 Courts are vested with broad discretion to fashion an appropriate notice program, which must be
21 the best notice practicable under the circumstances. Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B). The
22 Settlement provides for direct mail notice to each Class Member at his/her last known address based
23 upon Defendants' records, performing additional skip traces as necessary. SA ¶¶ 54-56. Because all
24 Class Members are current or former employees of Defendants, for whom Defendants have current or
25 last known addresses as well as SSNs, notice here is simpler and more reliable than in other types of
26 class actions that require published notice to reach unidentifiable class members. The Class Notice and
27 notice plan are consistent with class notices approved by state and federal courts, and under the
28 circumstances here, constitute the best notice practicable. *Spann*, 314 F.R.D. 331.

1 **D. The PAGA Payment is Reasonable**

2 The Settlement contemplates \$100,000 allocated to PAGA claims. 75% (\$75,000) will be paid
3 to the LWDA and the remaining 25% (\$25,000) will be distributed on a pro rata basis to PAGA
4 Settlement Members, regardless of whether they opt out of the Class Settlement. SA ¶¶ 16, 22-23, 46,
5 49. The Parties negotiated this resolution in good faith, intending to ensure it serves the deterrent and
6 punitive purposes of the PAGA. JDB Dec. ¶¶ 79, 87. The allocation proposed in the Settlement is
7 within the range of 0% and 2% approved by state and federal courts in other hybrid class action/PAGA
8 cases.⁷ The LWDA was notified of the Settlement as required by law. JDB Dec. ¶ 89; Exh. 7.

9 **E. The Settlement Administrator's Fees are Reasonable**

10 The Parties selected Atticus Class Action Administration to serve as Administrator. SA ¶¶ 1.35,
11 18. Atticus has substantial experience in administering class action settlements and will, among other
12 things, distribute the Court-approved Class Notice, distribute notice to state Attorney General's
13 pursuant to the CAFA, calculate Individual Settlement Payments and Individual PAGA Payments,
14 prepare and mail settlement checks, respond to Class Member inquiries/disputes, setup and administer
15 an information-only website, prepare appropriate tax forms, and perform all normal and customary
16 duties associated with the administration of the Settlement. Plaintiff seeks preliminary approval of
17 Administrator fees and costs of up to \$25,000. SA ¶¶ 34, 45.

18 **F. The Enhancement Payments to Plaintiffs Are Reasonable**

19 Named plaintiffs in class action litigation are eligible for reasonable service payments. *Staton*,
20 327 F.3d 977. Service/enhancement payments are intended to “compensate class representatives for
21 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
22 the class action, and, sometimes, to recognize their willingness to act as a private attorney general.”
23 *Rodriguez*, 563 F.3d 958-959; see also *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380,
24 1394 (2010). The appropriate amount of an enhancement payment is within the sound discretion of the

25 _____
26 ⁷ See, e.g., *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018) (trial court reduced the maximum PAGA penalty by
27 90% after Plaintiff prevailed at trial because of the employer's good faith attempt at complying with the law); *Nordstrom*
28 *Comm'n Cases*, 186 Cal.App.4th 576, 589 (2010) (approving a PAGA settlement allocating \$0 to the LWDA); *Hopson v.*
Hanesbrands, Inc., 2008 WL 338542 *1 (N.D. Cal. 2008) (approving PAGA settlement of .03% or \$1,500); *In re M.L. Stern*
Overtime Litig., 2009 WL 995864 *1 (S.D. Cal. 2009) (approving PAGA Settlement of 2% or \$20,000); *Munoz v. UPS*
Ground Freight, Inc., 2009 WL 1626376 *1 (N.D. Cal. 2009) (approving PAGA settlement of 2% or \$60,000).

1 district court. *In re Mego*, 213 F.3d 454. Enhancement payments are particularly appropriate in wage
2 and hour class actions where named litigants undertake significant reputational risk by bringing suit
3 against an employer. *Rodriguez*, 563 F.3d 958-959. These risks are even more pronounced for named
4 plaintiffs who continue to be employed, such as Kryzhanovskiy. *Holloway v. 3M Company*, 2021 WL
5 6618685 * 9 (C.D. Cal. 2021); *Moore v. PetSmart, Inc.*, 2015 WL 5439000 * 13 (N.D. Cal. 2015). In
6 deciding whether to approve an enhancement award, a court should consider: “(1) the risk to the class
7 representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
8 difficulty encountered by the class representative; (3) the amount of time and effort spent by the class
9 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed
10 by the class representative as a result of the litigation.” *In re Cellphone Fee Termination Cases*, 186
11 Cal. App.4th 1394-95 (internal quotation marks omitted); see also *Van Vranken v. Atlantic Richfield*
12 *Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (applying similar factors).

13 All of the aforementioned factors support the Enhancement Payments requested here; \$10,000
14 for Kryzhanovskiy and \$7,500 for Salazar. The sought enhancement payments are (a) equal to or
15 below amounts commonly awarded by courts in similar wage and hour class actions;⁸ (b) just 0.33%
16 and 0.25%, respectively, of the \$3,000,000 GSF; and (c) fair, reasonable and appropriate under the
17 circumstances of this case. JDB Dec. ¶¶ 93-95. Plaintiffs worked diligently with Class Counsel
18 throughout this entire litigation, including taking numerous calls, participating in formal discovery and
19 the Parties’ informal information exchange, and participating in the mediation and settlement
20 negotiations and should be rewarded for taking the initiative to pursue these claims on behalf of their
21 current and former coworkers, and for their roles in reaching a substantial settlement providing for
22 valuable monetary relief to the Class. JDB Dec. ¶¶ 90-96.

23 **G. Class Counsel’s Attorneys’ Fees and Costs are Reasonable, Fair, and Appropriate**

24 Plaintiffs, in the settlement of this wage and hour class action, are entitled to payment of
25 attorneys’ fees and costs. Cal. Lab. Code §§ 218.5, 226(e)(1), 1194, and 2699(g); *Earley v. Sup. Ct.*, 79

26 _____
27 ⁸ See e.g. *Lindell v. Synthes USA*, 2016 WL 736274 * 3 (E.D. Cal. 2016) (approving \$10,000 service award in \$5,000,000
28 settlement); *Bond v. Ferguson Enterprises, Inc.*, 2011 WL 2648879 (E.D. Cal. 2011) (approving \$11,250 service award each
to two class representatives in a meal break class action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D.
Cal. 2010) (approving service awards of \$10,000 each from a \$300,000 settlement in a wage and hour class action)

1 Cal.App.4th 1420, 1427 (2000). An attorneys' fee award is justified where the legal action has
2 produced benefits by way of a voluntary settlement. *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
3 (1987); *Westside Cmty. For Indep. Living, Inc. v. Obledo*, 33 Cal. 3d 348, 352-53 (1983). At the Final
4 Approval Hearing, Plaintiffs will seek an award of Class Counsel's fees under the common fund
5 doctrine, which is customarily used in Labor Code class actions and an approved method under both
6 California and federal law. *Wershba*, 91 Cal.App.4th 254; *Lealao v. Beneficial Cal., Inc.*, 82
7 Cal.App.4th 19, 26-30 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); see also *Boeing Co. v. Van*
8 *Gemert*, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers for a common fund . . . is entitled to a
9 reasonable attorney's fee from the fund as a whole."); *Hanlon*, 150 F.3d. 1029. Courts customarily
10 approve attorney's fees of one-third to forty percent of the common fund in comparable wage and hour
11 class actions.⁹ Plaintiffs will seek attorneys' fees of one-third of the GSF, or \$1,000,000—distributed
12 90% to Mayall Hurley, P.C. and 10% to the Law Offices of Mark S. Adams, and declared litigation
13 costs of up to \$30,000. Because these fees and costs are reasonable, within the range commonly
14 awarded in wage and hour class actions, and because Plaintiffs and Class Counsel have conveyed and
15 will convey significant monetary and nonmonetary benefits upon the Class, the Court should
16 preliminarily approve Plaintiffs' requested fee and cost award as fair and reasonable.

17 **XIII. A FINAL APPROVAL HEARING AND RELATED DEADLINES SHOULD BE SET**

18 Plaintiffs respectfully request the Court set a date for the Final Approval Hearing and all
19 associated deadlines. Plaintiffs request that the date for the Final Approval Hearing be set not less than
20 100 days after the Court's execution of the Order Granting Preliminary Approval.

21 **XIV. CONCLUSION**

22 For all the reasons stated above, Plaintiffs' unopposed Motion should be granted.

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25 ⁹ See, e.g., *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (collecting cases where one-third fee
26 was approved in class action context); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826 *29 (N.D. Cal. 2011)
27 (approving 42% fee); *Birch v. Office Depot, Inc.*, 2007 WL 9776717 *13 (S.D. Cal. 2007) (awarding a 40% fee); *Singer v.*
28 *Becton Dickinson and Co.*, 2010 WL 2196104, at *8 (S.D. Cal. 2010) (approving fee award of one-third; award was similar to
awards in other cited wage and hour class action cases where fees ranged from 30% to 40%); *Vasquez*, 266 F.R.D. 491-92
(citing 5 recent wage and hour class actions where district courts approved attorney fee awards ranging from 30% to 33%);
Cicero v. Directv, Inc., 2010 WL 2991486 *6 (C.D. Cal. 2010) (noting that fees of one-third are common in wage and hour
settlements below \$10 million).

1 DATED: December 18, 2023

MAYALL HURLEY P.C.

2 By /s/ Jenny D. Baysinger
3 ROBERT J. WASSERMANN
4 JENNY D. BAYSINGER
5 Attorneys for Plaintiffs and the Putative Class
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