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16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20 DONNA J. FORSYTH, ARUN VATTURI,
21 DAN WEILAND, SHAFIQ RAHMAN, AND
22 KEVIN ALVISO for an on behalf of themselves
23 and other persons similarly situated,

24 Plaintiffs,

25 v.

26 HP INC. AND HEWLETT PACKARD
27 ENTERPRISE COMPANY,

28 Defendants.

Case No. 5:16-CV-04775-EJD

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND COLLECTIVE ACTION
SETTLEMENT**

Date: October 26, 2023

Time: 10:00 a.m.

Judge: Hon. Edward J. Davila

Dept.: Courtroom 4 (5th Floor)

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on October 26, 2023, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 4, 5th Floor, of the San Jose Courthouse, located at 280 South 1st Street, San Jose, CA 95113, Plaintiffs Donna Forsyth (now deceased, by and through her personal representative, Chris Forsyth), Arun Vatturi, Dan Weiland, Shafiq Rahman, and Kevin Alviso (“Named Plaintiffs” or “Plaintiffs”), individually and on behalf of others similarly situated, move the Court for preliminary approval of the parties’ Collective and Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”). This Motion is unopposed by Defendants HP Inc. and Hewlett Packard Enterprise Company (“Defendants”).¹

STATEMENT OF RELIEF SOUGHT

By this Motion, Plaintiffs hereby ask that the Court:

1. Certify, for settlement purposes only, the California Settlement Classes² as defined below pursuant to Federal Rule of Civil Procedure 23(b)(3);
2. Appoint Named Plaintiff Arun Vatturi as representative of the HP Co./HP Inc. California Class as defined below and Named Plaintiff Kevin Alviso as representative of the HPE California Class as defined below;
3. Appoint the Named Plaintiffs’ attorneys as Class Counsel;

¹ Defendants do not oppose the instant motion for preliminary approval of the proposed settlement or the certification of the proposed California Settlement Classes for settlement purposes only and reserve the right to raise any argument with respect to the merits of the Plaintiffs’ individual, class, or collective claims or the appropriateness of the certification (or decertification) of any ADEA collective or Rule 23. See SA §§ 10.3.6, 11.1. In addition, Defendants’ non-opposition to this motion shall not act to preclude Defendants from opposing both the merits, and the propriety of collective or class certification (and Plaintiffs agree that they will not use this settlement to support the certification of any ADEA collective or state-law equivalent class), in any subsequent action. SA § 11.1.

² Unless otherwise defined herein, the capitalized terms used in this Motion are intended to have the same meaning as they are given in the Settlement Agreement.

1 Participating California Class Member will receive at minimum of \$15,000 (net of attorneys' fees,
2 costs, and expenses) in exchange for the release of claims set forth in the Settlement Agreement.
3 Plaintiffs' counsel and the Named Plaintiffs believe that the proposed allocation plan is fair and
4 objective. If approved, the average gross individual recovery (inclusive of requested attorneys' fees,
5 costs, and expenses, requested service awards, and costs of settlement administration) for all ADEA
6 Plaintiffs and Participating California Class Members would be \$50,279.

7 The Parties are in a good position to evaluate the risks of continued litigation against the
8 benefits of settlement. Plaintiffs filed this action in 2016. Since that time, the parties have exchanged
9 written discovery and Plaintiffs have obtained oral testimony from Defendants' witnesses. In addition
10 to formal discovery, counsel for Plaintiffs conducted an extensive investigation, communicating with
11 hundreds of percipient witnesses and consulting with experts to develop and evaluate the case. The
12 Parties also exchanged a substantial amount of information as a condition of engaging in mediation
13 and continued to exchange information for months after two formal mediation sessions.

14 While Plaintiffs won several major motions, including resisting numerous motions to dismiss
15 and to strike class allegations and their motion for conditional certification of two ADEA collectives,
16 they recognize that this ongoing litigation poses significant risks. Indeed, Defendants also won
17 significant motions in this Action, including motions to compel the claims of certain named and opt-
18 in plaintiffs to individual arbitration and portions of their motions to dismiss, and have pledged to
19 oppose Rule 23 certification of the alleged California state law classes, to move to decertify the ADEA
20 collectives, to seek summary judgment, and to vigorously defend the case on the merits at trial.
21 Moreover, even if Plaintiffs were to prevail at trial, extended appeals are likely, further delaying
22 potential relief in a case that has been pending for seven years.

23 There is no indication of collusion in connection with this Settlement—quite the opposite.
24 Settlement negotiations were not only at arms' length, but fiercely contested. The principal financial
25 terms were reached after the exchange of considerable information on both sides and two full-day
26 mediation sessions under the supervision of two highly experienced mediators. Even after the two
27 formal mediation sessions, the Parties continued to negotiate on a weekly and sometimes daily basis
28 regarding material terms of the Settlement for more than eight months thereafter.

1 As described in greater detail below, the proposed Settlement readily satisfies all requirements
2 of Rule 23, the ADEA, Ninth Circuit case law, and this District’s Procedural Guidance for Class
3 Action Settlements (updated Aug. 4, 2022) (“Class Action Settlement Guidance”). Therefore,
4 Plaintiffs submit that the Settlement should be preliminarily approved, and that the proposed Class
5 Notice should be disseminated to the California Class Members in accordance with the proposed
6 notice plan.

7 **II. PROCEDURAL HISTORY**

8 On August 18, 2016, Plaintiffs filed their initial Complaint. ECF No. 1. Subsequently, on
9 November 14, 2016, Defendants moved to partially dismiss the Complaint and to compel arbitration
10 of a former Plaintiff’s claim. *See* ECF Nos. 42, 44. On November 15, 2016, Defendants also moved
11 to strike the proposed definition of the nationwide ADEA collective and the Rule 23 California class
12 definition. ECF No. 46. Plaintiffs then filed their First Amended Complaint (“FAC”), and, on January
13 30, 2017, Defendants moved to partially dismiss the FAC and to compel arbitration for some
14 previously named plaintiffs. ECF Nos. 60, 74, 75. On March 20, 2017, Defendants also moved to
15 compel arbitration for 13 opt-in plaintiffs on the grounds that they had signed a Waiver and General
16 Release Agreement (“Waiver and Release”) containing a mandatory arbitration clause with class and
17 collective action waiver when Defendants terminated them. ECF Nos. 99–108.

18 On September 20, 2017, the Court granted Defendants’ motion to compel arbitration as to 15
19 named and opt-in plaintiffs, denied without prejudice Defendants’ motion to partially dismiss the FAC,
20 and stayed the action pending resolution of the individual arbitrations. ECF No. 132. On October 18,
21 2017, Plaintiffs filed a Motion for Reconsideration with leave of the Court to do so. ECF Nos. 135–
22 136. The Court ordered further briefing, and Defendants filed a motion to enjoin class arbitration and
23 a motion to stay this action pending resolutions of individual arbitrations. ECF Nos. 142–144.

24 On February 6, 2018, the Court continued the stay, but allowed Plaintiffs to amend the FAC to
25 add an additional named plaintiff. ECF No. 152. Plaintiffs then filed their Second Amended Complaint
26 (“SAC”), adding Kevin Alviso as a new Named Plaintiff. ECF No. 168. On November 6, 2018, the
27 Court dismissed with prejudice the claims of the former named plaintiffs and 13 opt-in plaintiffs who
28 had been compelled to individual arbitration proceedings. ECF No. 177.

1 While the case was stayed, counsel for Plaintiffs continued to investigate Plaintiffs' claims,
2 evaluate documents produced in discovery, work with experts, interview former employees, consult
3 with putative class and collective members, and file consents to join the lawsuit. Anderson Decl. ¶ 3.
4 Between November 16, 2018, and May 2, 2019, counsel for Plaintiffs filed consents to join the alleged
5 ADEA collective for an additional 156 individuals. ECF Nos. 179–82, 185, 190–334, 337–342.
6 Ultimately, 145 of the opt-in plaintiffs were found to have signed a Waiver and Release, and the claims
7 alleged by these plaintiffs were dismissed after the parties resolved their claims prior to individual
8 arbitration. ECF Nos. 336, 361, 367–68.

9 On January 7, 2020, Plaintiffs filed a Third Amended Complaint (“TAC”), which expressly
10 excluded the claims of individuals who executed a Waiver and Release. ECF No. 360. On February 6,
11 2020, Defendants filed a motion to dismiss Plaintiffs’ TAC. ECF No. 371. The Court denied
12 Defendants’ motion with respect to Plaintiffs’ ADEA and FEHA claims but granted it with respect to
13 Plaintiffs’ California Unfair Competition Law claims under the fraudulent prong of the statute (Bus.
14 & Prof. Code §17200, *et seq.*) and Plaintiffs’ prayer for injunctive relief, with leave to amend. ECF
15 No. 381. On July 9, 2020, Plaintiffs filed their Fourth Amended Complaint (“4AC”). ECF No. 389.
16 On August 24, 2020, Defendants filed another motion to dismiss and/or to strike the class definitions
17 set forth in the 4AC. ECF No. 401. On October 15, 2020, the Court denied Defendants’ motion, and
18 Defendants answered the 4AC on October 29, 2020. ECF Nos. 405-07.

19 On December 30, 2020, Plaintiffs filed a motion for conditional certification of their collective
20 action under the ADEA. ECF No. 409. On April 13, 2021, the Court granted Plaintiffs’ motion for
21 conditional certification of two ADEA collectives, one with respect to HP Inc. and another with respect
22 to HPE. ECF No. 423. After protracted negotiations and seeking the Court’s assistance to resolve
23 disputes about the form and content of the notices to be sent to putative members of the conditionally
24 certified ADEA collectives, a third-party administrator provided notice to those individuals on
25 November 2, 2021, informing them that the deadline to opt into this action was February 15, 2022.
26 ECF No. 488. By the close of the opt-in period, an additional 122 individuals had opted into one of
27 the two ADEA collectives, for a total of 148 ADEA Plaintiffs (including the five Named Plaintiffs and
28 143 opt-in plaintiffs). *Id.* The Parties then continued to engage in discovery before deciding to explore

1 settlement as an option. Anderson Decl. ¶ 4. The Parties continued to exchange information in advance
2 of settlement discussions for several months. *Id.*

3 The Parties participated in two (2) day-long mediation sessions with mediators Mark S. Rudy
4 and Hon. Daniel J. Buckley (Ret.) on October 14, 2022, and November 16, 2022, and were able to
5 reach an agreement in principle on the basic financial terms of a potential settlement during those
6 sessions. ECF No. 498. The settlement negotiations continued into 2023, as the Parties continued to
7 negotiate the details of the proposed Settlement, including how the settlement funds would be allocated
8 between the various ADEA Plaintiffs and California Class Members. The parties continued these
9 settlement negotiations, often on a weekly or even daily basis, for many months and, by June 6, 2023,
10 had reached agreement on the final terms of a settlement term sheet documenting the primary
11 settlement terms. ECF No. 514. Additional negotiations continued thereafter and, on September 19,
12 2023, the parties fully executed the Settlement Agreement that is presented here for preliminary
13 approval. *See SA.*

14 **III. SUMMARY OF PLAINTIFFS' FACTUAL ALLEGATIONS**

15 Plaintiffs have alleged that, in 2012, under the direction of Meg Whitman, Hewlett-Packard
16 Company ("HP Co.") implemented a companywide workforce reduction plan ("WFR Plan") that
17 continued through at least 2020, and that each of the Defendants' intention was to utilize the alleged
18 WFR Plan to replace thousands of existing, older workers with new, younger employees. ECF No.
19 391. Plaintiffs further alleged that the WFR Plan was designed and used by Defendants to restructure
20 their workforces over this multi-year period—from approximately 2012 to 2020—and to push older
21 workers out of the company, while hiring large numbers of new, younger employees to replace them.
22 *Id.* ¶¶ 1–16, 29–74. As alleged, the WFR Plan was first implemented by HP Co., and in November
23 2015, HP Co. was renamed HP Inc. and HPE was spun off as a separate entity. *Id.* ¶¶ 5–6, 34–35.
24 Plaintiffs alleged that, after this November 2015 split, both HP Inc. and HPE continued to implement
25 the discriminatory WFR Plan while acting in concert with one another. *Id.* Throughout the litigation,
26 each Defendant has denied, and continues to deny, the allegations described above.

27 **IV. TERMS OF THE PROPOSED SETTLEMENT**

28 **A. The ADEA Plaintiffs and California Classes.**

1 There are currently 146 ADEA Plaintiffs in this case. Thirty-two (32) of these 146 ADEA
2 Plaintiffs are also California Class Members because they had their employment terminated by a
3 Defendant in California. Also, there are an additional 212 California Class Members who are asserting
4 only California state law claims and who did not opt into one of the ADEA collectives. Thus, in total,
5 there are 358 unique individuals eligible to share in the proceeds of the Settlement.

6 The “California Settlement Classes” are defined as follows (*see* SA § 1.7):

7 **The HP Co./HP Inc. California Class:**

8 All individuals who had their employment terminated by HP Inc. (including when HP Inc. was
9 named Hewlett-Packard Company) in California pursuant to a WFR Plan between August 18,
10 2012, and February 15, 2022, and who were 40 years or older at the time of such termination.
11 As provided in the operative Fourth Amended Complaint [Dkt. No. 389] (“FAC”), excluded
12 from the HP Co./HP Inc. California Class are: (a) individuals who signed a Waiver and General
13 Release Agreement (as defined in the FAC, n.1); and (b) individuals who signed an Agreement
14 to Arbitrate Claims (as defined in the FAC, n.2).³ In addition, any individuals who previously
15 signed agreements that waived and released the claims asserted in this action are excluded from
16 the HP Co./HP Inc. California Class.

17 **The HPE California Class:**

18 All individuals who had their employment terminated by Hewlett Packard Enterprise Company
19 in California pursuant to a WFR Plan between November 1, 2015, and February 15, 2022, and
20 who were 40 years or older at the time of such termination. As provided in the operative FAC
21 [Dkt. No. 389], excluded from the HPE California Class are: (a) individuals who signed a
22 Waiver and General Release Agreement (as defined in the FAC, n.1); and (b) individuals who
23 signed an Agreement to Arbitrate Claims (as defined in the FAC, n.2). In addition, any
24 individuals who previously signed agreements that waived and released the claims asserted in
25 this action are excluded from the HPE California Class.

26 **B. The Proposed Common Fund and Allocation Plan**

27 The proposed Settlement involves a Maximum Gross Settlement Amount of \$18,000,000. The
28 Maximum Gross Settlement Amount represents the maximum amount that Defendants would pay if
every ADEA Plaintiff participates in the settlement and receives a settlement payment, inclusive of:
(1) all individual settlement payments to Participating California Class Members and ADEA Plaintiffs;
(2) the Plaintiffs’ attorneys’ fees; (3) litigation costs and expenses incurred by the Plaintiffs’ attorneys
up to \$200,000, including the costs of a third-party settlement administrator; and (4) and proposed

³ *See also* SA § 1.7 n.1 (exclusion of individuals who disclaimed interest in participating in or intention
to participate in this action).

1 service awards of up to \$10,000 each for the five Named Plaintiffs. The allocation of these four
 2 categories is as follows:

3	Maximum Gross Settlement Amount:	\$18,000,000.00
4	Less Plaintiffs’ Counsel’s Attorneys’ Fees (25%):	Up to \$ 4,500,000.00
5	Less Cost and Expenses Advanced by Plaintiffs’ Counsel	
6	Including Settlement Administration Costs:	Up to \$200,000.00
7	Less Service Awards to the 5 Named Plaintiffs (\$10,000 each):	\$50,000.00
8	Adjusted Settlement Amount:	\$13,250,000.00

9 Under the proposed allocation methodology, the Revised Gross Settlement Amount would be further
 10 divided between the ADEA Collective Action Plaintiffs and Participating California Class Members
 11 as follows:

13	Adjusted Settlement Amount	
14	Allocated to ADEA Collective Action Plaintiffs:	\$7,905,044.17
15	Adjusted Settlement Amount	
16	Allocated to Participating California Class Members:	\$5,344,955.83

17 **C. The Proposed Allocation Methodology**

18 The proposed allocation methodology took into consideration: (1) each individual’s salary at
 19 termination; (2) the number of years each individual was employed by a Defendant before termination;
 20 and (3) the damages (specifically, lost earnings) potentially recoverable by the ADEA Plaintiffs if the
 21 case went to trial, after considering their post-termination earnings and duty to mitigate damages.
 22 Plaintiffs’ counsel believes that each of these factors is objectively verifiable and tied to the allegations
 23 in the 4AC. *First*, salary at the time of termination is significant because any damages recoverable at
 24 trial would be based in part on how much each individual was earning at termination. *Second*, the
 25 number of years employed is relevant because Plaintiffs believe that former employees who worked
 26 for a Defendant for longer periods of time are in a better position to rebut that Defendant’s anticipated
 27 defenses that they were terminated for reasons other than age at trial as compared to employees who
 28 worked for a Defendant for a relatively short time. *Third*, the proposed allocation methodology

1 recognizes that individuals who opted into one of the ADEA collectives have taken on additional risk
2 by being named in the litigation. The ADEA Plaintiffs also worked cooperatively with Plaintiffs’
3 counsel to provide support for the claims alleged in this case, including by providing detailed earnings
4 and tax information necessary for Plaintiffs’ counsel to calculate damages. Further, as a general matter,
5 Plaintiffs’ counsel believes that the ADEA Plaintiffs are likely in a stronger position procedurally than
6 the California Class Members because the Court already conditionally certified the two ADEA
7 collectives and the ADEA Plaintiffs are parties to this case. By contrast, the 212 California Class
8 Members, including those eligible to opt into an ADEA collective but who did not do so, might never
9 be allowed to participate in this case unless a Rule 23 motion for class certification is granted. For
10 these reasons, the proposed allocation methodology includes an “Additional Damages Fund” that will
11 be distributed on a pro rata basis to ADEA Plaintiffs who demonstrated to Plaintiffs’ counsel, with
12 verifiable tax information, the amount of the lost earnings they incurred (after taking post-termination
13 earnings into account for mitigation purposes) during the first partial and first full year post-
14 termination.

15 If approved, payments to ADEA Plaintiffs and Participating California Class Members would
16 be based on an allocation methodology that works as follows⁴:

17 **Step One:** Calculate “Base Payments.” The proposed methodology allocates a “Base
18 Payment” to each of the 358 individuals who have an interest in the Settlement, including the 146
19 ADEA Plaintiffs and 212 California Class Members. The proposed “Base Payment” is calculated as
20 follows. First, each individual’s annual “salary at termination” according to each Defendant’s records
21 is divided by 52 to determine each individual’s “weekly salary at termination.” Second, the number of
22 years each individual was employed by a Defendant was calculated based on data contained in each
23 Defendant’s records. Third, the “weekly salary at termination” was multiplied by the “number of years
24 employed at WFR termination” to calculate each individual’s Base Payment. Fourth, if the Base
25 Payment calculation resulted in a figure that was less than \$15,000, the individual’s Base Payment
26 was set at \$15,000. Fifth, the Base Payment for the 32 individuals who are both ADEA Plaintiffs and
27

28 ⁴ See SA§ 3.3.

1 California Class Members was enhanced by 50% in recognition that these individuals are alleged to
2 have both federal ADEA and California state law claims. The estimated Base Payments for all of the
3 ADEA Plaintiffs and California Class Members (358 individuals) total \$9,884,556.49.

4 **Step Two: Distribution of the “Additional Damages Fund” to eligible ADEA Plaintiffs.** In
5 addition to the Base Payments described above, the proposed methodology also includes allocations
6 from an “Additional Damages Fund” for those ADEA Plaintiffs who provided Plaintiffs’ counsel with
7 tax documentation to confirm the amount of their post-termination earnings, including documentation
8 needed to determine any mitigation of their alleged lost earnings through post-termination
9 employment. Payments from the Additional Damages Fund were calculated on a pro rata basis based
10 on each ADEA Plaintiff’s alleged lost earnings as set forth in the Settlement Agreement. *See* SA
11 § 3.3.1 and 3.3.1 n.2. The proposed Additional Damages Fund is approximately \$3,365,443.52.

12 Attached to the Anderson Declaration as Exhibit B is an anonymized spreadsheet listing the
13 individual payments that would be made to all ADEA Plaintiffs and California Class Members,
14 assuming all of them participate in the settlement, based on the above proposed allocation
15 methodology should the Settlement be approved.

16 To the degree there are uncashed checks equal to or exceeding a total of \$25,000, a second pro
17 rata distribution will be made to all ADEA Plaintiffs and Participating California Class Members. If
18 the total of any uncashed checks is below \$25,000, or to the degree there is unclaimed money after a
19 second distribution, that money will go to the proposed *cy pres* recipient, the AARP Foundation. The
20 AARP Foundation is a nonprofit that advocates for economic opportunity, social connection, legal
21 advocacy, and food security for older adults. AARP Foundation, [https://www.aarp.org/aarp-
22 foundation/](https://www.aarp.org/aarp-
22 foundation/) (last visited Sept. 21, 2023); SA § 6.5.

23 No part of the California Class Members’ allocated share of the settlement proceeds will revert
24 to the Defendants. At present, 144 of the 146 ADEA Collective Action Plaintiffs have approved the
25 Settlement in writing by signing a Written Consent Authorizing Settlement (“Consent Form”).
26 Anderson Decl. ¶ 6. Four of these 144 individuals are deceased and their representatives have obtained
27 the authority to sign the Consent Form on their behalf the deceased ADEA Plaintiff. *Id.* Two additional
28 ADEA Plaintiffs are deceased, and their family members have agreed to accept the Settlement, but

1 and they are in the process of obtaining state probate authority to sign a Consent Form accepting the
2 Settlement. *Id.* If, however, an ADEA Plaintiff were to reject the Settlement, the Maximum Gross
3 Settlement Amount would be reduced by that person's allocation or \$50,000, whichever is higher,
4 because that individual's claim will not be resolved as part of this lawsuit. SA § 10.1.3.

5 Under the terms of the Settlement Agreement, half of each individual's settlement payment
6 will be characterized as back wages (with a Form W-2 being issued for that portion) and half will be
7 characterized as liquidated damages (with a Form 1099 being issued). The employer's share of payroll
8 taxes will be paid by the Defendants. Other applicable taxes will be deducted from each individual's
9 allocated settlement share, as set forth in the Settlement Agreement. *See* SA § 6.7.

10 **D. Settlement Administration and Notice**

11 The Parties have retained a mutually agreeable settlement administrator, CPT Group, Inc. (the
12 "Settlement Administrator" or "CPT"), which will be subject to the Court's approval, appointment,
13 and jurisdiction. The parties obtained bids from three different settlement administrators and CPT's
14 bid was the most economical and complete. Anderson Decl. ¶ 7. As detailed in the Settlement
15 Agreement, the duties of the Settlement Administrator will include, but are not limited to: (i) compiling
16 and delivering by First Class U.S. Mail the proposed settlement notice to the California Class Members
17 ("Class Notice"); (ii) attempting to confirm the accuracy of the addresses of the California Class
18 Members through the United States Post Office's National Change of Address database before
19 mailing; (iii) performing one skip trace on Class Notices returned as undeliverable; (iv) re-mailing
20 Class Notices one time only by First Class U.S. Mail upon a California Class Member's request; (v)
21 distributing Settlement proceeds and handling applicable tax reporting; (vi) establishing a Qualified
22 Settlement Fund; (vii) sending reminder postcards to any California Class Members and ADEA
23 Plaintiffs who have not cashed their checks thirty (30) days prior to the check expiration date; and
24 (viii) all other duties outlined in the Settlement Agreement and/or required under this District's
25 Procedural Guidance for Class Action Settlements ("Class Action Settlement Guidance"). *See* SA § 9.
26 The Settlement Administrator has agreed to perform all administrative work set forth in the Settlement
27 Agreement for a flat fee of \$14,750. Anderson Decl. ¶ 7. This amounts to approximately .082% of the
28 Maximum Gross Settlement Amount.

E. Release of Claims

1
2 The release of claims to be given by ADEA Plaintiffs (excluding the five Named Plaintiffs)
3 and Participating California Class Members is tailored to the age discrimination allegations asserted
4 in the lawsuit and does not release claims for any future conduct. SA § 13.1. Specifically, upon final
5 approval, California Class Members who do not timely opt out will release all legal claims they may
6 have against the “Released Persons” relating to actual or alleged age discrimination in re-hiring,
7 retention, termination of employment, or retaliation related to any attempt to become re-hired up to
8 the date the Court entered an order preliminarily approving the settlement. *Id.*

F. Named Plaintiffs’ Service Awards

9
10 The Settlement provides that the five Named Plaintiffs will request service award payments of
11 \$10,000 each. *Id.* at § 5. These amounts will be in addition to any other recovery they may be entitled
12 to under the Settlement as ADEA Plaintiffs and/or California Class Members.

G. Attorneys’ Fees, Costs, and Expenses

13
14 The Settlement Agreement provides that Plaintiffs’ counsel may seek up to 25% of the
15 Maximum Gross Settlement Amount (\$4,500,000) and reimbursement of costs and expenses up to
16 \$200,000, including costs of settlement administration. *Id.* at § 4. Counsel for Plaintiffs will file a
17 Motion for Class Counsel’s Fees, Costs, and Expenses and Named Plaintiff Service Awards at least
18 thirty-five (35) days before the California Class Members’ deadline to opt out of or object to the
19 Settlement. *See* Class Action Settlement Guidance, Preliminary Approval, ¶ 9.

V. STANDARD OF REVIEW

20
21 “[T]he court’s primary objective at [preliminary approval] is to establish whether to direct
22 notice of the proposed settlement to the class, invite the class’s reaction, and schedule a final fairness
23 hearing.” 4 *Newberg and Rubenstein on Class Actions* § 13:10 (6th ed. 2023) (hereafter “*Newberg &*
24 *Rubenstein*”). “Rule 23(e)(1) authorizes a court to grant preliminary approval of a proposed class
25 action settlement—and hence send notice of it to the class—so long as the moving parties demonstrate
26 that the court will ‘*likely* be able to’ grant final approval to the settlement” under Rule 23(e)(2).
27 *Newberg & Rubenstein*, § 13:13 (citing Fed. R. Civ. P. 23(e)(1)) (emphasis added).

28 Final approval under Rule 23(e)(2) will require a showing that the settlement is “fair,

1 reasonable, and adequate,” after taking into consideration four factors. *Id.* The procedural factors
 2 evaluate whether the class representatives and class counsel adequately represent the class and whether
 3 the proposed settlement was negotiated at arm’s length. *Id.* (citing Fed. R. Civ. P. 23(e)(2)(A)–(B)).
 4 The substantive factors evaluate the adequacy of the relief and whether the proposed settlement treats
 5 class members equitably. *Id.* (citing Fed. R. Civ. P. 23(e)(2)(C)–(D)).

6 VI. ARGUMENT

7 A. Certification of the California Settlement Classes Is Appropriate.

8 A court is authorized to send notice of a proposed settlement to a class “if the parties have
 9 demonstrated that it is ‘likely’ the court will be able to ... ‘certify the class for purposes of judgment
 10 on the proposal’ after a notice and objection period.” *Newberg & Rubenstein*, § 13:17 (quoting Fed.
 11 R. Civ. P. 23(e)(1)). For the purposes of settlement, the parties here agreed to the certification of the
 12 two California State Law Settlement Classes set forth in Section IV.A., *supra*.⁵ The proposed classes
 13 meet all of the criteria for certification under Rule 23.

14 1. Rule 23(a) Is Satisfied

15 Numerosity is met because the proposed California Settlement Classes consist of hundreds of
 16 individuals who are geographically dispersed across the state such that joinder would not be
 17 practicable. Fed. R. Civ. P. 23(a)(1).

18 Commonality is met because “there are questions of law or fact common to the class.” Fed. R.
 19 Civ. P. 23(a)(2). In examining the commonality factor, the focus is on whether there are common
 20 issues of fact among class members and whether class treatment will “generate common *answers* apt

21
 22 ⁵ The two proposed California Settlement Classes are substantially the same as those asserted in the
 23 4AC except both have an end date of February 15, 2022, whereas the 4AC asserts classes without an
 24 end date because the alleged WFR Plan was still being implemented when the 4AC was filed.
 25 SA § 1.7; ECF No. 391, ¶¶ 114–116. The cutoff date is reasonable given that, according to the class-
 26 wide data that Defendants provided to Plaintiffs’ counsel ahead of mediation, the latest date that any
 27 California Class Member was terminated was prior to February 15, 2022. Anderson Decl. ¶ 8. The
 28 February 15, 2022, date is the last day that ADEA Plaintiffs were permitted to opt into the case. *Id.*

1 to drive the resolution of the litigation.” *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th Cir.
2 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Here, it is Plaintiffs’
3 position that there are numerous common questions, including whether the WFR policies and practices
4 of each Defendant discriminated against California Class Members and whether each Defendant’s
5 conduct violated FEHA, the UCL and/or California common law.

6 Typicality is also satisfied. Rule 23 typicality requires that the “claims or defenses of the
7 representative parties [be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).
8 Typicality “focuses on the similarity between the lead plaintiff’s legal theories and those of the people
9 he or she purports to represent.” *Whiteway v. FedEx Kinko’s Office & Print Servs., Inc.*, No. 05–cv–
10 2320–SBA, 2006 WL 2642528, at *6 (N.D. Cal. Sept. 14, 2006); *Hanlon v. Chrysler Corp.*, 150 F.3d
11 1011, 1020 (9th Cir. 1998). Here, it is Plaintiffs’ position that the Named Plaintiffs’ claims are typical
12 because they challenge the same policies and practices, the same alleged workforce reduction plans,
13 and assert the same legal theories, as California Class Members.

14 Adequacy is satisfied where the class representatives: (1) have common, and not antagonistic,
15 interests with unnamed class members, and (2) vigorously prosecute the interests of the class through
16 qualified counsel. Fed. R. Civ. P. 23(a)(4); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997);
17 *Hanlon*, 150 F.3d at 1020. Here, the Named Plaintiffs contend that they share common interest in
18 holding Defendants accountable for the alleged discriminatory conduct. Plaintiffs Alviso and Vatturi
19 are well-suited to represent the HPE California Class and HP Co./HP Inc. California Class,
20 respectively, because they were terminated as part of workforce reductions by their respective
21 employers, which they allege discriminated against older workers. All Named Plaintiffs have
22 dedicated themselves for years to prosecuting these claims on behalf of themselves and others they
23 allege to be similarly situated.

24 Finally, Plaintiffs are also adequately represented. Adequacy of class counsel depends on (1)
25 work performed on the matter, (2) experience, (3) knowledge of the law, and (4) the resources that
26 counsel can commit. Fed. R. Civ. P. 23(g)(1)(A). As described further in counsel’s declarations,
27 Plaintiffs’ counsel are experienced litigators, recognized experts in representing employees in complex
28 employment cases, and have committed significant resources and time to the prosecution of the claims

1 asserted here. Anderson Decl. ¶¶ 15–18, Ex. E; Declaration of Douglas Dehler in Support of
2 Unopposed Motion for Preliminary Approval of Settlement (“Dehler Decl.”), ¶¶ 2–5, Ex. A.

3 **2. The Requirements of Rule 23(b)(3) Are Satisfied.**

4 Rule 23(b)(3) is satisfied because common questions “predominate over any questions
5 affecting only individual members, and [] a class action is superior to other available methods for
6 fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

7 Common questions can predominate “even though certain class members’ circumstances
8 var[y] and some of the defendant’s practices would have to be proven by anecdotal testimony.”
9 *Delagarza v. Tesoro Refin. & Mktg. Co.*, No. 09-cv-5803 EMC, 2011 WL 4017967, at *12 (N.D. Cal.
10 Sept. 8, 2011). Here, Plaintiffs contend that common issues predominate because the Named Plaintiffs
11 and the California Class Members have alleged that they were all terminated under the same WFR
12 Plan when they were over 40 years old, which Plaintiffs allege was discriminatory and implemented
13 from the top down. *See, e.g.*, ECF No. 391, ¶¶ 29, 32, 34–35; *see also Ellis v. Costco Wholesale Corp.*,
14 285 F.R.D. 492, 538 (N.D. Cal. 2012) (citing evidence of a common nationwide promotion system in
15 support of a finding of predominance); *Tierno. v. Rite Aid Corp.*, Case No. 05-02520 TEH, 2006 WL
16 2535056, at *10 (N.D. Cal. Aug. 31, 2006) (holding that centralized policies and control support a
17 finding of predominance).

18 Plaintiffs believe that a class action is also superior to other available methods for adjudicating
19 California Class Members’ claims here. Litigating hundreds of individual age discrimination lawsuits,
20 where Plaintiffs alleged that the terminations at issue related to the same alleged WFR Plan and alleged
21 policies, would be wasteful and inefficient, and the class mechanism achieves significant economies
22 of scale without wasting judicial resources.

23 **B. The Settlement is Fair, Adequate and Reasonable.**

24 Once the Court has determined that Rule 23 class certification is proper for the purposes of
25 settlement, the next step is to determine whether the settlement is “fundamentally fair, adequate, and
26 reasonable” and whether the settlement suffers from any obvious deficiencies. *Hanlon*, 150 F.3d at
27 1026; *See also In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079–80 (N.D. Cal. 2007). Rule
28 23(e) instructs the Court to assess the adequacy of the relief proposed, whether the proposed settlement

1 treats class members equitably, whether the proposed settlement was negotiated at arm's length, and
2 whether the class representatives and class counsel adequately represent the class. Fed. R. Civ. P.
3 23(e)(2)(A)–(D). Similarly, the Ninth Circuit has long considered the following factors, some of
4 which overlap with Rule 23(e)(2)(A)–(D) and may warrant greater attention at final approval: (1) “the
5 strength of the plaintiffs’ case,” “the risk, expense, complexity, and likely duration of further
6 litigation,” and “the risk of maintaining class action status throughout the trial,” (2) “the amount
7 offered in settlement,” (3) “the extent of discovery completed and the stage of the proceedings,” and
8 (4) “the experience and views of counsel.” *Hanlon*, 150 F.3d at 1026.⁶

9 **1. The Relief Proposed Is Fair, Adequate, and Reasonable.**

10 When evaluating the adequacy of the relief proposed pursuant to Rule 23(e)(2)(C), courts
11 should take into account the following factors: (i) the cost, risks, and delay of trial and appeal; (ii) the
12 effectiveness of any proposed methods of distributing relief to the class, including the method of
13 processing class-member claims; (iii) the terms of any proposed award of attorneys’ fees, including
14 time of payment; (iv) any agreement required to be identified under Rule 23(e)(3); and (v) whether
15 the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C).

16 **a. The Cost, Risks, and Delay of Continued Litigation Is Substantial.**

17 “Approval of a class settlement is appropriate when ‘there are significant barriers plaintiffs
18 must overcome in making their case.’” *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14–
19 cv–01788–JST, 2016 WL 344532, at *4 (N.D. Cal. Jan. 28, 2016).

20 Plaintiffs face substantial obstacles to full recovery, and this factor weighs in favor of
21 settlement here. First, even if Plaintiffs are able to prove statistically significant disparities regarding
22 termination of older workers as part of an alleged WFR Plan, Defendants are expected to argue that
23 terminations were based on factors other than age and that age was not a significant factor in the
24

25 ⁶ In addition, courts review “the presence of a governmental participant,” and “the reaction of the class
26 members to the proposed settlement.” *Id.* Here, there are no governmental participants and the
27 California Class Members have not yet weighed in, although the Settlement appears to have achieved
28 unanimous approval from the ADEA Plaintiffs. Anderson Decl. ¶ 6.

1 decision-making process or the “but for” cause of the decisions at issue. *See Coleman v. Quaker Oats*
2 *Co.*, 232 F.3d 1271, 1282 (9th Cir. 2000) (noting that a reductions-in-force initiatives can be a
3 nondiscriminatory reason for laying off an employee in age discrimination case). Defendants are also
4 expected to argue that the California Settlement Classes should not be certified and that the ADEA
5 collectives should be decertified because, *inter alia*, the Plaintiffs worked in different geographical
6 locations, had different job titles, reported to different local managers, were selected for termination
7 in a highly decentralized manner based on varying selection criteria, and the lack of any common
8 workforce reduction plan. *See, e.g.*, ECF No. 414 (Defendants’ Opposition to Plaintiffs’ Motion for
9 Conditional Certification).

10 Finally, trial always presents substantial risks for both parties and, even if Plaintiffs ultimately
11 prevail at trial, appeals are likely to further delay relief and resolution. The delay factor is particularly
12 acute here in an age discrimination case already pending for nearly seven years. Indeed, six ADEA
13 Plaintiffs have already passed away, and the chances are that the same is true for some California Class
14 Members. Anderson Decl. ¶ 6.

15 **b. The Amount of the Settlement and the Allocation Plan Are Fair.**

16 “[P]erhaps the most important factor” courts consider for preliminary approval is “plaintiffs’
17 expected recovery balanced against the value of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp.
18 3d 930, 935 (N.D. Cal. 2016).

19 One way to assess the fairness of the amount is to compare the settlement amount to the
20 maximum damages expected to be awarded at trial should plaintiffs prevail, taking into consideration
21 the risk factors continued litigation poses. Class Action Settlement Guidance, Preliminary Approval,
22 § 1.c. If this case was successfully litigated to trial, counsel for Plaintiffs estimate that the wage loss
23 recovery for the 212 California Class Members and 146 ADEA Plaintiffs would be in the range of
24 \$36,591,982 to \$73,183,964.⁷ Anderson Decl. ¶ 10. These figures are Plaintiffs’ counsel’s estimated
25

26 ⁷ These estimates are exclusive of any liquidated damages, punitive damages, interest, noneconomic
27 damages, and/or attorneys’ fees that could be awarded because such damages are difficult to estimate
28 at this stage.

1 equivalent of one and two years of lost wages, respectively, before consideration of the mitigation
2 efforts of California Class Members and ADEA Plaintiffs. Any estimate of the potential class and
3 collective recovery must take into account the duty to mitigate lost earnings by making reasonable
4 efforts to obtain a new job. For example, when taking mitigation data collected from ADEA Plaintiffs
5 into consideration and extrapolating those percentages across the California Settlement Classes, the
6 total projected *mitigated* wage losses during the first full year after termination for both the ADEA
7 Plaintiffs and the California Class are estimated to be \$22,321,209, or 61% of *unmitigated* wage loss
8 damages (based on the \$36,591,982 estimate noted above). Anderson Decl. ¶ 10. Based on data from
9 the Bureau of Labor Statistics (“BLS”), as well as detailed mitigation information that Plaintiffs’
10 counsel obtained from the ADEA Plaintiffs, many plaintiffs either will have been reemployed to some
11 extent or have withdrawn from the workforce after two years. According to BLS, 68.9% of long-term
12 workers in business and professional services who were terminated between January 2013 and
13 December 2015 were reemployed by January 2016, while another 20.2% of those workers had left the
14 workforce altogether.⁸ Similarly, based on information that counsel has collected from the ADEA
15 Collective Action Plaintiffs, approximately 65.5% of the ADEA Plaintiffs were reemployed by the
16 end of their first full year after their termination. Anderson Decl. ¶ 11. While variables certainly exist,
17 in light of the foregoing, Plaintiffs’ counsel believes that using the full one- and two-year salary ranges
18 for each and every California Class Member and ADEA Plaintiff provides a reasonable estimate of
19 the damages that might be awarded at trial.

20 The next step is to adjust these exposure figures by the probability of Plaintiffs’ prevailing at
21 each stage of litigation. In *Rabin*, an age discrimination case in this District where the settlement
22 received final approval on February 4, 2021, it was estimated that plaintiffs had a 12.5% chance of
23 recovering the maximum damages. *Rabin v. PricewaterhouseCoopers LLP*, No. 16-cv-02276-JST,

24
25 ⁸ See Bureau of Labor Statistics, U.S. Department of Labor, *Two-thirds of workers displaced from*
26 *2013 to 2015 were reemployed in January 2016*, The Economics Daily (Aug. 31, 2016)
27 [https://www.bls.gov/opub/ted/2016/two-thirds-of-workers-displaced-from-2013-to-2015-were-](https://www.bls.gov/opub/ted/2016/two-thirds-of-workers-displaced-from-2013-to-2015-were-reemployed-in-january-2016.htm)
28 [reemployed-in-january-2016.htm](https://www.bls.gov/opub/ted/2016/two-thirds-of-workers-displaced-from-2013-to-2015-were-reemployed-in-january-2016.htm).

1 2021 WL 837626, at *5 (N.D. Cal. Feb. 4, 2021). In that case, the aggregated 12.5% chance of
2 recovering maximum wage loss damages at trial was calculated based on the assumption that plaintiffs
3 had a 50% chance at prevailing at each of the following stages: (1) class certification (and
4 decertification), (2) summary judgment, and (3) trial. Anderson Decl., ¶ 12; Ex. C. And this figure
5 does not take into account the additional risk of losing on appeal. Applying the same risk factors here,
6 the estimated range of \$36,591,982 to \$73,183,964 is reduced to \$4,573,998 to \$9,147,996, rendering
7 the settlement amount here of \$18,000,000 reasonable. *See also Heath v. Google LLC*, Case No. 15-
8 cv-01824-BLF, 2019 WL 3842075, at *5 (N.D. Cal. Aug. 15, 2019) (assessing settlement compared
9 to actual wage loss and noting that courts in the Ninth Circuit have found FLSA settlements in the
10 range of 25% to 35% of total possible recovery reasonable).⁹

11 Another way to assess the fairness of the Settlement is to look at the per-person recovery. Here
12 the \$18,000,000 settlement results in an average gross recovery of \$50,279 for each of the 358
13 individuals participating in the Settlement. Compared to other ADEA settlements, counsel for
14 Plaintiffs believe the average recovery here exceeds results achieved in many other age discrimination
15 cases. *See, e.g., Rabin*, 2021 WL 837626, at *5 (\$11.625 million settlement yielding an average award
16 of \$2,054, with class members receiving awards ranging from \$200 to \$6,054); *Heath*, 2019 WL
17 3842075, at *5 (\$11,000,000 settlement for 227 plaintiffs yielding an average gross award of \$48,458
18 per plaintiff); *Williams v. Sprint/United Management Company*, No. 03-2200-JWL, 2007 WL
19 2694029 (D. Kan. Sept. 11, 2007) (\$57,000,000 for 1,697 plaintiffs yielding an average of \$33,589
20 per plaintiff); *Dallas v. Alcatel-Lucent USA, Inc.*, Case No. 09-14596, 2013 WL 2197624 (E.D. Mich.
21 May 20, 2013) (\$1,400,000 settlement was shared by 194 plaintiffs yielding an average of \$7,216 per
22 plaintiff); *see also* Anderson Decl. Ex. D.

23 As described in Section IV.C., *supra*, the proposed allocation plan is based on objective factors
24 including salary at termination, time employed at each Defendant, and a separate lost wages fund for
25 plaintiffs who opted into one of the two ADEA collectives and provided objectively verifiable
26

27 ⁹ This settlement amount would constitute 49% to 25% of the estimated total wage loss of \$36,591,982
28 to \$73,183,964, respectively, without accounting for risk factors or mitigation.

1 evidence of mitigated wage losses. The proposed allocation plan also takes into consideration
2 individuals who have opted into one of the ADEA collectives and individuals who have asserted
3 claims under both the ADEA and California state law, while providing significant relief to every class
4 or collective member without requiring a cumbersome claims process.

5 **c. The Settlement Is the Product of Arm’s Length Negotiations.**

6 “The primary procedural factor courts have considered at preliminary approval is whether the
7 agreement arose out of arms-length, non-collusive negotiations.” *Newberg & Rubenstein*, § 13:14; *see*
8 *also Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (citing *Hanlon* at 1027). “[T]he
9 involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on
10 whether they were conducted in a manner that would protect and further the class interests.” Advisory
11 Committee Notes, Fed. R. Civ. P. 23(e)(2) (2018). *See also Tijero v. Aaron Bros., Inc.*, 301 F.R.D.
12 314, 325 (N.D. Cal. 2013) (participation in private mediation “support[s] the conclusion that the
13 settlement process was not collusive”).

14 Here, the Parties engaged in two full-day mediations with one of the most prominent
15 employment discrimination mediators in the country, Mark S. Rudy, and a retired California state
16 court chief judge with significant complex litigation experience, Hon. Daniel J. Buckley (Ret.), and
17 continued to consult with the mediators in connection with ongoing settlement negotiations. Anderson
18 Decl. ¶ 14. Thereafter, the parties continued to vigorously negotiate the terms of the proposed
19 Settlement on a weekly, and sometimes daily, basis for eight more months, including terms relating to
20 allocation of the settlement proceeds, the scope of the release, the data security guarantees of the
21 Settlement Administrator, walk-away provisions, attorneys’ fees, costs, and expenses, and
22 confidentiality provisions, in addition to Plaintiffs’ counsel conducting significant independent
23 investigations to verify the employment data used to create the proposed allocation methodology. *Id.*

24 **d. The Parties Are Adequately Informed to Make Decisions About**
25 **Settlement.**

26 “In the context of class action settlements, ‘formal discovery is not a necessary ticket to the
27 bargaining table’ where the parties have sufficient information to make an informed decision about
28 settlement,” including formal and informal discovery. *Dyer v. Wells Fargo Bank, N.A.* 303 F.R.D.

1 326, 332 (N.D. Cal. 2014) (concluding that the parties were sufficiently informed to judge the
2 adequacy of the settlement where counsel had propounded and reviewed discovery, taken depositions,
3 interviewed defendant’s employees and prepared for a multi-day mediation); *see also In re Omnivision*
4 *Techn., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (finding the parties were sufficiently
5 informed about the case prior to settling the action where they propounded and reviewed discovery,
6 took depositions, briefed motions, and engaged in mediation). “[T]he nature and amount of discovery
7 in this or other cases, or the actual outcomes of other cases, may indicate whether counsel negotiating
8 on behalf of the class had an adequate information base. The pendency of other litigation about the
9 same general subject on behalf of class members may also be pertinent.” Advisory Committee Notes,
10 Fed. R. Civ. P. 23(e)(2) (2018).

11 Here, the Parties have sufficient information to evaluate the sufficiency of the proposed
12 Settlement. The parties have exchanged written discovery and Plaintiffs have taken corporate
13 depositions. Class Counsel conducted significant independent investigation, including interviewing
14 and gathering information from percipient witnesses, and working on regression analyses and theories
15 with expert consultants. Counsel for Plaintiffs also prosecuted the claims of the individual plaintiffs
16 whose claims were compelled to arbitration, which provided significant insight regarding the
17 Defendants’ policies, practices, and defenses. Finally, the parties have continued to exchange a large
18 volume of information and data over the course of many months informally in connection with
19 particular issues that arose during settlement negotiations. Anderson Decl. ¶ 15.

20 **e. Counsel’s Experience and Views Support the Settlement.**

21 “Great weight is accorded to the recommendation of counsel, who are most closely acquainted
22 with the facts of the underlying litigation.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
23 F.R.D. 523, 528 (C.D. Cal. 2004) (internal quotations omitted).

24 As noted in Section VI.A.1, above, counsel for Plaintiffs are experienced and highly regarded
25 employment class attorneys, who have been litigating claims on behalf of the ADEA Plaintiffs and
26 California Class Members in this case, as well as other individuals compelled to individual arbitration,
27 for more than seven years. Anderson Decl. ¶ 15; Dehler Decl. ¶ 2. Plaintiffs’ counsel also worked
28 closely with consultants to analyze the strength of their statistical analysis. Anderson Decl. ¶ 15. Thus,

1 the proposed Settlement results from Plaintiffs’ counsel’s informed judgment about the strengths and
2 weaknesses of the claims. Based on their experience and knowledge of the law, and their knowledge
3 of the Defendants’ policies, practices, and defenses, the rigorous manner in which Defendants are
4 expected to defend themselves against the claims and class and/or collective certification, the legal
5 standards that will need to be met at trial, and the significant monetary relief that Plaintiffs’ counsel
6 believe the Settlement guarantees, Plaintiffs’ counsel believe the Settlement is not only fair, but an
7 excellent result for the California Class Members and ADEA Plaintiffs. Anderson Decl. ¶ 16; Dehler
8 Decl. ¶ 3.

9 **f. Attorneys’ Fees, Costs, and Expenses Are Reasonable.**

10 The proposed Settlement allows Plaintiffs’ counsel to request a fee of up to 25% of the
11 Maximum Gross Settlement Amount. Twenty-five percent is the well-established “benchmark for an
12 attorneys’ fee award in a successful class action” in this Circuit. *Williams v. MGM-Pathe Commc’ns*
13 *Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *see also In re Bluetooth Headset Products Liab. Litig.*, 654
14 F.3d 935, 942 (9th Cir. 2011) (“[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a
15 reasonable fee award”). Indeed, courts in this Circuit frequently approve fee awards in excess of 25%.
16 *Chavez v. Netflix Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (noting that fee awards in class actions
17 average around one-third of the recovery); *Rabin*, 2021 WL 837626, at *8 (approving attorneys’ fees
18 of 35% of the common fund). Counsel’s anticipated fee request is also reasonable when conducting a
19 lodestar crosscheck. “Calculation of the lodestar, which measures the lawyers’ investment of time in
20 the litigation, provides a check on the reasonableness of the percentage award.” *Vizcaino v. Microsoft*
21 *Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002).

22 Plaintiffs’ counsel have performed substantial work in this case such that the requested fee is
23 justified. Over the past several years of this litigation, Plaintiffs’ counsel has (a) conducted extensive
24 research and pre- and post-filing investigation; (b) worked with expert consultants; (c) filed three
25 subsequent amended complaints; (d) defeated, in part, multiple rounds of motions to dismiss and
26 related motion practice; (e) negotiated multiple discovery disputes; (f) engaged in both written and
27 deposition discovery; (g) communicated with hundreds of percipient witnesses; (h) successfully
28 moved for conditional certification of the ADEA collectives; (i) vigorously represented Plaintiffs in

1 two full-day mediations and engaged in months of intense post-mediation settlement discussions; and
2 (j) otherwise skillfully pursued the claims in this case and achieved what they believe to be an excellent
3 result for California Class Members with this proposed Settlement.

4 The anticipated fee application also passes muster when cross checked with Plaintiffs'
5 counsel's lodestar. Plaintiffs' counsel's lodestar is already over 5,487,582, such that the requested fee
6 of \$4,500,000 constitutes a 0.82 multiplier, with more work to be performed to secure preliminary
7 approval, oversee notice to California Class Members, respond to putative class member inquiries
8 during the notice period, and brief and argue final approval. Anderson Decl. ¶ 17; Dehler Decl. ¶ 4.
9 Moreover, Plaintiffs' counsel has agreed to cap the costs they seek to recover from the Maximum
10 Gross Settlement Amount at \$200,000, including costs of settlement administration, even though their
11 actual costs exceed this amount. Anderson Decl. ¶ 17. As such, the requested award would not "yield
12 windfall profits for class counsel in light of the hours spent on the case" and will likely be approved.
13 *In re Bluetooth*, 654 F.3d at 942.

14 Plaintiffs' counsel will submit their request for attorneys' fees, costs, and expenses at least 35
15 days before the objection and opt-out deadline. SA § 4.1.

16 **g. The Requested Service Awards Are Reasonable.**

17 Service awards "are discretionary ... and are intended to compensate class representatives for
18 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
19 the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Wren*
20 *v. RGIS Inventory Specialists*, Case No. C-06-05778 JCS, 2011 WL 1230826, at *31 (N.D. Cal. April
21 1, 2011).

22 Here, the Named Plaintiffs cooperated with discovery, worked with Plaintiffs' counsel on their
23 investigation, and diligently represented the interests of the classes and collectives for as many as
24 seven years. *See also DeLeon v. Wells Fargo Bank, N.A.*, Case No. 12-cv-4494 (RLE), 2015 WL
25 2255394, at *7 (S.D.N.Y. May 7, 2015) (approving \$15,000 service award, noting that doing so
26 "recognizes the risks that the named-Plaintiff faced by participating in a lawsuit against her former
27 employer"). The Named Plaintiffs also risked the potential of being liable for costs. *See, e.g., Fed. R.*
28 *Civ. P. 54(d)(1).*

1 Plaintiffs believe that the requested \$10,000 service awards here are reasonable and in keeping
2 with service awards granted in similar cases in this District. *See, e.g., Rabin*, 2021 WL 837626, at *9
3 –10 (\$20,000 service award to each named plaintiff); *Galeener v. Source Refrigeration & HVAC, Inc.*,
4 No. 13-CV-04960-VC, 2015 WL 12976106, at *3 (N.D. Cal. Aug. 20, 2015) (\$27,000 and \$25,000 to
5 two class representatives); *Ross v. U.S. Bank Nat’l Ass’n*, No. 07 Civ. 2951, 2010 WL 3833922, at *4
6 (N.D. Cal. Sept. 29, 2010) (\$20,000 service award for each of four class representatives). Plaintiffs’
7 counsel will submit their request for service awards 35 days before the objection and opt-out deadline.
8 SA § 5.1.

9 **C. The Proposed Notice and Notice Plan Are the Best Practicable Here.**

10 The proposed Notice is reasonable and constitutes the “best notice that is practicable under the
11 circumstances.” Fed. R. Civ. P. 23(c)(2)(B); 23(e)(1). To satisfy Rule 23(e)(1), settlement notices must
12 “present information about a proposed settlement neutrally, simply, and understandably.” *In re*
13 *Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019).

14 The proposed Notice is easy to understand, explains all options available to the California
15 Class Members, and refers California Class Members to links where they may access more detailed
16 descriptions and the Settlement Agreement itself should they so choose.

17 Importantly, the Notice explains the scope of the released claims in plain language, referring
18 the reader to the more detailed language accessible on the website. Courts have found that including
19 the full release language can be confusing to lay people and is discouraged. *See Shin v. Plantronics,*
20 *Inc.*, No. 18-CV-05626-NC, 2019 WL 2515827, at *7 (N.D. Cal. June 17, 2019) (rejecting notice that
21 “merely copies and pastes the full release language” and “is heavy on legalese and difficult to parse”);
22 *see also In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig.*, 716 F.3d 1057, 1065 (8th Cir.
23 2013) (notice may refer the reader to a more detailed description or text of the release at a settlement
24 website). “Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail
25 to alert those with adverse viewpoints to investigate and to come forward and be heard.’” *In re Hyundai*
26 *& Kia Fuel Econ. Litig.*, 926 F.3d at 567.

27 The Notice includes: (1) contact information for Class Counsel to answer questions; (2) the
28 address for a website, maintained by the Settlement Administrator, that will link to the notice, the

1 Settlement Agreement, motions for approval and for attorneys' fees, costs, and expenses, and any
 2 other important documents in the case; and (3) instructions on how to access the case docket via
 3 PACER or in person at any of the Court's locations. The Notice will also state the date of the final
 4 approval hearing and clearly states that the date may change without further notice to the class. The
 5 Notice further advises California Class Members that they should check the settlement website or the
 6 Court's PACER site to confirm that the date has not been changed. Finally, the Notice explains that
 7 California Class Members have 60 days to object or opt out, and provides information on how to do
 8 so. SA Ex. B.

9 VII. PROPOSED SCHEDULE FOR REMAINING PROCEDURES

10 After consulting with Defendants, Plaintiffs proposed the following schedule:

11 Event	11 Date/Days
12 Preliminary Approval Hearing	October 26, 2023
13 Court Enters Preliminary Approval Order	To Be Determined by Court
14 Defendants provide list of California Class Members to CPT	Within five (5) business days of date of entry of order granting preliminary approval
15 CPT disseminates Notice to the California Class Members	Within fifteen (15) business days of receipt from Defendants of list of California Class Members
17 Plaintiffs file Motion for Attorneys' Fees, Costs, and Expenses and Motion for Named Plaintiff Service Awards	Thirty-Five (35) calendar days prior to deadline for California Class Members to opt out or object
18 Deadline for California Class Members to Opt-Out or Object to the Settlement	Sixty (60) calendar days after the date on which CPT mails Notice to California Class Members
19 Plaintiffs File Motion for Final Approval	To Be Determined by Court
20 Final Approval Hearing	Date No Earlier Than 100 Days After Preliminary Approval Motion Is Filed

22 VIII. CONCLUSION

23 For the reasons set forth above, Plaintiffs' counsel request that the Court grant Plaintiffs'
 24 Motion, preliminarily approving the Settlement and, among other things set forth in this Motion,
 25 certifying the California Settlement Classes for settlement purposes only, directing that Notice be
 26 disseminated to the California Class Members, and setting a date for the Final Approval Hearing.

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DATE: September 21, 2023

ANDRUS ANDERSON LLP

By: /s/ Jennie Lee Anderson
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Classes*