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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 LWDA;**

14 **Plaintiff,**

15 **v.**

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

20 **Defendants.**

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

PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR ATTORNEYS' FEES,
COSTS, AND CLASS REPRESENTATIVE
ENHANCEMENT PAYMENTS

Date: September 10, 2024
Time: 9:00 a.m.
Dept.: Courtroom 8, 6th Floor
Judge: United States Magistrate Judge
Barbara A. McAuliffe

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1 **I. INTRODUCTION.**

2 In conjunction with seeking final approval of the Parties' Class Action Settlement Agreement
3 and Release ("Settlement" or "SA")¹, preliminarily approved on March 22, 2024, Plaintiffs Leilani
4 Kryzhanovskiy and Patricia Salazar (collectively, "Plaintiffs") renew their previous request for an
5 award of attorneys' fees in the amount of \$1,000,000, one third of the \$3,000,000 Gross Settlement
6 Fund ("GSF") secured on behalf of the Settlement Class. Although this Court was only willing to
7 preliminarily approve attorneys' fees of 25% of the GSF, an upward departure from the Ninth Circuit
8 benchmark is warranted based on the significantly positive results achieved, which provide a gross
9 average recovery of \$871.13/Class Member and *actual net* average recovery of \$548.96, the
10 contingent nature of the representation and attendant risks undertaken by Class Counsel, the skill and
11 experience exhibited by Class Counsel, the fee awards in comparable wage and hour class action
12 litigation, and the overwhelmingly positive reaction of Settlement Class Members. Although the
13 Class Notice advised that Class Counsel would seek up to \$1,000,000 in fees, ***not one of the 3,329***
14 ***Participating Class Members objected and only two people opted out.*** The renewed request should
15 further be approved as reasonable under the common fund methodology because it serves to spread
16 the attorneys' fees equally among all the beneficiaries of the GSF, mimics the contingency legal
17 marketplace that would have been implicated had Class Members each individually retained Class
18 Counsel (where percentage fees are generally between 33.33% and 40%), and encourages competent
19 counsel to take on complex contingency cases such as this and to seek early settlement and avoid
20 unnecessarily prolonging litigation.

21 Plaintiffs also seek \$24,642.43 in actual litigation costs (less than anticipated at the time of
22 Settlement), and Class Representative Enhancement Payments in the preliminarily approved amounts
23 of \$10,000 (0.33% of the GSF) to Kryzhanovskiy and \$7,500 (0.25% of the GSF) to Salazar \$2,500.
24 The fees, costs, and class representative enhancement payments should be approved and awarded as

25 _____
26 ¹ All capitalized terms shall have the same meanings given those terms in the Parties' Class Action Settlement Agreement
27 and Release ("Settlement Agreement", "Settlement", or "SA"), a copy which is attached as **Exhibit 1** to the Declaration
28 of Jenny D. Baysinger in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for
Attorneys' Fees, Costs, and Enhancement Payments ("JDB Dec.") filed concurrently with Plaintiff's Motion for Final
Approval of Class Action Settlement ("MFA") (Dkt. 61), filed on the same date as this motion.

1 the amounts sought are consistent with both applicable precedent and recent awards in similar wage
2 and hour class action settlements, and fall within the range of reasonableness under the facts and
3 circumstances of this case and, again, *not a single Class Member objected to date*.

4 **II. SUMMARY OF THE CASE.**

5 **A. Brief Overview of the Litigation**

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. ¶¶ 7-8. 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
13 June 2022. Dkt. 11, 21. A Second Amended Class and Representative Action Complaint for
14 Damages and Civil Penalties (the “SAC”) was filed November 29, 2023 in order to 1) add Plaintiff
15 Salazar as a named party, 2) add a class-wide claim for waiting time penalties, and 3) remove the
16 class-wide allegations for violation of the Equal Pay Act. Dkt. 46; JDB Dec. ¶¶ 36-37. Presently, the
17 class and representative claims asserted in the operative SAC are limited to failures to 1) pay
18 overtime, 2) furnish accurate wage statements, 3) timely pay all wages due upon separation, 4) unfair
19 business practices, and 5) a claim to assess and collect civil penalties pursuant to the PAGA. *Id.* The
20 SAC also alleges the Kryzhanovskiy Individual Claims. Dkt. 46; SA at Recitals; JDB Dec. ¶ 37.

21 **B. The Settlement Is The Product Of A Full Day Mediation and Protracted Negotiations**

22 Negotiating the terms of the Settlement and finalizing details necessitated the parties
23 participating in a full-day mediation with experienced class action mediator Lisa Klerman, Esq. and
24 engaging in more than three (3) months of additional negotiations to reach agreement on the nuances
25 of an appropriate resolution and long-form Settlement Agreement. JDB Dec. ¶¶ 33-39. The
26 Settlement was finally executed December 12, 2023. *Id.* ¶ 35, Exh. 1.

27 Pursuant to the SA, Amazon will pay \$3,000,000 (“GSF”) to resolve all claims of Settlement
28 Class Members; \$2,900,000 is allocated to the Released Claims of Participating Settlement Class

1 Members and \$100,000 is allocated to resolve Released PAGA Claims of Settlement Class Members.
2 SA ¶¶ 14, 22, 40. After deducting the costs of administering the Settlement, the PAGA Settlement
3 Amount, and the sought Class Representative Enhancement Payments to Plaintiffs and Class Counsel
4 Award, at least \$1,827,500² is expected to be distributed to the 3,329 Participating Settlement Class
5 Members. SA ¶ 18; Declaration of Bryn Bridley Re Dissemination of Class Notice and Settlement
6 Administration (“Admin. Dec.”) ¶¶ 10, 12. JDB Dec. ¶¶ 66, 90.

7 **C. The Court Granted Preliminary Approval of the Settlement, But Of Only A 25% Fee**
8 **Award.**

9 On March 22, 2024, this Court granted preliminary approval of the Settlement. Order Granting
10 in Part Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“PAO”).
11 (Dkt. 58). As relevant to the instant motion, after reviewing Plaintiffs’ Motion for Preliminary
12 Approval, including supporting documents, and the substantive terms of the Settlement, this Court (1)
13 found the Settlement Class appropriate for preliminary and conditional certification under Federal
14 Rules of Civil Procedure Rules 23(a) and 23(b), subject to further review at the final fairness hearing,
15 (2) found the Class Notice and manner of notice proposed by Plaintiffs—after specific modifications—
16 met the requirements of Rules 23(c)(2)(B), 23(e) and due process; (3) found no evidence of collusion
17 between the parties; (4) preliminarily approved a fee award of 25% of the GSF, less than that requested,
18 and (5) preliminarily approved the sought Class Representative Enhancement Payments. PAO (Dkt.
19 58) 10:28-12:6, 13:13-20:14, 20:15-25:12, 21:22-22:8; 26:23-28:20; 28:22-35:22 (discussion of fees);
20 Conclusion & Order ¶¶ 2-5, 7-8.

21 **D. Distribution of the Notice.**

22 Because the approved Class Notice erroneously asserted the Court preliminarily approved the
23 fee request of 1/3 of the GSF, Class Counsel sought an order approving a modified Class Notice
24 excising the erroneous language. Dkt. No. 59. The Court approved the amended Class Notice on April
25 24, 2024 and on May 3, 2024, the Class Notice was mailed to 3,331 total Settlement Class Members via
26 First Class mail. Admin. Dec. at ¶ 8, Exh. B. Only sixteen (16) Class Notices, less than 4%, were

27 _____
28 ² This number is expected to actually be higher than \$1,827,500 as the Class Counsel actual costs are less than \$25,000
(not \$30,000) and the Administrator Costs are \$24,850 (not \$25,000). Admin Dec. ¶ 17.

1 initially returned as undeliverable. *Id.* ¶ 9. All of those have now been re-mailed and none has been
2 returned a second time to date. *Ibid.* The approved Class Notice specifically informs Settlement Class
3 Members about the terms of the Settlement, including the fact Plaintiffs would request: (1) an award of
4 attorney’s fees of 1/3 of the GSF or \$1,000,0000, (2) reimbursement of up to \$30,000 in litigation costs,
5 and (3) a Class Representative Enhancement Payments of \$10,000 to Kryzhanovskiy and \$7,500 to
6 Salazar. See Class Notice, attached as **Exhibit B** to Admin. Dec. The Class Notice also apprised Class
7 Members of the existence of the Kryzhanovskiy Individual Claims *and* the fact she settled the claims
8 for \$25,000 *in addition to* the Enhancement Payment. *Id.* The Notice Period expired June 17, 2024
9 and not a single Class Member expressed any concern regarding the requested fees, costs or
10 Enhancement Payments. *Id.* ¶ 10. ***In fact, to date, not one of the 3,331 Class Members to whom***
11 ***Notice was sent has objected in any way, to any degree, to the terms of the Settlement including Class***
12 ***Counsel’s requested award of fees and costs or Plaintiff’s requested Service Payment.*** The
13 overwhelmingly positive reaction of the Class is a clear indication of its approval of the Settlement and
14 the fees, costs and Enhancement Payments now sought.

15 **III. LAW AND ARGUMENT**

16 In diversity cases, such as this one, federal courts are bound to apply California law in
17 evaluating both the right to attorneys’ fees and the appropriate method for calculating them.
18 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Emmons v. Quest Diagnostics*
19 *Clinical Lab., Inc.*, 2017 WL 749018 * 7 (E.D. Cal. 2017). Under California law, Plaintiffs are
20 statutorily entitled to reasonable attorneys’ fees and costs in connection with the settlement of this
21 wage and hour class action. Cal. Lab. Code §§ 218.5, 226 (e)(1), 248.5 (e), and 2699 (g); Fed. R.
22 Civ. P. 23(h); *Earley v. Superior Court*, 79 Cal.App.4th 1420, 1427 (Cal. 2d Dist. 2000). The
23 predominate method for calculating fees in the context of class action settlements under California
24 law is the percentage-of-the-fund or “common fund” methodology. *Laffitte v. Robert Half Int’l.,*
25 *Inc.*, 1 Cal.5th 480, 503-506 (Cal. 2016); *Emmons*, 2017 WL 749018 * 7. While California law
26 governs the analysis, this Court has an independent obligation to review requested fees and costs
27 sought from a common fund and to evaluate them for objective fairness and reasonableness. *In re*
28 *Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994).

1 In reviewing the reasonableness of a fee request under California law, courts should consider
2 (1) the results achieved; (2) the riskiness of prosecuting the litigation; (3) the skill and high quality of
3 work by counsel; and (4) the financial burden carried by Class Counsel in prosecuting the case on a
4 contingency basis. *Serrano v. Priest*, 20 Cal.3d 25, 49 (1977); *Lealao v. Beneficial Cal., Inc.*, 82
5 Cal.App.4th 19, 26 (2000); see also *Vizcaino*, 290 F.3d 1048-50 (internal quotation and citation
6 omitted). Each of these factors underscores the reasonableness of Class Counsel’s request here.

7 **A. The Common Fund Methodology For Class Action Settlements Under California Law.**

8 “[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than
9 himself or his client is entitled to reasonable attorneys’ fees from the fund as a whole.” *Boeing Co. v.*
10 *Van Gemert*, 444 U.S. 472, 478 (1980). The California Supreme Court clarified its stance on common
11 fund cases, ruling –

12 “We join the overwhelming majority of federal and state courts in holding that when class
13 action litigation established a monetary fund for the benefit of the class members, and the trial
14 court in its equitable powers awards class counsel a fee out of that fund, the court may
15 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
16 created.”

17 *Laffitte*, 1 Cal.5th 503. Explaining its ruling, the Court further held “[t]he recognized advantages of the
18 percentage method – including relative ease of calculation, alignment of incentives between counsel
19 and the class, a better approximation of market conditions in a contingency case, and the
20 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
21 litigation – convince us the percentage method is a valuable tool that should not be denied by our trial
22 courts.” *Id.* (internal citations omitted); see also *Vizcaino*, 290 F.3d 1047. Based on this rationale, the
23 California Supreme Court in *Laffite* affirmed a fee award representing one-third of a \$19,000,000 fund
24 and rejected objections of putative class members to such despite a multiplier above 2.0 being applied
25 to the lodestar to reach the requested award. *Laffitte*, 1 Cal.5th 487, 506.

26 In general, common fund fee awards between 30 and 50 percent of the total fund are routinely
27 afforded. Rubenstein, Conte and Newberg, *NEWBERG ON CLASS ACTIONS* (4th Ed. 2002) § 14.6; see
28 *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176 *8 (E.D. Cal. 2015) (surveying cases and
attendant percentage fee awards). Review of California cases “reveals that courts usually award

1 attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a
2 common fund under \$10 million." *Cicero v. DirecTV, Inc.*, 2010 WL 2991486 *6 (C.D. Cal. 2010).
3 As reiterated by the Ninth Circuit, district courts are obligated to apply California law in awarding
4 attorneys' fees in diversity jurisdiction cases such as this one. *Farmers Ins. Exch. v. Law Offices of*
5 *Conrado Joe Sayas, Jr.*, 250 F.3d 1234, 1236 (9th Cir. 2001) ("Because this case is based on diversity
6 jurisdiction, we are obligated to apply California state law regarding attorneys' fees."); *Chambers v.*
7 *Whirlpool Corp.*, 2016 WL 5922456 *10 (C.D. Cal. 2016) ("[i]n diversity actions, the Ninth Circuit
8 applies state law to determine the right to fees and the method for calculating fees"). The Ninth
9 Circuit promulgates a "25% benchmark" that is presumptively reasonable. However, studies reveal
10 reasonable fee awards in class action cases average around the 33.33% mark requested here. *Van Lith*
11 *v. iHeartMedia + Entertainment, Inc.*, 2017 WL 4340337 * 15 (C.D. Cal. 2017), citing *Chavez v.*
12 *Netflix, Inc.*, 162 Cal.App.4th 43, 66, n. 11 (Cal. 1st Dist. 2017). Based on the applicable
13 reasonableness factors identified in the preceding section, upward departure from the 25% benchmark
14 here is justified and the objective reasonableness of the sought Class Counsel Award of 33.33% of the
15 common fund or \$1,000,000 is undeniable. It is also of note that *there is no benchmark* recognized by
16 California law. *Emmons*, 2017 WL 749018 * 7.

17 In fact, Class Counsel's request here is squarely in line with the "30-50% commonly being
18 awarded in cases in which the common fund is relatively small" as recognized in the Eastern District
19 and is justified by the specific circumstances of this case. *Miller*, 2015 WL 4730176 *8 citing
20 NEWBERG ON CLASS ACTIONS § 14.6. While wholly optional, the lodestar cross-check further
21 underscores the propriety of the requested fees as the multiplier implicated is well within the "1.9 to
22 5.1 or even higher" typically applied in class action cases. NEWBERG ON CLASS ACTIONS § 14.7; *In re*
23 *NCAA Grant-In-Aid Cap Antitrust Litig.*, 2017 WL 6040065 * 10 (N.D. Cal. 2017) (recognizing
24 "routine recourse" to a lodestar cross-check to modify fee awards threatens the utility and benefits of
the common fund method).

25 **B. Upward Departure from the 25% Benchmark is Appropriate Under The Circumstances.**

26 The requested 33.33% fee award, or \$1,000,000, should be approved because: (1) it is
27 consistent with the percentage fees recently awarded by California and federal courts in similar wage
28 and hour class settlements against Amazon; (2) the Class' response to the requested award has been

1 entirely positive; (3) it is reasonable in light of the substantial monetary and non-monetary benefits
2 conferred on the Settlement Class; (4) it achieves the dual purposes of a common fund award by
3 spreading the litigation costs among those who benefited from the settlement while rewarding and
4 encouraging competent counsel to handle complex, contingency, class action cases like this; and (5)
5 the lodestar cross-check, while not required, nevertheless confirms the reasonableness of the
6 requested fees as the requested multiplier is within the “1.9 to 5.1, or even higher” typically approved
7 in class action cases. NEWBERG ON CLASS ACTIONS § 14:7; *Laffitte*, 1 Cal.5th 504 (unless the imputed
8 multiplier is “far outside the normal range” there is no reason to reexamine the choice of a
9 percentage). Cases with relatively small common funds (i.e. less than \$10 million) tend to have fees
10 above the 25% benchmark in California, with 30-50% commonly awarded in cases under such
11 circumstances. See NEWBERG ON CLASS ACTIONS at § 14.6; *Miller*, 2015 WL 4730176 * 9, citing
12 *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1127 (C.D. Cal. 2008). Review of relevant
13 California cases “reveals that courts usually award attorneys’ fees in the 30-40% range in wage and
14 hour class actions that result in recovery of a common fund under \$10 million.” *Cicero*, 2010 WL
15 2991486 *6. These smaller class actions frequently involve fee awards in the range of one-third
16 because they do not implicate megafunds where a smaller percentage recovery is more appropriate.
17 See *Vandervort v. Balboa Capital Corp.* 8 F.Supp.3d 1200, 1209-10 (C.D. Cal. 2014).³ Routinely, in
18 smaller wage-hour class actions like this one, California Federal courts routinely award attorneys’
19 fees of percentages equal to or greater than that sought by Plaintiffs in this action.⁴ When viewed in

21 ³ “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
22 actions average around one-third of the recovery.” *Chavez*, 162 Cal.App.4th 66 n. 11; see also *Knight v. Red Door Salons,*
23 *Inc.*, 2009 WL 248367, at *6 (N.D. Cal. 2009) (“fee awards in class actions average around one-third of the recovery”)
(quoting NEWBERG ON CLASS ACTIONS § 14.6 (4th ed. 2007)).

24 ⁴ See, e.g., *Wren v. RGIS Inventory Specialists* 2011 WL 1230826 *29 (N.D. Cal. 2011) (approving fee award that
25 constituted 42% of the common fund in wage and hour class and collective action); *Boyd v. Bank of Am. Corp.*, 2014 WL
26 6473804 *8-*12 (C.D. Cal. 2014) (awarding one-third of settlement in wage and hour case on behalf of real estate review
27 appraisers); *Birch v. Office Depot, Inc.*, 2007 WL 9776717 *13 (S.D. Cal. 2007) (awarding a 40% fee on a \$16,000,000
28 wage and hour class action settlement); *Stuart v. Radioshack Corp.*, 2010 WL 3155645 at *5-*7 (N.D. Cal. 2010) (awarding
one-third of \$4.5 million settlement fund as fees in class case alleging failure to reimburse employees for expenses);
Quezada v. Con-Way Freight, Inc., 2017 WL 6949286 *1 (N.D. Cal. 2017) (awarding one-third of \$2 million settlement
fund as fees in class case alleging failure to pay wages for all hours worked); *Singer v. Becton Dickinson and Co.*, 2010 WL
2196104 *8 (S.D. 2010) (approving fee award of 1/3 of the common fund; award was similar to awards in three other cited
wage and hour class action cases where fees ranged from 30% to 40%); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
482, 491-92 (E.D. Cal. 2012) (citing five recent wage and hour class actions where federal district courts approved attorney

1 the light of the foregoing authorities, the reasonableness of Plaintiff's requested fee award of
2 \$1,000,000, one-third of the GSF, is clear.

3 **1. The Laudable Result Obtained for the Class Supports A 33.33% Fee Award.**

4 It is well settled that the primary—and most critically important—consideration when
5 evaluating the reasonableness of a fee request in the class action context is the results obtained for the
6 class. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Carlin v. DairyAmerica, Inc.*, 380 F.Supp.3d
7 998, 1021 (E.D. Cal. 2019); *In re NCAA*, 2017 WL 6040065 * 3. Here, the results obtained by Class
8 Counsel are objectively exceptional, particularly as compared directly to other approved wage and hour
9 settlements against Amazon. JDB Dec. ¶¶ 83-86. In fact, the Settlement here, which provides an
10 average gross recovery of \$871.13/Settlement Class Member, represents the largest gross value per
11 Class Member resolution of recent wage and hour resolutions with Amazon. *Id.* ¶¶ 58, 83-86.
12 Participating Settlement Class Members will *actually receive* nearly \$550 on average (\$548.96). *Id.* ¶
13 66. The objectively positive results obtained through the Settlement are further underscored by the
14 percentage recoveries it secured. More specifically, the gross Settlement represents nearly 20% of the
15 *maximum* damages and penalties available to Settlement Class Members—between 48% and 54%
16 recovery of the *maximum* wage loss incurred (depending on whether offsets are considered). *Id.* ¶¶ 56-
17 57. Once expected recoveries are adjusted for risk, the GSF represents 30% of the realistic damages
18 and penalty exposure; a substantial two-thirds of the realistic wage loss is being recovered. *Id.* ¶¶ 63-
19 64. The actual net distribution to Participating Settlement Class Members equates to 20% of the
20 realistic damages, more than 30% of the *maximum* wage loss, and 42% of the realistic wage loss. *Id.* ¶¶
21 66-67. These percentages are greater than those frequently recognized by courts as sufficient to merit
22 upward departure from the 25% benchmark. See *In re NCAA*, 2017 WL 6040065 * 3, fn 14 (surveying
23 cases).

24 **2. The Risks Associated With This Litigation Justify The Fee Request.**

25 Class counsel undertook considerable risk in litigating this case, not just because it was done on
26 a wholly contingency basis, but also because complex, representative wage-and-hour litigation is an

27 fee awards ranging from 30% to 33%); *Cicero*, 2010 WL 2991486, at *6 (noting that fees of one-third are common in wage
28 and hour settlements below \$10 million, citing cases).

1 ever-emerging area under the law. As such, judicial decisions could potentially detrimentally impact
2 some claims asserted on behalf of the Class if the matter proceeded through litigation. This is a
3 common occurrence in the ever-changing landscape of California wage and hour litigation and
4 compounds the risks inherent in representation on a contingency basis.

5 Although Amazon did not (yet) assert it, Kryzhanovskiy executed an arbitration agreement with
6 a class waiver that could seriously jeopardize the case. JDB Dec. ¶ 124; *AT&T Mobility v.*
7 *Concepcion*, 563 U.S. 333, 352 (2011) (upholding class action waivers in arbitration agreements under
8 federal law). Even if arbitration were not impacted, recovery on the Released Claims was far from
9 guaranteed and could only occur after years of costly litigation rife with risk. Defendants asserted
10 numerous defenses and planned to employ a multipronged attack aimed at circumscribing both the
11 scope of the Class and the available damages/penalties. Primarily, Defendants intended to argue 1)
12 that the Signing and On Sign Bonuses were discretionary, 2) that the bonuses were properly included
13 in the regular rate of pay for overtime and sick leave, 3) that Defendants voluntarily overpaid certain
14 wages and were entitled to an offset of those overpayments against any underpayments to the Class, 4)
15 that any net failures to pay wages were not sufficiently willful to justify imposition of waiting time
16 penalties, 5) that the wage statements actually comply with the Labor Code, and 6) that no one was
17 injured by any technical omission on the wage statements. JDB Dec. ¶¶ 68-78.

18 Success on any one of these challenges would, in a best case scenario for Class Members,
19 substantially limit Defendants' exposure. It is possible class-wide relief might be precluded entirely.
20 Success by Plaintiffs on these issues was not a foregone conclusion at any time. Nevertheless, Class
21 Counsel persevered at great risk (while foregoing other profitable work) on a contingency basis, and
22 brought this case to beneficial resolution for the Settlement Class, recovering a gross amount nearly
23 20% of the maximum potential damages/penalties and nearly 30% of the realistic recovery (50% of the
24 maximum wage loss and 66.67% of the realistic wage loss). JDB Dec. ¶¶ 57, 63-64. Class Counsel
25 undertaking these numerous litigation risks, particularly in light of the success attained, further justifies
26 the sought fees award and an upward departure from the 25% benchmark.

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28 ///

1 **3. The skill of class counsel and the quality of their work justifies the fee request.**

2 Class counsel demonstrated substantial skill, diligence, and high quality of work in achieving
3 the proposed Settlement, ultimately creating a GSF of \$3,000,000 to be shared by just over 3,300
4 individuals. Through its efforts, Class Counsel was able to successfully defend against a motion to
5 dismiss. (Dkt. 21). Because the claims were vetted and narrowly pled, with focused and specific
6 factual theories, Class Counsel was able to maneuver the case into a settlement posture efficiently and
7 diligently. JDB Dec. ¶¶ 129, 148; see *In re NCAA*, 2017 WL 6040065 * 10 (recognizing the value of
8 efficiently litigating, rather than undertaking needless “belt and suspenders” litigation, and that a lower
9 lodestar resulting from efficiency should not operate against counsel when evaluating the
10 reasonableness of a common fund award). The Settlement, and the cognizable monetary benefits it
11 conveys to the Class, was obtained efficiently and effectively without wasted effort or years of
12 needless, costly litigation. As a result of the skill and tremendous effort of Class Counsel, who have
13 significant experience representing plaintiffs in wage and hour class, collective, and representative
14 actions, Plaintiffs were well-positioned to reach a favorable settlement for the Class, which itself
15 required significant expertise, engaging in written discovery and motion practice, employment of a
16 damages expert, a full-day mediation and protracted, at times contentious, negotiations to achieve. JDB
17 Dec. ¶¶ 10-11, 14-28.

18 The skill and experience of Class Counsel, and the quality of the work performed, operates in
19 favor of an upward departure from the 25% benchmark and supports the reasonableness of Class
20 Counsel requested 33.33% fee award.

21 **4. The Contingent Nature Of The Fee And Financial Burden Carried By Class**
22 **Counsel Justifies The Fee Request.**

23 A law firm that prosecutes class action cases does not get paid in every case. Sometimes, it gets
24 nothing or is awarded fees equal to only a small percentage of the amount actually incurred. Where
25 plaintiffs’ counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm
26 regularly undertakes. *Vizcaino*, 290 F.3d 1048; *In re NCAA*, 2017 WL 6040065 * 4. As the California
27 Supreme Court explains:

28 ///

1 “[A] contingent fee must be higher than a fee for the same legal services paid as they are
2 performed. The contingent fee compensates the lawyer not only for the legal services he
3 renders but for the loan of those services. The implicit interest rate on such a loan is higher
4 because the risk of default (the loss of the case, which cancels the debt of the client to the
5 lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not
being paid and provides legal services is not receiving the fair market value of his work if he is
paid only for the second of these functions. If he is paid no more, competent counsel will be
reluctant to accept fee award cases.”

6 *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-33 (Cal. 2001) (internal citation and quotation omitted).

7 Accordingly, courts recognize that “[i]t is an established practice in the private legal market to reward
8 attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates
9 for winning contingency cases.” *Fischel v. Equitable Life Assurance Soc’y of U.S.*, 307 F.3d 997, 1008
10 (9th Cir. 2002).

11 In this case, Class Counsel worked diligently on this case since July 2021 and, in effect, loaned
12 their legal services to the entire Class since that time. Class Counsel prosecuted this case wholly on a
13 contingency basis, at cognizable risk of never receiving any compensation due to the inherently
14 uncertain nature of class action litigation in general, the ever-changing environment of California wage
15 and hour law, and also due to the numerous factual and legal defenses of Defendants and their
16 aggressive litigation tactics. Class Counsel took a tremendous risk by taking on this case, and
17 persevered to attain the Settlement on behalf of the Class. To date Class Counsel has spent nearly
18 \$25,000 in out-of-pocket costs and expended more than 700 (718) hours of attorney time, with
19 additional work remaining, without receiving any compensation at all. JDB Dec. ¶¶ 93-101; Exh. 4.
20 Meanwhile, all of this entailed passing on other lucrative cases. *Id.* ¶ 128.

21 **5. Class Counsel’s Requested Percentage Fee Of 33.33% Is Equal To That**
22 **Awarded In Each Recent Amazon Wage and Hour Settlement**

23 As discussed, *supra*, in section III.A, common fund fee awards are routinely between 30 and
24 50 percent and departure from the benchmark is the norm. *Carlin*, 380 F.Supp.3d 1021-1022. This
25 trend is demonstrably true in the case of recent wage and hour class action settlements involving
26 Amazon. In each of the five (5) recent class action wage and hour settlements against Amazon that
27 Class Counsel is aware of, a percentage fee award at or above 33.33% was afforded. JDB Dec. ¶¶
28 142-149. This was true regardless of whether the matter was litigated in state or federal court.

1 The most analogous comparator is the pending matter of *Boone v. Amazon.com Services,*
 2 *LLC*, Eastern District of California Case No. 1:21-cv-00241-KES-BAM (the “*Boone Matter*”). That
 3 case involves settlement of the narrow COVID screening and derivative claims of 250,000 Amazon
 4 employees for payment of \$5,500,000—an average of \$22/class member. JDB Dec. ¶¶ 86, 147.
 5 This Court preliminarily approved a common fund fee award of 33.33%. *Id.* ¶ 147. That case
 6 followed a similar procedural track to the instant action, implicating motion practice (12(b)(6)),
 7 informal discovery, and mediation/settlement after more than 2 years of litigation. *Id.* ¶ 148. Just as
 8 33.33% is reasonable in the *Boone Matter*, so is such a common fee award appropriate here.⁵

9 The fee awards in similar cases, particularly the uniform award of at least 33.33% in
 10 connection with each recent Amazon wage and hour class action settlement, strongly supports the
 11 reasonableness of the requested common fund fee award here. In fact, each of the factors informing
 12 the reasonableness of a common fee request operate in favor approving Class Counsel’s 33.33% fee
 13 request here.

14 **C. The Overwhelmingly Positive Reaction of the Class Supports Approval.**

15 It is well settled that positive reactions by class members underscore the propriety of settlement
 16 terms. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1152-53
 17 (2000). Thus, the absence of disapproval constitutes strong evidence in support of the reasonableness
 18 of a requested attorneys’ fee and cost award. See *In re Heritage Bond Litig.*, 2005 WL 1594403 * 21
 19 (C.D. Cal. 2005). Here, after having received the Class Notice, *not one of the 3,331 Settlement Class*
 20 *Members objected to the requested Class Counsel Award* of \$1,000,000. Admin. Dec. ¶ 10. This fact
 21 just further underscores the reasonableness of Plaintiffs’ renewed fee request.

22 **D. The Requested Fee Award Fairly Spreads the Litigation Costs Among the**
 23 **Participating Settlement Class Members Who Will Benefit From It.**

24 The percentage-of-the-fund approach is an appropriate method for awarding attorneys’ fees here
 25 because it allows Plaintiffs and Class Counsel to create “a fund from which others will benefit [and] to
 26 _____

27 ⁵ The fact this case results in an average award substantially greater than achieved in the *Boone Matter*, \$871.13 gross
 28 and 548.96 net, further underscores the propriety of affording Class Counsel here a comparable percentage of the fund
 award of 33.33% or \$1,000,000.

1 require those other beneficiaries to bear their fair share of the litigation costs.” *Nw. Energetic Servs.,*
2 *LLC v. Cal. Franchise Tax Bd.*, 159 Cal.App.4th 841, 878 (Cal. 5th Dist. 2008) citing *Serrano*, 20 Cal.
3 3d 35. This approach ensures all 3,329 Participating Class Members, who have indicated a willingness
4 and intention to accept the benefits from the common fund GSF, also accept their fair *pro rata*
5 responsibility to contribute towards the attorneys’ fees and costs that created the fund in the first place.
6 *Earley*, 79 Cal.App.4th 1436. In other words, “[t]hose who benefit from the creation of the fund should
7 share the wealth with the lawyers whose skill and effort helped create it.” *In re Wash. Pub. Power*
8 *Supply Sys. Sec. Litig.*, 19 F.3d 1300. Accordingly, the percentage-of-the-fund approach is appropriate
9 here and supports Class Counsel’s request for an award of a percentage of the common fund (i.e., 1/3 of
10 the \$3,000,000 GSF).

11 In addition to spreading the litigation costs among all beneficiaries, awards of common fund
12 fees are essential to furthering the important societal goal of attracting competent counsel “who will be
13 more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the
14 fund if [attorneys are] assured that [they] will be promptly and directly compensated should [their]
15 efforts be successful” to handle these often-complex contingency cases. *Melendres v. City of L.A.*, 45
16 Cal.App.3d 267, 273 (Cal. 2d Dist. 1975); *In re NCAA*, 2017 WL 6040065 * 4. “Given the unique
17 reliance of our legal system on private litigants to enforce substantive provisions of law through class
18 and derivative actions, attorneys providing these essential enforcement services must be provided
19 incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal
20 marketplace, as it will otherwise be economic for defendants to increase injurious behavior.” *Lealao*,
21 82 Cal.App.4th 47. Without such incentives, meritorious class actions such as this might not be
22 brought and the private enforcement of important statutory rights would be undermined.

23 California courts further recognize “the amount of attorney fees typically negotiated in
24 comparable litigation should be considered in the assessment of a reasonable fee in representative
25 actions in which a fee agreement is impossible.” *Ibid*. By doing so, courts can ensure the awarded fee
26 approximates the legal marketplace by being comparable to what clients and counsel would have likely
27 negotiated at the outset of the matter. Class Counsel here typically negotiates contingent fees in single-
28 plaintiff cases that are between 33.33% and 40%. JDB Dec. ¶ 127. Notably, the typical contingency

1 fee contract ranges from 20 to 40 percent of the total recovery—leaving Class Counsel’s requested
2 attorneys’ fee here in the middle of the spectrum. *Chavez*, 162 Cal.App.4th 64-65. The requested
3 award ensures Class Counsel receives appropriate compensation for the actual benefit conferred on the
4 Settlement Class, particularly where it would impossible *ex ante* to enter a fair fee arrangement with all
5 individual Settlement Class Members.

6 **E. The Lodestar Cross-Check Further Confirms the Reasonableness of the Requested Fee**
7 **Award.**

8 California law affords trial courts discretion to award fees as a percentage of the common fund,
9 with or without conducting a lodestar cross-check. *Laffitte*, 1 Cal.5th 506 (“We further hold that trial
10 courts have discretion to forgo a lodestar cross-check and use other means to evaluate the
11 reasonableness of a requested percentage fee.”). A lodestar cross-check is wholly voluntary and courts
12 caution routine resort to it to downwardly adjust percentage awards risks swallowing the benefits of the
13 common fund method and inherently incentivizes inefficient and unnecessarily protracted litigation. *In*
14 *re NCAA*, 2017 WL 6040065 * 10, fn. 63. Although not required, courts asked to approve fee awards
15 on a common fund percentage basis may perform a “lodestar cross-check” as a means of determining
16 whether the requested percentage is reasonable in relation to the amount and value of the time
17 expended by counsel. See *Lealao*, 82 Cal.App.4th 47-50. The goal under either the percentage or
18 lodestar approach being the award of a “reasonable fee” to compensate counsel for their efforts.
19 *Laffitte*, 1 Cal.5th 504. It is only where a percentage award would require a multiplier that is “**far**
20 **outside** the normal range” that it may reflect the percentage requested is unreasonable or inappropriate.
21 *Laffitte*, 1 Cal.5th 504; *Van Lith*, 2017 WL 4340337 * 15. Such is simply not the case here.

22 The cross-check starts with the basic lodestar calculation but may then “evaluate the lodestar as
23 a percentage of the recovery and adjust it accordingly if it can be determined that the lodestar is
24 significantly different from the range of percentage fees freely negotiated in comparable litigation.”
25 *Lealao*, 82 Cal.App.4th 50. Under the first step of the cross-check, the “lodestar” figure is calculated
26 by multiplying “the number of hours [the prevailing party] reasonably expended on the litigation [] by
27 a reasonable hourly rate.” See *Hensley*, 461 U.S. 433; *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 322
28 (Cal. 1983). Class Counsel, to date, devoted more than 700 (718) hours to bring the Settlement to the

1 brink of finalization for the Settlement Class. JDB Dec. ¶ 134, Exh. 4; Declaration of Mark S. Adams
2 (“MSA Dec.”) ¶ 2, Exh. These hours reflect time reasonably spent litigating this case, which Class
3 Counsel sought to efficiently manage, staff, assign, and divide the work between respective attorneys in
4 Class Counsel’s offices to avoid duplication of effort. JDB Dec. ¶ 130, Exh. 4. The number of hours
5 expended in this case is undeniably reasonable considering the procedural history and its more than 3-
6 year duration. As to an appropriate reasonable hourly rate, Class Counsel understands and appreciates
7 this issue is the subject of some division and debate within this Eastern District. There are judges
8 within the district who accept the *Laffey* Matrix, and judges who accept only significantly lower rates
9 (of varying natures) as “reasonable.” Depending on the hourly rates utilized⁶ Class Counsel’s lodestar
10 is between \$634,104.75 and \$235,991.25. JDB Dec. ¶¶ 134-140.

11 Under the second step of the lodestar cross-check, the reasonableness of the requested fee
12 award is confirmed by the application of a multiplier. In wage and hour actions, California and Ninth
13 Circuit courts both routinely approve multipliers on class counsel’s lodestar ranging from 2 to 4 times
14 (and sometimes higher), in order to reward counsel for accepting the contingent risk of the litigation
15 or obtaining excellent results. See, e.g., *Laffitte*, 1 Cal.5th 506 (approving one-third fee award with
16 multiplier between 2.03 and 2.13); see also *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
17 255 (Cal. 6th Dist. 2001) (noting multipliers can range from 2 to 4 or higher); *Glendora Cmty. Redev.*
18 *Agency v. Demeter*, 155 Cal.App.3d 465, 479-481 (Cal. 2d Dist. 1984) (affirming multiplier of 12).
19 Where counsel obtain a settlement prior to overcoming certain hurdles, such as class and collective
20 certification motions, courts recognize they should not be penalized by use of a straight lodestar in
21 determining the reasonableness of requested fees. See *Vizcaino*, 290 F.3d 1050 n.5 (“We do not mean
22 to imply that class counsel should necessarily receive a lesser fee for settling a case quickly; in many
23 instances, it may be a relevant [positive] circumstance that counsel achieved a timely result for class
24 members in need of immediate relief.”); *In Re Activision Secs. Litig.*, 723 F.Supp. 1373, 1378 (N.D.

25
26
27 ⁶ Class Counsel calculated the lodestar based on each of the following: 1) the *Laffey* Matrix, 2) “reasonable” fees for
28 partners as approved by Judge Dale A. Drozd, 3) actual hourly billed rates charged to Class Counsel’s hourly clients, 4)
“reasonable” associate rates approved by Judge Dale A. Drozd, and 5) rates identified by this Court as “reasonable” in
connection with its PAO. JDB Dec. ¶¶ 134-140.

1 Cal. 1989) (noting “Where attorneys must depend on a lodestar approach there is little incentive to
2 arrive at an early settlement.”).

3 Here, a multiplier to Class Counsel’s lodestar is justified based on the substantial monetary
4 results obtained through a timely Settlement and the contingent risk assumed by Counsel, who agreed
5 to represent Plaintiffs and the Class with no guarantee of payment. Indeed, a district court “*must*
6 apply a risk multiplier to the lodestar ‘when (1) attorneys take a case with the expectation they will
7 receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there
8 is evidence that the case was risky. Failure to apply a risk multiplier in cases that meet these criteria
9 is an abuse of discretion.’” *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016), quoting *Stanger*
10 *v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (emphasis in original, internal quotation
11 marks omitted). In this matter, Class Counsel took on this matter with an expectation that at least a
12 modest risk enhancement would be applied to any fee request. Accordingly, a reasonable multiplier is
13 appropriate. Depending on the reasonable hourly rates used, multipliers between 1.58 and 4.24 are
14 necessary to reach the 33.33% common fund recovery sought. Class Counsel acknowledges 4.24 is
15 on the high end of acceptable multipliers, but suggests it is not “so far outside” the normal range of 1
16 to 4 to render the \$1,000,000 fee request unreasonable. The fact all recent Amazon wage and hour
17 class action settlements were afforded a 33.33% fee is considerably more reflective of the
18 reasonableness of the Class Counsel’s request than a 4.24 multiplier is indicative of potential
19 unreasonableness—the fact Class Counsel managed the litigation efficiently and thus expended less
20 hours and accumulated a lower lodestar should not be used to punish Class Counsel, particularly in
21 light of the objectively beneficial results obtained and the absence of any objections to the \$1,000,000
22 fee award by Participating Settlement Class Members.⁷ Considering all the circumstances, the
23 common fund fee request is reasonable and appropriate and it should be approved.

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25
26
27 ⁷ To the extent the Court remains uncomfortable with application of a 4.24 multiplier, Class Counsel requests a 3.86
28 multiplier—equivalent to that afforded in the *Boone* Matter—be applied. This would result in a fee award of
\$910,926.22, which is just over 30% of the GSF (30.36%). JDB Dec. ¶ 151. Given the results obtained, upward
departure from the 25% benchmark at least to that amount is reasonable.

1 **F. Class Counsel’s Out-of-Pocket Expenses Are Reasonable and Compensable From the**
2 **Common Fund.**

3 The Settlement allows Class Counsel to request reimbursement for the out-of-pocket expenses
4 they incurred during this litigation in the reasonable amount of no more than \$30,000. SA ¶ 2.
5 Reimbursement of incurred expenses is appropriate for the same reason attorneys’ fees should be paid
6 out of the fund: all beneficiaries should bear their fair share of the costs of the litigation, and these are
7 normal costs that counsel traditionally bill their paying clients. See *Serrano*, 20 Cal. 3d 35 (common
8 fund doctrine permits class counsel to recover attorneys’ fees and costs from the fund as a whole);
9 *Rider v. County of San Diego*, 11 Cal.App.4th 1410, 1423 n.6 (Cal. 4th Dist. 1992) (costs are
10 recoverable from the common fund “[o]f necessity, and for precisely the same reasons discussed above
11 with respect to the recovery of attorney fees”); *Earley*, 79 Cal.App.4th 1436; see also *Harris v.*
12 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

13 Class Counsel incurred \$24,642.43 in actual out-of-pocket expenses—less than the \$30,000
14 contemplated at the time of Settlement. JDB Dec. ¶ 154, Exh. 4. The costs to be reimbursed are
15 routinely reimbursed litigation costs typically charged to fee-paying clients, including filing fees,
16 process server fees, court reporter fees, postage, computerized legal research charges, travel expenses,
17 expert fees, mediation expenses, etc. See also *Harris*, 24 F.3d 19 (attorneys may recover reasonable
18 expenses typically billed to paying clients in non-contingency cases). These costs were necessarily
19 incurred and are reasonable in relation to the size and scope of the case and should be reimbursed.

20 **G. The Class Representative Enhancement Payments for the Class Representatives Are**
21 **Reasonable.**

22 The Court should also affirm its preliminary approval of Class Representative Enhancement
23 Payments in the amount of \$10,000 for Kryzhanovskiy and \$7,500 for Salazar as the amounts are just,
24 fair, and reasonable. Courts regularly approve incentive awards so that class representatives can “be
25 compensated for the expense or risk they have incurred in conferring a benefit on other members of the
26 class.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1394 (Cal. 5th Dist. 2010)
27 (quoting *Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 806 (Cal. 6th Dist. 2009)); see also
28 *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 725-26 (Cal. 1st Dist. 2004) (upholding service

1 payments to class representatives); *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal.App.4th 399,
2 412 (Cal. 2d Dist. 2010).

3 In deciding whether to approve an enhancement payment, a court should consider: “(1) the risk
4 to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and
5 personal difficulty encountered by the class representative; (3) the amount of time and effort spent by
6 the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof)
7 enjoyed by the class representative as a result of the litigation.” *In re Cellphone Fee Termination*
8 *Cases*, 186 Cal.App.4th 1394-95 (internal quotation marks omitted); see also *Van Vranken v. Atlantic*
9 *Richfield Co.*, 901 F.Sup. 294, 299 (N.D. Cal. 1995) (applying similar factors to evaluate service
10 payments).

11 All of the factors support the requested Enhancement Payments. The sought payments are (a) in
12 line with amounts commonly awarded by courts in similar wage and hour class actions;⁸ (b)
13 collectively less than 1% (0.58%) of the \$3,000,000 GSF, and (c) fair, reasonable and appropriate under
14 the circumstances of this case. Here, both Plaintiffs took on substantial risk in bringing this class action
15 and exposed themselves to negative notoriety and personal difficulties associated with serving as a
16 named plaintiff in wage and hour litigation. First, Plaintiffs bore the significant financial risk of
17 Defendants’ costs in the event she lost at trial. Declaration of Leilani Kryzhanovskiy (Dkt. 61-4) ¶ 20.
18 This financial risk, in a complex employment class action involving more than 3300 current and former
19 employees, could easily total tens of thousands of dollars. The risks also included, but were not limited
20 to, damage to their professional reputations. *Id.* ¶¶ 18-19. It is well established plaintiffs in the
21 employment context “face[] the risk that new employers would learn that they were class
22 representatives in a lawsuit against their former employer and take adverse action against them.

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24
25 ⁸ See e.g. *Bond v. Ferguson Enterprises, Inc.*, 2011 WL 2648879 (E.D. Cal. 2011) (approving \$11,250 service award each
26 to two class representatives in a meal break class action); *Vasquez*, 266 F.R.D. at 493 (approving service awards of \$10,000
27 each from a \$300,000 settlement in a wage and hour class action); *Castellanos v. Pepsi Bottling Group, Inc.*, No.
28 RG07332684 (Alameda Cnty. Super. Ct., March 11, 2010 (approving incentive award of \$12,500 in a wage and how- class
action); *Louie v. Kaiser Found. Health Plan, Inc.*, 2008 WL 4473183 *2 (S.D. Cal. 2008) (approving “\$25,000 incentive
award for each Class Representative” in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL
1687832, at *17 n.8 (N.D. Cal. 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive
awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class”).

1 Moreover, each time they change jobs, they will risk retaliation in the hiring process.” *Asare v. Change*
2 *Grp. of N.Y., Inc.*, 2013 WL 6144764 *15 (S.D.N.Y. 2013).

3 Plaintiffs, who worked diligently with Class Counsel throughout this entire litigation, including
4 taking numerous calls, assisting Class Counsel in responding to formal discovery requests, being
5 personally available and actively participating in the full-day remote mediation, providing information,
6 documents, and consultation, and providing input during the protracted settlement negotiations, should
7 be rewarded for taking the initiative to pursue these claims on behalf of their coworkers, and for their
8 roles in reaching a substantial settlement providing for valuable monetary relief to the Class.

9 Kryzhanovskiy has devoted more than eighty (80) hours of time to actively participating in the
10 litigation—Salazar has spent 25 hours—and each should be compensated accordingly. Kryzhanovskiy
11 Dec. ¶ 14; Declaration of Patricia Salazar (Dkt. 57-4) ¶ 10. By actively pursuing this action, Plaintiffs
12 furthered the twin California public policy goals of enforcing the Labor Code and making appropriate
13 use of the class action device. *Sav-on Drug Stores, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 340 (Cal. 2004).

14 The reasonableness of the requested Class Representative Enhancement Payments are further
15 confirmed by the fact that ***not a single Settlement Class Member objected to them.***

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court should grant the instant motion and award Class Counsel
18 attorneys’ fees on a common fund basis in the amount of 33.33% of the GSF (\$1,000,000), costs of
19 \$24,642.43, and reaffirm Class Representative Enhancement payments to Kryzhanovskiy and Salazar
20 of \$10,000 and \$7,500.

21 **DATED: August 6, 2024**

MAYALL HURLEY P.C.

22
23 By /s/ Jenny D. Baysinger

JENNY D. BAYSINGER

ROBERT J. WASSERMANN

Attorneys for Plaintiff and the Settlement Class
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 2 **ROBERT J. WASSERMANN (SBN: 258538)**
rwassermann@mayallaw.com
 3 **JENNY D. BAYSINGER (SBN: 251014)**
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 5 **Telephone (209) 477-3833**
Facsimile: (209)473-4818
 6 **Website: www.mayallaw.com**

7 **Attorneys for Plaintiffs LEILANI KRYZHANOVSKIY and PATRICIA SALAZAR,**
 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**
 13 **others similarly situated, and as a proxy for**
the LWDA;

Case No.: 2:21-cv-01292-MCE-KJN

DECLARATION OF MARK S. ADAMS IN
SUPPORT OF FINAL APPROVAL, FEES,
COSTS AND SERVICE PAYMENTS

14 **Plaintiff,**

15 **v.**

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

20 **Defendants.**

21
 22 I, Mark S. Admas, Esq., declare as follows:

23 1. I am an attorney licensed to practice law before this Court and the federal and state
 24 courts of California including the Eastern District of California I am over 18 years of age. I am
 25 also a member of the United States Supreme Court Bar. I have personal knowledge of the facts set
 26 forth in this declaration and could and would testify competently to them.

27 2. I have served as a litigation consultant for Mayall Hurley in the above-captioned
 28

1 matter since March 2021. I have expended 66.4 hours on this case to date. During this time, I
2 have participated in numerous calls and a handful of meetings with Robert Wassermann and
3 Plaintiff Leilani Kryzhanovskiy. These calls and meetings have covered a number of topics
4 including, but not limited to, relevant facts, legal issues, appropriate claims, litigation strategy, and
5 settlement strategy for the mediation. My invoice is attached hereto and incorporated herein by
6 reference as an exhibit.

7 3. My current billing rate for litigation consulting in class actions and PAGA
8 representative actions is \$1,057 per hour using the Laffey Matrix. The fees to date are \$70,184.80

9 4. I typically earn more than \$1,500 hour on the average case I settle. However, I get
10 nothing on approximately 5% of my case load.

11 **Experience of Class Counsel**

12 5. I graduated from McGeorge School of Law, University of the Pacific, May 28,
13 1977. I was admitted to the California Bar December 28, 1977.

14 6. From October 1979 until April 2015, I practiced at Mayall Hurley, P.C. I became
15 a shareholder in 1985 and served as a C.F.O. and Vice President of Marketing for more than 15
16 years.

17 7. Shortly after retiring from Mayall Hurley, P.C., I opened the Law Offices of Mark
18 S. Adams where I continue to practice to this day. I maintain an office in Stockton and Burbank. I
19 focus almost exclusively on plaintiff's employment litigation, and also regularly give speeches
20 and teach continuing legal education events, mostly on the topics of employment law and trials.

21 8. I served as the President of the San Joaquin County Bar Association from 1986 to
22 1987 and the California Association of Small Bar Association from 1987-1988. I chaired the Civil
23 Litigation Committee of the S.J.C.B.A and also served on the Judicial Liaison committee.

24 9. I received the President's Award from the Association of Defense Counsel of
25 Northern California and Nevada in 2004. I also served as a Board Member from 1995 to 2004.

26 10. I served as a Board Member for the California Defense Counsel from 1999 to 2010.

27 11. I am a member of the Sacramento Valley Chapter of the American Board of Trial
28

1 Advocates (Rank of Advocate requiring 50 or more jury trials.)

2 12. I have been a member of the California Employment Lawyers Association for more
3 than a decade.

4 13. I have been selected as a “Northern California Super Lawyer” by Super Lawyers
5 Magazine in the field of Labor and Employment, recognizing top-rated practicing attorneys every
6 year since 2014. I am AV rated by Martindale-Hubbell.

7 14. In my nearly 47 years of practice, I have acquired substantial experience in complex
8 civil jury trials in the areas of employment discrimination, wrongful termination, wage and hour
9 cases, civil rights, insurance bad faith, and serious injuries.

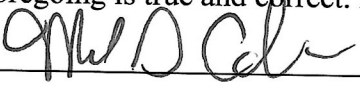
10 15. I have tried fifty-eight (58) jury trials in eight different counties. Notable trials and
11 results include, but are not limited to:

- 12 a. A judgment in excess of \$500,000 for a client in Los Angeles County Superior
13 Court following an eight-day jury trial in a same sex harassment discrimination
14 case against the law firm Proskauer Rose LLP, one of the U.S.’s 50 largest law
15 firms;
- 16 b. 38 defense verdicts following a three-month long trial involving nineteen (19)
17 homes claiming \$7,500,000 in damages against the Port Commission for alleged
18 nuisance and trespass and inverse condemnation. *Chargin v. Stockton Port*
19 *District*, San Joaquin County Superior Court.
- 20 c. A \$600,000 settlement against CNA, one of the Stockton Port District’s insurance
21 carriers, following a coverage dispute case in the Eastern District of California,
22 Sacramento.
- 23 d. I was co-counsel in Herum v Behr Products, a class action coordinated in San
24 Joaquin County with the Heller Ehrman Law Firm partners Paul Sugarman and
25 Anna McClean representing defendant. The case settled for approximately
26 \$40,000,000.

27 16. In addition, Mayall Hurley and Ms. Kryzhanovskiy agreed that I would receive 10% of
28

1 the attorney fees awarded by the court to Mayall Hurley, in compliance with California
2 Rule of Professional Conduct Rule 1.5.1. See the attached agreement.
3

4 I declare under penalty of perjury under the laws of the United States and the State of
5 California that the foregoing is true and correct. Executed on August 6, 2024, at Stockton, CA. .

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7 MARK S. ADAMS
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Tax ID 47-3834433

Law Offices of Mark S. Adams
3031 W. March Ln. Suite 120
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Telephone (209) 481-3485
FAX (209) 956-0640

LEILANI KRYZHANOVSKIY (CLASS ACTION)
270 RAVENWOOD WAY
LODI, CA 95240

In the matter of: KRYZHANOVSKIY V. AMAZON - CONTINGENCY
For Professional Services Rendered

Invoice #1 for Mark S. Adams

Re: *Kryhanovskiy v. California Fulfillment Center dba Amazon*

MSA 03/16/21 Phone call and Meeting with client to discuss new case against Amazon 1.7 hr.

MSA 03/17/21 Meeting with client to discuss case and referral to Robert Wasserman for possible class action against Amazon 2.6 hr.

MSA 03/18/21 Research recent Viking River Case and California cases re allowing PAGA to proceed arb. Agreement impact 3.4 hr.

MSA 3/22/21 Research jury instructions on issues of liability 3.8 hr.

MSA 3/31/21 Phone call with Wasserman to discuss new case against Amazon .8 hr.

MSA 4/6/21 Research Cal. Rule of Court 1.5.1 re paying referral fee 1.6 hr.

MSA 5/26/21 Review and consult with Robert Wasserman re LWDA letter from .7 hr.

MSA 7/14/21 Review and consult with Baysinger and Wasserman re current draft of complaint 2.8 hr.

MSA 08/16/21 Reviewing 62 page first amended complaint 2.6 hr. and phone conf with Jenny and Robert .3 hr

MSA 09/14/21 consult with Robert re motion to dismiss .7 hr,

MSA 09/15/21 Receive and review Defendant's Motion to Dismiss and review cited cases 3.8 hr

MSA 04-24-22 Review interogs to plaintiff set #1 .8 hr.

MSA 04-24-22 Review RFP set #1 from defendant to plaintiff (61) requests 2.4 hr.

MSA 06/17/22 Review defendant's answers and objections to interrogatories first set 1.8 hr.

MSA 06/17/22 Review defendant's responses to Request for Admission set #1 .1.1 hr.

MSA 06/18/22 Review defendant's responses to RFP set #1 and approximately 200 pages of documents 4.8 hr.

MSA 7/10/22 review latest draft of responses to request to produce documents and our production 2.1 hr

MSA 7/14/22 Review draft answers to interogs.. to plaintiff from defendant set #1 .6 hr.

MSA 09/11/22 Review Inc. and LLC responses to interrogatories set #2 .5 hr.

MSA 02.18/23 Review defendants responses/objections to RFP set #2 .2 hr.

MSA 02/18/23 Review defendant answer to plaintiff interrogatories set #3 .2 hr.

MSA 07/25/23 Review Adolph v. Uber decision of the California Supreme Court and its effect on Paga claims like ours 1.8 hr.

MSA 08/16/23 Review 48 page Santa Clara County complaint of Sanchez v. Amazon 1.5 hr.

MSA 08/17/23 Review docket items from Romanov v. Amazon including preliminary and final approval 3.2 hr.

MSA 08/17/23 Review the Valencia case v Amazon 1.1 hr.

MSA 08/18/23 Review the Zuleta and Gomez class against suits against Amazon including 42 page complaint 1.7 hr.

MSA 08/19/23 Review the Romero Complaint from Alameda County 39 page doc . 1.3 hr.

MSA 08/22/23 Review/edit mediation brief for mediation with Lisa Klerman 1.0 hr.
MSA 08/27/23 Prep for mediation 1.8 hr.
MSA 08/31/23 call re progress at mediation .3
MSA10/08/23 review MOU and emails to and from Jenny Baysinger re same 1.7 hr.
MSA 10/12/23 Review Jenny Baysinger letter to Labor and Workforce Development Agency
.3 hr.
MSA 12/08/23 Review long form settlement agreement and confer with Robert 1.9 hr.
12/16/23 review final of motion for preliminary approval of settlement and supporting
declaration of Jenny Baysinger 1.8hr.
MSA 01-19-24 Read and review the new Cal Supreme Court decision in Estrada v. Royal
Carpet Mills re no power to dismiss PAGA claims on manageability basis 1.8 hr.
MSA 02/22/24 Review Judge McAuliffe's amended findings and recommendations in the
Trevino Case.1.7 hr.
MSA 03/07/24 Emails to and from Robert re declaration .3hr
MSA 04/17/24 Review signed 40 page order of preliminary approval of class settlement 1.5
hr. ,
MSA May and June 2024; receive and review two opt outs from class members .3 hr.
MSA 08/02/24 Receive and review Baysinger papers re final approval .8 hr.
MSA 08/05/24 Update invoice and declaration for final approval .8 hr.
MSA 08/06/24 emails to and from Baysinger re final approval docs. .3hr.
MSA 08/06/24 Phone call to Baysinger re declaration .2 hr.

Total Hours for MSA 66.4 Hours X Laffey Matrix hourly rate of \$1,057

Total Amount Due \$70,184.80