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Interim Settlement Class Counsel

[Additional Counsel Appear on Signature Page]

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

20 PETER MOSES GUTIERREZ, JR.,
21 *et al.*,

22 Plaintiffs,

23 v.

24 AMPLIFY ENERGY CORP., *et al.*,

25 Defendants.

Case No. 8:21-CV-01628-DOC(JDEx)

**CLASS COUNSEL’S
SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
APPROVAL OF ATTORNEYS’
FEES, EXPENSES, AND SERVICE
AWARDS UNDER RULE 23(H)**

26 Date: September 14, 2023
27 Time: 8:30 a.m.
28 Judge: David O. Carter
Room: 10A

1 Class Counsel respectfully submit this supplemental memorandum in support
2 of their motion for attorneys' fees, expenses, and class representative service
3 awards. Dkt. 756. This supplemental memorandum reports on Class members' very
4 positive response to the Settlement and Class Counsel's request, and respectfully
5 requests an additional \$8,405.90 in expenses previously omitted.

6 The \$45 million non-reversionary Settlement before the Court provides
7 Fisher, Property, and Waterfront Tourism Class members meaningful recoveries of
8 the damages they incurred as a result of the Spill. Dkt. 739-2 ("Settlement"). The
9 Settlement is fair, adequate, and reasonable. Following the extensive notice
10 program, not a single Class member has objected to the substance of the Settlement,
11 to the requested fee and cost award, or to the requested class representative service
12 awards.

13 For their work in securing this excellent result on behalf of the Classes, Class
14 Counsel seek \$11,250,000 in fees. The fees sought here are based on time separate
15 from those sought related to the settlement with the Amplify Defendants. As set
16 forth in Class Counsel's initial memorandum in support of the requested fee award,
17 this request for 25% of the Settlement's total value is strongly supported by each of
18 the relevant factors under Ninth Circuit law. *See generally* Dkt. 756. *First*, the
19 recovery provides significant monetary relief to the Settlement Classes (on top of
20 the separate monetary and injunctive relief already achieved for the same
21 Settlement Class Members by the same counsel in the Amplify settlement). *Second*,
22 the Settlement Classes would have faced serious litigation risks and delays had they
23 continued to litigate against the Shipping Defendants, which mounted a spirited
24 defense and are represented by sophisticated and experienced counsel. *Third*, Class
25 Counsel applied their considerable experience and skill in litigating this case on
26 behalf of the Settlement Classes against the Shipping Defendants, including very
27 significant and complex additional litigation after settlement with Amplify. *Fourth*,
28 Class Counsel pursued this case purely on a contingency basis. *Fifth*, the requested

1 25 percent fee request is a modest request in comparison with similar settlements.
 2 *Finally*, the requested 25 percent fee results in a multiplier of approximately 2.23,
 3 which is in the middle of the range considered presumptively reasonable in this
 4 Circuit. Considered together with the lodestar accrued and fees awarded in the
 5 settlement with Amplify, the total multiplier for the requested fees would be a
 6 modest 1.63. In sum, given the quality of the Settlement and the risks undertaken
 7 by Class Counsel, an award of 25 percent of the Settlement Funds is appropriate.

8 The Court-approved notice disseminated to the Class indicated that Class
 9 Counsel would not seek a fee in excess of 25% of the Settlement.¹ Critically, no
 10 Class member objected to the fee request stated in the Class Notices. The absence
 11 of objections strongly supports the reasonableness and fairness of Class Counsel’s
 12 request. *See Gutierrez v. Stericycle, Inc.*, No. LA CV15-08187 JAK (JEMx), 2019
 13 WL 12470143, at *8 (C.D. Cal. Mar. 22, 2019) (finding class counsel’s requested
 14 fee appropriate “in light of the absence of any objections by members of the
 15 Class”); *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC (CTx), 2008 WL
 16 11338161, at *15 (C.D. Cal. June 9, 2008) (“[T]hat no Class members [] have
 17 manifested any disapproval of the fee request further supports its reasonableness.”);
 18 *Nevarez v. Forty Niners Football Co., LLC*, 474 F. Supp. 3d 1041, 1051 (N.D. Cal.
 19 2020) (considering the fact that there were “no objections” as a factor in justifying
 20 Plaintiffs’ lodestar).² Likewise, no Class members filed objections to the requested
 21 class representative service awards, which were also disclosed in the Class Notice.

22
 23
 24 ¹ See Dkt. 739-5, Declaration of Gina Intrepido-Bowden Regarding Proposed
 Shipping Defendants Settlement Notice Plan (“Intrepido-Bowden Decl. ISO
 Notice”) Exs. B-D, ¶ 8 (“Class Counsel will apply to the Court for fees of up to
 25 25% of the Settlement . . . plus . . . expenses.”).

26 ² *Cf. In re Amgen Inc. Sec. Litig.*, No. CV 7-2536 PSG (PLAx), 2016 WL
 10571773, at *5 (C.D. Cal. Oct. 25, 2016) (finding class counsel’s fee request
 27 reasonable after overruling three objections); *Fernandez v. Victoria Secret Stores,
 LLC*, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *13 (C.D. Cal. July
 28 21, 2008) (“Only three class members objected and only twenty-nine opted out.
 This indicates that counsel achieved a favorable result for the class, which in turn
 suggests that they are entitled to a generous fee.”).

1 See Dkt. 773-2, Supplemental Declaration of Gretchen Eoff, ¶ 15; Dkt. 739-5,
2 Intrepido-Bowden Decl. ISO Notice, at Exs. B-D, ¶ 8.

3 Class Counsel also sought \$1,134,254.91 to reimburse costs spent on behalf
4 of the Class in order to secure the Settlement, based on expenses separate from
5 those sought related to the settlement with the Amplify Defendants. In their prior
6 request, Class Counsel incidentally omitted or had not yet received four invoices for
7 costs related to court reporters, expert witnesses, and Plaintiffs' document
8 discovery platform. These invoices total \$8,405.90, and will all be paid from the
9 Common Fund that Class Counsel maintained in connection with the prosecution
10 and settlement of this case. See Ex. A, Supplemental Declaration of Lexi J. Hazam,
11 attached hereto. These expenses were reasonably and necessarily incurred in Class
12 Counsel's efforts to prosecute the claims on behalf of the Classes, they are
13 commercially reasonable, and they are reflected on the books and records of Class
14 Counsel. See *id.* Class Counsel respectfully request that the Court award
15 reimbursement of these \$8,405.90 in costs in addition to the \$1,134,254.91
16 previously requested, for a total of \$1,142,660.81 in costs.

17 In addition to the time and expenses Class Counsel have dedicated to this
18 matter already, they will continue their efforts on behalf of the Class all the way
19 through the complete administration of the Settlement. This ongoing effort and
20 commitment further demonstrates the propriety of the fee and cost award and, as
21 noted, has and will continue to result in a reduction of the multiplier on Class
22 Counsel's lodestar.

23 **CONCLUSION**

24 Class Counsel have achieved an extraordinary recovery for the Classes in an
25 incredibly hard-fought, difficult, and risky case. After receiving notice of the
26 requested fee award, no member of any Class objected, evidencing the
27 reasonableness of the requested award. For these reasons, and those articulated in
28 Class Counsel's opening memorandum, Class Counsel respectfully request that the

1 Court grant their motion for \$11,250,000 in attorneys’ fees; \$1,142,660.81 in
2 litigation expenses (the amount previously requested plus the additional \$8,405.90
3 requested here); and \$7,500 to each of the seventeen Class Representatives.³

4
5 Dated: August 28, 2023

Respectfully submitted,

/s/ Lexi J. Hazam

Lexi J. Hazam

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Interim Settlement Class Counsel

28 ³ Plaintiffs attach an amended proposed order to address the lack of objections and requested reimbursement of additional costs.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

PETER MOSES GUTIERREZ, JR.,
et al.,

Plaintiffs,

v.

AMPLIFY ENERGY CORP., *et al.*,

Defendants.

Case No. 8:21-CV-01628-DOC(JDEx)

**[AMENDED PROPOSED] ORDER
GRANTING ATTORNEYS' FEES,
EXPENSES, AND SERVICE
AWARDS UNDER RULE 23(H)**

Judge: David O. Carter
Room: 10A

1 Before the Court is a motion for attorneys’ fees, expenses, and class
2 representative service awards related to a class action settlement reached between
3 Class Plaintiffs and Shipping Defendants.¹ See Dkt. 739-2 (the proposed
4 “Settlement”). The Court conducted a fairness hearing on September 14, 2023.
5 Having considered the moving papers and the information provided at the hearing,
6 the Court GRANTS the motion for attorneys’ fees, costs, and Class Representative
7 service awards.

8 **I. BACKGROUND**

9 This litigation arises from an oil spill in the San Pedro Bay on or around
10 October 1, 2021. Class Plaintiffs allege that in January 2021, two container ships,
11 the *M/V Beijing* and *M/V MSC Danit*, struck and dragged their anchors over
12 Amplify’s San Pedro Bay Pipeline.² Plaintiffs allege that damage from those strikes
13 caused the pipeline to rupture. When the pipeline ruptured, oil spilled into the
14 Pacific Ocean and spread along the coast of Orange County. See Dkt. 454 ¶¶ 2, 4,
15 12-14.

16 In the aftermath of the oil spill, and as early as October 4, 2021, certain
17 plaintiffs filed the first of many class action complaints against Amplify. On
18 December 20, 2021, this Court consolidated many of the cases into this lead case,
19 *Gutierrez, et al. v. Amplify Energy, et al.*, and administratively closed all related
20 cases. See Dkt. 38. The Court invited attorneys to apply for leadership positions on
21 behalf of plaintiffs and, after briefing and oral presentations to the Court, appointed
22 Wiley Aitken of Aitken*Aitken*Cohn, Stephen Larson of Larson LLP, and Lexi

23
24 ¹ The “Shipping Defendants” are: Capetanissa Maritime Corporation, Costamare
25 Shipping Co., S.A., V.Ships Greece Ltd., and the *M/V Beijing* (collectively,
26 “Capetanissa”) and Dordellas Finance Corp., MSC Mediterranean Shipping Co.
SA, Mediterranean Shipping Co. S.r.l., MSC Shipmanagement Ltd., and *MSC*
Danit (collectively, “Dordellas”). See Dkt. 739-2, ¶ 1. Unless otherwise stated,
capitalized terms have the definitions set forth in the Settlement Agreement.

27 ² Amplify” refers collectively to Amplify Energy Corporation, Beta Operating
28 Company, LLC, and San Pedro Bay Pipeline Company, the three Defendants that
own and operate the San Pedro Bay Pipeline.

1 Hazam of Lief Cabraser Heimann & Bernstein LLP as Interim Co-Lead Counsel.
2 *Id.* at 3.

3 After this Court consolidated separately filed class actions into this lead case,
4 Interim Co-Lead Counsel filed a consolidated amended class action complaint in
5 early 2022. Dkt. 102. Plaintiffs have subsequently amended. Plaintiffs’ operative
6 pleading in this lead case is now the 110-page Second Amended Consolidated
7 Complaint (“SAC”), filed on October 4, 2022. Dkt. 454.

8 Plaintiffs brought claims against the Shipping Defendants for negligence,
9 public nuisance, negligent interference with prospective economic advantage,
10 trespass, continuing private nuisance, violation of California’s Unfair Competition
11 Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, respondeat superior, and
12 enforcement of maritime lien *in Rem.* See Dkt. 454 ¶¶ 273-389. The Shipping
13 Defendants each moved to dismiss Plaintiffs’ claims for a variety of reasons,
14 including that maritime law barred their claims. See Dkts. 467, 469.

15 The Parties conducted substantial discovery. The Class Representatives
16 collected 8 GB of data for search and review responsive to the Shipping
17 Defendants’ requests. Dkt. 739-1, ¶ 25. Plaintiffs obtained and reviewed more than
18 180,000 documents from the Shipping Defendants, including numerous highly
19 technical documents relating to ship engineering and navigation. *Id.* Plaintiffs
20 cross-noticed and participated in the depositions of more than 40 witnesses around
21 the world, including at ports of call in Europe. *Id.* Plaintiffs also participated in the
22 inspections of the *M/V Beijing*, the oil platform that controlled the pipeline at the
23 location and time of the spill, and the pipeline during its removal. *Id.* Plaintiffs
24 developed several maritime experts and worked with various liability experts. *Id.*
25 This discovery-related work included This discovery work included many disputes
26 argued between Plaintiffs and the Shipping Defendants before the Special Master
27 Panel (“SMP”) appointed by the Court to oversee discovery. Dkt. 38, § IV.

28 Plaintiffs also managed the interplay between this action and a related action

1 brought by certain of the Shipping Defendants under the Limitation of Liability Act
2 of 1851, 46 U.S.C. §§ 30502, *et seq.* See *In the Matter of the Complaint of*
3 *Dordellas Finance Corp. Owner and MSC Mediterranean Shipping Company S.A.,*
4 *Owner pro hac vice*, No. 2:22-cv-02153-DOC-JDE (C.D. Cal.) (“Limitation
5 Action”); see also *In re the Matter of the Complaint of Capetanissa Maritime*
6 *Corporation*, No. 2:22-cv-03462-DOC-JDE (C.D. Cal.). The Parties engaged in
7 significant additional litigation in the Limitation Action, including briefing
8 regarding whether Plaintiffs’ claims should proceed in this action or the Limitation
9 Action, whether any claims should be stayed, whether class claims could be
10 maintained in the Limitation Action, the sufficiency of the Limitation Action
11 notice, and the scope of the Limitation Action trial. See Dkt. 739 at 4-7 (detailing
12 this briefing).

13 Apprised of the facts of this case, the Parties then engaged in settlement
14 negotiations.

15 In advance of the mediation, Plaintiffs engaged some of the same experts that
16 survived *Daubert* challenges in similar litigation, *Andrews v. Plains All American*
17 *Pipeline, L.P.*, No. 2:15-cv-04113-PSG (C.D. Cal.), a similar class action lawsuit
18 on behalf of businesses and property owners harmed by a Southern California oil
19 spill. These experts include an expert in the field of real estate damages, an
20 economist, and a marine scientist, who submitted confidential preliminary reports
21 for purposes of mediation to support Plaintiffs’ claims and damages. Dkt. 739-1, ¶
22 26. The Parties exchanged and submitted detailed mediation statements addressing
23 liability and damages, including expert reports and rebuttal reports. See Dkt. 739-4
24 (Declaration of Layn R. Phillips), ¶ 6. As the mediator recognized, substantial work
25 went into mediation preparation, and the mediation involved complex issues that
26 required significant thought. *Id.* ¶¶ 6, 11.

27 Under the proposed Settlement, the Shipping Defendants will pay \$45
28 million total, with \$30.6 million paid to the Fisher Class, \$8.1 million to the

1 Property Class, and \$6.3 million to the Waterfront Tourism Class. *See* Settlement at
2 §§ II.16, 28, 41, III. These amounts, together with interest earned thereon, will
3 constitute the Fisher, Property, and Waterfront Tourism Class Common Funds,
4 respectively. *Id.* § II.14, 26, 39. No portion of the combined \$45 million will revert
5 to the Shipping Defendants. After deduction of notice-related costs and any Court-
6 approved award of attorneys’ fees, reimbursement of litigation expenses, and
7 service awards to Class Representatives, all of the remaining monies will be
8 distributed to the Class members in accordance with Plaintiffs’ proposed Plans of
9 Distribution, which were filed with the Court on June 26, 2023. Dkt. 752.

10 This Court granted preliminary approval to the Shipping Defendants
11 Settlement on June 15, 2023. Dkts. 750, 751. After considering the factors set forth
12 in Fed. R. Civ. P. 23(g), this Court appointed Interim Co-Lead Counsel Wylie A.
13 Aitken, Lexi J. Hazam, and Stephen Larson as Interim Settlement Class Counsel.
14 Dkt. 751, ¶ 4.

15 Plaintiffs now move for an order approving the requested attorneys’ fees,
16 expenses, and service awards.

17 **II. ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS**

18 Plaintiffs move for (1) \$11.25 million in attorneys’ fees, representing 25% of
19 the Settlement Funds, (2) reimbursement of \$1,142,660.81 in litigation costs
20 incurred by Class Counsel, and (3) service awards of \$7,500 to each Class
21 Representative. *See* Plaintiffs’ Notice of Motion and Motion for Attorneys’ Fees,
22 Expenses, and Service Awards Under Rule 23(H) (“Fees Mot.”) at 1. The Court
23 addresses each request in turn.

24 **A. Attorneys’ Fees**

25 **1. Legal Standard**

26 Awards of attorneys’ fees in class action cases are governed by Federal Rule
27 of Civil Procedure 23(h), which provides that, after a class has been certified, the
28 court may award reasonable attorneys’ fees and nontaxable costs. The court “must

1 carefully assess” the reasonableness of the fee award. *Staton v. Boeing Co.*, 327
2 F.3d 938, 963 (9th Cir. 2003).

3 Where litigation leads to the creation of a common fund, courts can
4 determine the reasonableness of a request for attorneys’ fees using either the
5 common fund method or the lodestar method. *See In re Bluetooth Headset Prods.*
6 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). “Because the benefit to the class is
7 easily quantified in common-fund settlements,” courts may “award attorneys a
8 percentage of the common fund in lieu of the often more time-consuming task of
9 calculating the lodestar.” *Id.* The Court will analyze Interim Settlement Class
10 Counsel’s fee request under both theories, starting with the percentage-of-the-
11 common-fund theory, and then a lodestar-cross-check.

12 2. Discussion

13 The “benchmark” percentage for attorney’s fees in the Ninth Circuit is 25%
14 of the common fund with costs and expenses awarded in addition to this amount.
15 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). “However, in
16 most common fund cases, the award exceeds that [25%] benchmark.” *Spencer-*
17 *Ruper v. Scientiae, LLC*, No. 819CV01709DOCADS, 2021 WL 4895740, at *1
18 (C.D. Cal. Sept. 24, 2021) (Carter, J.) (citing *Omnivision*, 559 F. Supp. 2d 1036,
19 1047 (N.D. Cal. 2007) (citing *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378
20 (N.D. Cal. 1998))). “Absent extraordinary circumstances that suggest reasons to
21 lower or increase the percentage, the rate should be set at 30%.” *Omnivision*, 559 F.
22 Supp. 2d at 1048.

23 Here, Interim Settlement Class Counsel requests that the court approve a fee
24 award of \$11.25 million, or 25% of the gross Settlement amount. Fees Mot. 1. The
25 fee request is fully supported by the factors enunciated in *Vizcaino*, as explained
26 below.

27 The common fund approach is also endorsed by California law, a relevant
28 consideration given that many of the Settlement Classes’ claims are brought under

1 this State’s law. *See Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 503 (2016)
2 (endorsing percentage of the fund approach and affirming an award equal to one-
3 third of the common fund).

4 **a. Percentage-of-the-Common-Fund Method**

5 The selection of a percentage must “take into account all of the
6 circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. When assessing the
7 reasonableness of a fee award under the common fund theory, courts consider
8 factors such as (1) the results achieved, (2) the risk of litigation, (3) the complexity
9 of the case and skill required, (4) the benefits beyond the immediate generation of a
10 cash fund, and (5) awards made in similar cases. *Omnivision*, 559 F. Supp. 2d at
11 1046; *Vizcaino*, 290 F.3d at 1048-50).

12 **i. Results Achieved**

13 “The overall result and benefit to the class from the litigation is the most
14 critical factor in granting a fee award.” *Omnivision*, 559 F. Supp. 2d at 1046.

15 The Court finds that the monetary relief here is a strong result for the Class in
16 light of the costs and risks of delay of litigation. As detailed in Plaintiffs’ motions
17 for settlement approval, the non-reversionary \$45 million Settlement provides
18 Settlement Class Members with substantial monetary relief on its own. When
19 viewed in combination with the \$50 million monetary relief achieved in the
20 settlement with Amplify, the \$95 million represents a substantial portion of the
21 Classes’ estimated damages. *See* Dkt. 739-4 (Phillips Decl.), ¶ 13; *see also id.*
22 (“Based on my experience as a litigator, a former U.S. District Judge and a
23 mediator, I believe that the Settlement represents a recovery and outcome that is
24 reasonable and fair for the Settlement Classes I further believe it was in the best
25 interests of the parties that they avoid the burdens and risks associated with taking a
26 case of this size and complexity to trial, particularly given the added complication
27 of the Limitation Action and its potential impact on the claims. I strongly support
28 the Court’s approval of the Settlement in all respects.”).

1 Further, the Court recognizes the overwhelmingly positive reaction from the
2 Class—no Class Member has filed an objection to the Settlement or the fee request.
3 *See* 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:58 (6th ed.)
4 (“If the class contains particularly significant class members . . . who do not object,
5 those class members’ acquiescence may be more meaningful.”). The lack of
6 objections to the Settlement and to Class Counsel’s request for fees provides a
7 compelling argument that the results obtained are meaningful to the Class and that
8 Class members appreciate the Class Counsel’s work achieving them. *Jenson v.*
9 *First Tr. Corp.*, No. CV 05-3124 ABC (CTx), 2008 WL 11338161, at *15 (C.D.
10 Cal. June 9, 2008) (“[T]hat no Class members that have manifested any disapproval
11 of the fee request further supports its reasonableness.”).

12 Accordingly, the Court finds that the result obtained for the Class supports
13 the reasonableness of the requested award.

14 **ii. Risk of Litigation**

15 “The risk that further litigation might result in Plaintiffs not recovering at all,
16 particularly [in] a case involving complicated legal issues, is a significant factor in
17 the award of fees.” *Spencer-Ruper*, 2021 WL 4895740, at *2 (citing *Omnivision*,
18 559 F. Supp. 2d at 1046-47).

19 The Court finds that the risk of continued litigation supports the requested
20 benchmark fee. Litigation against the Shipping Defendants—a constellation of
21 companies from across the globe—was complicated and risky. The Shipping
22 Defendants each moved to dismiss Plaintiffs’ claims for a variety of reasons,
23 including that maritime law barred their claims. *See* Dkts. 467, 469. Those motions
24 were still pending when the parties settled.

25 Plaintiffs also faced the challenges associated with the Limitation Action and
26 the related trial that had been approaching at the time of settlement. If the Ships had
27 proven at that trial that they were not liable for the oil spill, or that their damages
28 should be limited, Class Plaintiffs would have either recovered nothing or

1 potentially significantly less than their full damages—especially considering that
2 Amplify would have also claimed very significant damages in any concursus
3 related to any limited funds identified in the Limitation Action. If the Court had
4 granted limitation, Plaintiffs also faced the challenge of demonstrating that a class
5 claim was proper in a Limitation Action—which the Shipping Defendants had
6 strenuously opposed and which this Court had not yet decided.

7 Even if Plaintiffs had prevailed on every measure in the Limitation Action
8 and it was dismissed, Plaintiffs would then still face the gauntlet of prevailing on
9 class certification, *Daubert*, summary judgment, liability and damages at trial, and
10 an inevitable appeal. Each of these would be hotly contested. The Shipping
11 Defendants would also likely seek to shift liability onto Amplify. And even if
12 Plaintiffs secured a complete victory at a merits trial on both liability and damages,
13 it is a near certainty that the Shipping Defendants would engage in “vigorous post-
14 trial motion practices . . . and likely appeals to the Ninth Circuit—delaying any
15 recovery for years.” *Baker v. SeaWorld Ent., Inc.*, No. 14-CV-02129-MMA-AGS,
16 2020 WL 4260712, at *7 (S.D. Cal. July 24, 2020).

17 For these reasons, “the risks of continued litigation not only support the
18 Settlement, the result obtained for the Class also supports the reasonableness of the
19 requested fees.” *See Spencer-Ruper*, 2021 WL 4895740, at *2.

20 **iii. Complexity of the Case and Skill Required**

21 The Court also considers the skill required to prosecute and manage this
22 litigation, as well as Class Counsel’s overall performance. *See Omnivision*, 559 F.
23 Supp. 2d at 1047.

24 As this Court recognized in appointing Interim Settlement Class Counsel as
25 Interim Co-Lead Counsel at the beginning of this hard-fought litigation, Interim
26 Settlement Class Counsel has a depth of experience handling class actions and other
27 complex litigation, including “litigation involving similar facts and issues to those
28 in th[is] case,” they engaged in significant work “investigating potential claims in

1 this action,” and they have knowledge of the laws at issue in this case, including
2 environmental law. *See* Dkt. 38 (appointing Interim Co-Lead Counsel).

3 The Court finds that Interim Settlement Class Counsel deftly applied their
4 legal skills and abilities to this litigation and settlement. The interplay between this
5 action and the Limitation Action required significant research, strategizing, and
6 briefing to navigate in order to maintain the claims of the three Settlement Classes.
7 *See* Dkt. 739 at 4-7 (detailing Limitation Action-related litigation). Interim
8 Settlement Class Counsel also engaged in extensive discovery, collecting an
9 producing enormous amounts of data and documents, reviewing and interpreting
10 understand voluminous and highly-technical documents from Defendants,
11 participating in depositions of more than 40 witnesses around the world, and
12 participating in inspections of one of the container ships, the oil platform that
13 controlled the pipeline at the location and time of the spill, and the pipeline itself
14 during removal. Dkt. 739-1, ¶ 25. Plaintiffs also retained and worked with experts
15 related both to liability and damages, in fields including marine science, real estate
16 damages, and economics. *Id.* ¶ 26.

17 Interim Settlement Class Counsel also successfully handled this litigation
18 against a multitude of Defendants with significant financial and legal resources,
19 represented by prominent litigation firms. *See In re Am. Apparel, Inc. S’holder*
20 *Litig.*, No. 10-cv-6352, 2014 WL 10212865, at *22 (C.D. Cal. July 28, 2014) (“In
21 addition to the difficulty of the legal and factual issues raised, the court should also
22 consider the quality of opposing counsel as a measure of the skill required to
23 litigate the case successfully.”).

24 The Court agrees that the skill displayed by Interim Settlement Class Counsel
25 in prosecuting this case and obtaining a favorable settlement supports their
26 requested award.

27 **iv. Settlement Class Counsel’s undertaking of this**
28 **case on a contingency-fee basis supports the**
requested fees.

1 “The Ninth Circuit has long recognized that the public interest is served by
2 rewarding attorneys who undertake representation on a contingent basis by
3 compensating them for the risk that they might never be paid for their work.”
4 *Spencer-Ruper*, 2021 WL 4895740, at *3(citing *In re Washington Pub. Power*
5 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

6 Interim Settlement Class Counsel bore not insignificant risks to achieve this
7 result. Interim Settlement Class Counsel took the case purely on contingency,
8 devoting thousands of hours and advancing hundreds of thousands of dollars in
9 litigation expenses, all with no guarantee of reimbursement. Fees Mot. at 10. In so
10 doing, Interim Settlement Class Counsel “turn[ed] down opportunities to work on
11 other cases to devote the appropriate amount of time, resources, and energy
12 necessary to responsibly handle this complex case.” *In re Volkswagen “Clean*
13 *Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at *3 (N.D.
14 Cal. Mar. 17, 2017).

15 This factor also strongly supports Interim Settlement Class Counsel’s
16 requested fee.

17 **v. Awards Made in Similar Cases**

18 A court should also consider fee awards from similar cases. *Vizcaino*, 290
19 F.3d at 1049-50. The requested fee is equal to the Ninth Circuit’s “benchmark,” and
20 in fact is lower than the fees often awarded in similar cases. *See Beaver v. Tarsadia*
21 *Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *10 (S.D. Cal. Sept.
22 28, 2017) (citing several cases awarding 33%). Indeed, in another oil spill case
23 along the California coast, the court awarded a 32% fee. *See Andrews v. Plains All*
24 *Am. Pipeline L.P.*, No. CV154113PSGJEMX, 2022 WL 4453864, at *4 (C.D. Cal.
25 Sept. 20, 2022) (awarding a 32% fee and citing cases awarding up to 42% in fees).
26 This Court awarded a 25% fee for the similar settlement with Amplify, and notably
27 none of the class members there—who are the same as the class members here—
28 objected to that fee request. *See* Dkt. 726 at 8.

1 The requested fee is also below a traditional contingency fee, which further
2 supports its reasonableness. *Vinh Nguyen v. Radiant Pharms. Corp.*, No. SACV 11-
3 00406 DOC, 2014 WL 1802293, at *9 (C.D. Cal. May 6, 2014) (Carter, J.)
4 (awarding 28% in fees, noting that 28% is “commensurate with, and even slightly
5 below, a traditional contingency fee) (citing *Blum v. Stenson*, 465 U.S. 886, 904,
6 (1984) (“In tort suits, an attorney might receive one-third of whatever amount the
7 plaintiff recovers.”).

8 Thus, the requested 25 percent award is consistent with fee awards in class
9 action cases generally, and compares favorably with percentages approved in
10 similar cases. Accordingly, this factor clearly supports Interim Settlement Class
11 Counsel’s requested fee.

12 **b. Lodestar Cross-Check**

13 The lodestar method is a way for the Court to cross-check the reasonableness
14 of a fee award. Courts sometimes employ a “streamlined” lodestar analysis to
15 “cross-check” the reasonableness of a requested award. *Vizcaino*, 290 F.3d at 1050.
16 “[W]hile the primary basis of the fee award remains the percentage method, the
17 lodestar may provide a useful perspective on the reasonableness of a given
18 percentage award.” *Id.* “The aim is to do rough justice, not to achieve auditing
19 perfection.” *In re Apple Inc. Device Performance Litig.*, No. 18-md-2827,, 2021
20 WL 1022866, at *7 (N.D. Cal. Mar. 17, 2021) (citation omitted); *see also In re*
21 *Capacitors Antitrust Litig.*, No. 17-md-2801, 2018 WL 4790575, at *6 (N.D. Cal.
22 Sept. 21, 2018) (holding that a lodestar cross-check does not require “mathematical
23 precision [or] bean-counting”).

24 In the Ninth Circuit, a multiplier ranging from 1.0 to 4.0 is considered
25 “presumptively acceptable.” *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334
26 (N.D. Cal. 2014); *Vizcaino*, 290 F.3d at 1051 n.6 (finding most multipliers range
27 from 1.0–4.0).

28 Here, the lodestar cross-check reveals that the requested fee is eminently

1 reasonable: the resulting multiplier is comfortably in the middle of the acceptable
2 range. First, Interim Settlement Class Counsel devoted a substantial number of
3 hours to the litigation specifically against the Shipping Defendants. Fees Mot. at
4 11-12. Interim Settlement Class Counsel confirms they did not submit any hours in
5 support of this fee request in support of the fee requested for the Amplify
6 settlement. *Id.*

7 Second, Class Counsel's rates are consistent with market rates in their area.
8 *See, e.g., Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983,
9 at *14 (N.D. Cal. Dec. 18, 2018) (rates from \$650 to \$1,250 for partners or senior
10 counsel, \$400 to \$650 for associates); *In re Volkswagen "Clean Diesel" Mktg.,*
11 *Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at
12 *5 (N.D. Cal. Mar. 17, 2017) (billing rates ranging from \$275 to \$1600 for partners,
13 \$150 to \$790 for associates, and \$80 to \$490 for paralegals found to be reasonable);
14 *see also* No. 15-cv-4922, *Dickey v. Advanced Micro Devices, Inc.*, 2020 WL
15 870928, at *8 (N.D. Cal. Feb. 21, 2020) (approving rates between \$275 and \$1,000
16 for attorneys); *In re Lidoderm Antitrust Litig.*, No. 14-md-2521, 2018 WL 4620695,
17 at *2 (N.D. Cal. Sept. 20, 2018) (approving rates between \$300 and \$1,050). This
18 Court recently approved the same rates in granting the fee request relating to the
19 Amplify settlement. Dkt. 726 at 12-13.

20 The resulting lodestar of \$5,035,745.40 yields a modest multiplier of 2.23 for
21 work performed to date related to the Shipping Defendants settlement. This
22 multiplier is in the middle of the "presumptively acceptable range of 1.0-4.0" in this
23 Circuit. *Dyer*, 303 F.R.D. at 334; *see also Vizcaino*, 290 F.3d at 1051 n.6
24 (approving 3.65 multiplier); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 13-cv-
25 5693, 2017 WL 4685536, at *9 (C.D. Cal. May 8, 2017) (approving multiplier of
26 up to 2.5). And the multiplier will only decrease as Interim Settlement Class
27 Counsel continue to work on the approval and implementation of this proposed
28 Settlement. Allocation to attorneys of any fees awarded as a multiplier will be

1 determined by Interim Co-Lead Counsel.

2 The reasonableness of the requested fee is also evident when this Settlement
3 is considered together with the Amplify settlement, where the total requested 25%
4 fee yields a total multiplier of 1.63.

5 This factor supports Interim Settlement Class Counsel’s requested 25 percent
6 fee, and demonstrates that such a fee will not result in a “windfall” to Counsel.

7 For the above reasons, the Court finds that the requested benchmark fee is
8 reasonable and GRANTS Interim Settlement Counsel’s Motion for Fees of \$11.25
9 million.

10 **B. Litigation Expenses**

11 Class Counsel may “recover their reasonable expenses that would typically
12 be billed to paying clients in non-contingency matters.” *Brown v. CVS Pharmacy,*
13 *Inc.*, No. 15-cv-7631, 2017 WL 3494297, at *9 (C.D. Cal. Apr. 24, 2017) (citation
14 omitted); *see also Staton v. Boeing*, 327 F.3d 938, 974 (9th Cir. 2003); Fed. R. Civ.
15 P. 23(h). This includes expenses that are reasonable, necessary, and directly related
16 to the litigation. *See Willner v. Manpower Inc.*, No. 11-cv-2846, 2015 WL
17 3863625, at *7 (N.D. Cal. June 22, 2015).

18 Here, Interim Settlement Class Counsel established a joint cost fund to
19 manage the bulk of the hard costs incurred, such as for depositions, transcripts,
20 expert fees, and mediation expenses. Fees Mot. at 13. Combined with each firm’s
21 held costs, the total costs for which Class Counsel seek reimbursement is
22 \$1,134,254.91. *Id.* Interim Settlement Class Counsel confirms that none of the costs
23 requested here were requested or reimbursed in the Amplify settlement. *Id.*

24 These costs benefited the Settlement Classes and are commensurate with the
25 stakes, complexity, novelty, and intensity of this particular litigation. Interim
26 Settlement Class Counsel expended costs on the typical categories, *e.g.*, experts,
27 document management systems, mediation fees, and necessary travel, in addition to
28 soft costs attributable to the litigation. *Id.* at 14. While this highly technical case

1 was expensive to prosecute, “[Interim Settlement] Class Counsel had a strong
2 incentive to keep expenses at a reasonable level due to the high risk of no recovery
3 when the fee is contingent.” *Beesley v. Int’l Paper Co.*, No. 06-cv-703, 2014 WL
4 375432, at *3 (S.D. Ill. Jan. 31, 2014).

5 The Court is satisfied that the costs are reasonable, and therefore GRANTS
6 Plaintiffs’ motion for costs in the amount of \$1,142,660.81.

7 **C. Service Awards for Class Representatives**

8 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W.*
9 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). In addition to any settlement
10 distributions they receive, the Court-appointed Class Representatives request
11 service awards of \$7,500 to compensate them for the time and effort they spent
12 pursuing this matter on behalf of their respective Classes. Courts have discretion to
13 approve service awards based on the amount of time and effort spent, the duration
14 of the litigation, and the personal benefit (or lack thereof) as a result of the
15 litigation. *See, e.g., Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D.
16 Cal. 1995). Each of these Class Representatives searched for and provided facts
17 used to compile the Complaints, helped Interim Settlement Class Counsel analyze
18 claims, produced voluminous documents that were responsive to discovery requests
19 both by Amplify and by the Shipping Defendants, provided information to respond
20 to written discovery requests served by the Shipping Defendants, and reviewed and
21 approved the proposed Settlement. They each have submitted declarations further
22 explaining the time and effort they expended to benefit the class. Fees Mot. at 14.

23 Service awards of \$7,500 or larger are often awarded in this Circuit. *See, e.g.,*
24 *In re Wells Fargo & Co. S’holder Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D.
25 Cal. 2020) (granting \$25,000 service awards to each institutional investor plaintiff);
26 *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.* (“*In*
27 *re NCAA*”), No. 14-md-2541, 2017 WL 6040065, at *11 (N.D. Cal. Dec. 6,
28 2017), *aff’d*, 768 F. App’x 651 (9th Cir. 2019) (awarding each of the four class

1 representatives \$20,000 service awards); *Garner v. State Farm Mut. Auto. Ins. Co.*,
2 No. 08-cv-1365, 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010)
3 (collecting Ninth Circuit cases with service awards of \$20,000 or higher); *Boyd v.*
4 *Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *7 (C.D. Cal.
5 Nov. 18, 2014) (Carter, J.) (awarding a service award of \$15,000).

6 If considered together with the \$10,000 service awards granted by this Court
7 for the Class Representatives' total service awards would amount to \$17,500 each
8 (out of a total \$95 million recovery), which is still below the amount often awarded
9 in this Circuit. *See In re NCAA*, 2017 WL 6040065, at *11 & n.69 (citing several
10 cases awarding between \$20,000 and \$120,000), *aff'd*, 768 F. App'x 651 (9th Cir.
11 2019). Awarding multiple, separate service awards for successive settlements in the
12 same litigation is also appropriate. *See In re High-Tech Emp. Antitrust Litig.*, No.
13 11-CV-02509-LHK, 2015 WL 5158730, at *17 (N.D. Cal. Sept. 2, 2015) (awarding
14 \$80,000–\$120,000 to each class representative on top of \$20,000 awarded to each
15 for prior settlements).

16 Moreover, a \$7,500 service award to each of the seventeen Class
17 Representatives amounts to a total payment of \$127,500, or less than .3 percent of
18 the gross Settlement amount. This is well within the range the Ninth Circuit has
19 found reasonable. *Staton*, 327 F.3d at 976-77.

20 Accordingly, the Court GRANTS Plaintiffs' request for service awards in the
21 amount of \$7,500 per Plaintiff, for a total of \$127,500.

22 **III. CONCLUSION**

23 For the reasons stated above, Plaintiffs' motion for approval of attorneys'
24 fees, expenses, and incentive awards is GRANTED. Accordingly, it is HEREBY
25 ORDERED AS FOLLOWS:

- 26 1. Class Counsel is awarded 25 percent of the total settlement amount, or
27 \$11.25 million, in attorneys' fees and \$1,142,660.81 in costs.
- 28 2. Each of the seventeen Class Representatives is awarded \$7,500 in

1 service awards.

2 3. The Court finds that these amounts are warranted and reasonable for
3 the reasons set forth in the moving papers before the Court, at the Final Approval
4 Hearing, and the reasons stated in this Order.

5

6 IT IS SO ORDERED.

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8 Dated: _____

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Hon. David O. Carter

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EXHIBIT A

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Interim Settlement Class Counsel

14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18
19 PETER MOSES GUTIERREZ, JR., *et al.*,

20 Plaintiffs,

21 v.

22 AMPLIFY ENERGY CORP., *et al.*,

23 Defendants.

Case No. 8:21-CV-01628-DOC(JDEx)

**SUPPLEMENTAL DECLARATION
OF LEXI J. HAZAM IN SUPPORT
OF MOTIONS FOR FINAL
SETTLEMENT APPROVAL, PLANS
OF DISTRIBUTION, AND
ATTORNEYS' FEES AND COSTS**

24 Date: September 14, 2023
25 Time: 8:30 a.m.
Judge: David O. Carter
26 Courtroom: 10A

1 I, Lexi J. Hazam, declare:

2 1. I am a partner in the law firm of Lief, Cabraser, Heimann &
3 Bernstein, LLP (“LCHB” or “Lief Cabraser”), and serve as Court-appointed
4 Interim Settlement Class Counsel (“Class Counsel”) for the Plaintiffs in this action.
5 I have personal knowledge of the facts set forth in this Declaration based on my
6 day-to-day participation in the prosecution and settlement of this case, and, if called
7 as a witness, could and would testify competently to them.

8 2. I submit this declaration in support of Plaintiffs’ motions for final
9 approval of the proposed Settlement and for approval of the Plans of Distribution,
10 as well as Interim Settlement Class Counsel’s motion for an award of attorneys’
11 fees, expenses, and class representative service awards.

12 3. Class Counsel previously sought \$1,134,254.91 to reimburse costs
13 spent on behalf of the Class in order to secure the Settlement, based on expenses
14 separate from those sought related to the settlement with the Amplify Defendants.
15 See Dkt. 756. In their prior request, Class Counsel incidentally omitted or had not
16 yet received four invoices for costs related to court reporters, expert witnesses, and
17 Plaintiffs’ document discovery platform. These invoices total \$8,405.90. These
18 expenses were not previously submitted or reimbursed in the Amplify settlement.

19 4. As reported in my prior declaration in support of this motion, Dkt. 757
20 at ¶ 33, Class Counsel maintained a Common Fund for expenses incurred during
21 the course of this litigation, which was managed by Lief Cabraser at my direction.
22 The three Interim Co-Lead Counsel firms all made contributions to the Common
23 Fund at periodic intervals as costs were incurred. Lief Cabraser maintained the
24 books and records for the Common Fund and disbursed monies to cover case
25 expenses as needed.

26 5. The \$8,405.90 in additional expenses reported here will be paid from
27 the Common Fund that Class Counsel maintained in connection with the
28 prosecution and settlement of this case. The total case expenses for the Common

1 Fund, including the additional \$8,405.90 requested here, are presented in summary
2 form in Exhibit 1, attached to this declaration.

3 6. These expenses were reasonably and necessarily incurred in Class
4 Counsel's efforts to prosecute the claims on behalf of the Classes, they are
5 commercially reasonable, and they are reflected on the books and records of Class
6 Counsel. These are the type of expenses typically billed by attorneys to paying
7 clients and reflect the actual costs of these services.

8 7. The Common Fund and other expenses were advanced by Class
9 Counsel and the other firms working on behalf of the Classes with no guarantee of
10 recovery. As a result, Class Counsel had a strong incentive to keep costs to a
11 reasonable level and did so.

12 8. In addition to the \$1,134,254.91 in costs previously requested by Class
13 Counsel, the additional \$8,405.90 in costs requested here result in a total of
14 \$1,142,660.81 in requested costs.

15 I declare under penalty of perjury under the laws of the State of California
16 that the foregoing is true and correct.

17 Executed on August 28, 2023, in San Francisco, California.

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/s/ Leif Hagan

EXHIBIT 1

Gutierrez v. Amplify Energy Corp., No. 8:21-CV-01628-DOC(JDEx)
Shipping Case Portion - Cost Fund Expenses Summary

Category	Amount
Court Reporters	\$175,295.71
Expert Witness Fees	\$212,757.11
Mediator Charges	\$49,447.54
Document Discovery Platform	\$283,560.77
Special Masters Panel Fees	\$257,875.31
Total Common Fund Costs	\$978,936.44