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15 *[Additional Counsel Appear on Signature Page]*

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

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

21 Plaintiffs,

22 v.

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

24 Defendants.

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

25 **PLAINTIFFS' NOTICE OF**  
26 **MOTION AND MOTION FOR**  
27 **ATTORNEYS' FEES, EXPENSES,**  
28 **AND SERVICE AWARDS UNDER**  
**RULE 23(H)**

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

1 TO ALL THE PARTIES AND COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 14, 2023, at 8:30 a.m., or as  
3 soon thereafter as the matter may be heard by the Honorable David O. Carter in  
4 Courtroom 10A of the above-entitled court, located at 411 West Fourth Street,  
5 Santa Ana, California, 92701, Plaintiffs, for themselves and on behalf of all others  
6 similarly situated, will and hereby do move the Court, pursuant to Rule 23 of the  
7 Federal Rules of Civil Procedure, for an Order:

- 8 A. Approving the request for attorneys' fees to Interim Settlement Class  
9 Counsel in the amount of \$11,250,000, or 25% of the Settlement  
10 Funds achieved with the Shipping Defendants;<sup>1</sup>  
11 B. Approve reimbursement of litigation expenses of \$1,134,254.91; and  
12 C. Approve service awards of \$7,500 to each of the seventeen Class  
13 Representatives (*see* Settlement Agreement (Dkt. 739-2, ¶¶ 2-4)) for  
14 the time and effort they spent pursuing this matter on behalf of the  
15 Settlement Classes, for a total of \$127,500.

16 This motion is based on the attached supporting memorandum; the  
17 accompanying declarations and exhibits; the pleadings, papers, and records on file  
18 in this action, including those submitted in support of Plaintiffs' Motion for Final  
19 Approval; any further papers filed in support of this motion; and arguments of  
20 counsel.

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25 \_\_\_\_\_  
26 <sup>1</sup> The "Shipping Defendants" are: Capetanissa Maritime Corporation, Costamare  
27 Shipping Co., S.A., V.Ships Greece Ltd., and the *M/V Beijing* (collectively,  
28 "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* Settlement Agreement (Dkt. 739-2, ¶ 1).  
Capitalized terms have the definitions set forth in the Settlement Agreement.

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Dated: July 31, 2023

Respectfully submitted,

/s/ Lexi J. Hazam  
Lexi J. Hazam

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14 *Interim Settlement Class Counsel*

15 *[Additional Counsel Appear on Signature Page]*

16 **UNITED STATES DISTRICT COURT**  
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20 **PETER MOSES GUTIERREZ, JR.,**  
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21 **Plaintiffs,**

22 v.

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

24 **Defendants.**

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

25 **PLAINTIFFS' MEMORANDUM OF**  
26 **POINTS AND AUTHORITIES IN**  
27 **SUPPORT OF MOTION FOR**  
28 **ATTORNEYS' FEES, EXPENSES,**  
**AND SERVICE AWARDS UNDER**  
**RULE 23(H)**

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1 **INTRODUCTION**

2 After more than a year of intensive litigation, Plaintiffs, through Court-  
3 appointed Interim Co-Lead Counsel,<sup>1</sup> reached a proposed Settlement<sup>2</sup> with the  
4 Shipping Defendants<sup>3</sup> that will create a \$45 million dollar non-reversionary cash  
5 fund (the “Settlement Fund”) to compensate Settlement Class Members. *See*  
6 *generally* Dkt. 751 (Amended Order Granting Preliminary Approval Order of  
7 Shipping Defendant Settlement). In recognition of their work achieving this  
8 excellent result, Plaintiffs and Interim Settlement Class Counsel respectfully move  
9 the Court to award attorneys’ fees in the amount of 25 percent of the \$45 million  
10 Settlement Fund (\$11,250,000), grant reimbursement of \$1,134,254.91 in litigation  
11 expenses, and award each of the seventeen Class Representatives a service award of  
12 \$7,500 for the time they spent prosecuting this action on behalf of the Settlement  
13 Classes. The fees and costs sought by Interim Settlement Class Counsel here are  
14 based on time and expenses separate from those sought related to the settlement  
15 with the Amplify Defendants.<sup>4</sup> *See* Declaration of Lexi J. Hazam, filed concurrently  
16 herewith (“Hazam Decl.”), ¶¶ 26, 34.

17 Interim Settlement Class Counsel’s request for 25 percent of the Settlement  
18 Fund, equivalent to the Ninth Circuit’s “benchmark” rate, is presumptively  
19 reasonable. *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1006 (9th  
20

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21 <sup>1</sup> “Interim Co-Lead Counsel” and “Interim Settlement Class Counsel” both refer to  
22 the counsel appointed by this Court to lead this litigation for Plaintiffs: Wylie A.  
23 Aitken, Lexi J. Hazam, and Stephen Larson. *See* Dkt. 751 at 3.

23 <sup>2</sup> All capitalized terms used herein have the meaning set forth in the Class Action  
24 Settlement Agreement (“Settlement Agreement” or “Settlement”) (Dkt. 739-2 (Ex.  
25 1 to the Hazam Decl.), unless otherwise indicated.

24 <sup>3</sup> 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.  
27 SA, Mediterranean Shipping Co. S.r.l., MSC Shipmanagement Ltd., and *MSC*  
28 *Danit* (collectively, “Dordellas”). *See* Settlement Agreement (Dkt. 739-2, ¶ 1).

27 <sup>4</sup> “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 Cir. 2002). An analysis of the other factors considered by courts in this Circuit in  
2 assessing fee requests confirms the reasonableness of the request. *First*, the  
3 recovery provides significant monetary relief to the Settlement Classes (on top of  
4 separate monetary and injunctive relief already achieved for the same Settlement  
5 Class Members by the same counsel in the Amplify settlement). *Second*, the  
6 Settlement Classes would have faced serious litigation risks and delays had they  
7 continued to litigate against the Shipping Defendants, which mounted a spirited  
8 defense and are represented by sophisticated and experienced counsel. *Third*,  
9 Interim Settlement Class Counsel applied their considerable experience and skill in  
10 litigating this case on behalf of the Settlement Classes against the Shipping  
11 Defendants, including very significant and complex additional litigation after  
12 settlement with Amplify. *Fourth*, Interim Settlement Class Counsel pursued this  
13 case purely on a contingency basis. *Fifth*, the requested 25 percent fee request is a  
14 modest request in comparison with similar settlements. *Finally*, the requested 25  
15 percent fee results in a multiplier of approximately 2.23 for this settlement, which is  
16 in the middle of the range considered presumptively reasonable in this Circuit.

17 If this \$45 million Settlement with the Shipping Defendants is considered  
18 together with the already-approved \$50 million settlement with Amplify, the total  
19 fee would constitute 25 percent of the combined total recovery, and would result in  
20 a total multiplier of 1.63.

21 In sum, given the quality of the Settlement and the risks undertaken by  
22 Interim Settlement Class Counsel, an award of 25 percent of the Settlement Funds  
23 is appropriate. Notably, this Court approved a 25 percent fee for Interim Settlement  
24 Class Counsel's work achieving the very similar settlement with the Amplify  
25 Defendants, and zero members of the same Settlement Classes objected to that  
26 award. *See* Dkt. 726 at 8.

27 In addition to attorneys' fees, Interim Settlement Class Counsel also  
28 respectfully requests that the Court award reimbursement of \$1,134,254.91 in

1 litigation expenses, all of which were reasonably incurred and necessary for the  
2 prosecution of the case. *See* Argument, § II, *infra*. Finally, the Class  
3 Representatives each seek \$7,500 service awards in recognition of their time and  
4 effort litigating this action on behalf of the Settlement Classes, for a total of  
5 \$127,500. *See* Argument, § III, *infra*.

## 6 BACKGROUND

7 Plaintiffs have detailed the extensive history of this litigation in their  
8 accompanying motion for final approval and the concurrently-filed Hazam  
9 Declaration. In the interest of efficiency, Interim Settlement Class Counsel will not  
10 repeat that history here, but rather incorporate it by reference. In sum, this litigation  
11 was hotly contested for over a year, involved numerous complex and highly  
12 technical factual disputes as well as cutting-edge legal arguments, and settled with  
13 extraordinary quickness.

## 14 ARGUMENT

### 15 **I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND** 16 **APPROPRIATE UNDER THE APPLICABLE STANDARDS.**

17 Pursuant to Federal Rule of Civil Procedure 23(h), courts may award  
18 reasonable attorneys' fees to class counsel. *See also Boeing Co. v. Van Gemert*, 444  
19 U.S. 472, 478 (1980) (“[A] litigant or lawyer who recovers a common fund for the  
20 benefit of persons other than himself or his client is entitled to a reasonable  
21 attorney’s fee from the fund as a whole.”).

22 “Courts consider several factors to determine the appropriate percentage of  
23 the fund to award as attorneys’ fees in a common fund case including (a) the results  
24 achieved; (b) the risk of litigation; (c) the skill required and the quality of work; (d)  
25 the contingent nature of the fee; and (e) awards made in similar cases.” *Spencer-*  
26 *Ruper v. Scientiae, LLC*, No. 819CV01709DOCADS, 2021 WL 4895740, at \*1  
27 (C.D. Cal. Sept. 24, 2021) (Carter, J.) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d  
28 1043, 1047, 1048-50 (9th Cir. 2002)).

1 As detailed below, each of these factors strongly supports Interim Settlement  
2 Class Counsel’s 25 percent fee request. Additionally, and as demonstrated by the  
3 lodestar cross-check, the requested award would not constitute a windfall to Interim  
4 Settlement Class Counsel. The requested fee would constitute a reasonable lodestar-  
5 multiplier of 2.23 for this Settlement with the Shipping Defendants, or a total  
6 multiplier of 1.63 when considered together with the Amplify settlement. Those  
7 multipliers will decrease during the administration of the Settlement. And this fee  
8 request will not result in any double-recovery, as none of the time supporting this  
9 request was submitted in support of the fee request related to the Amplify  
10 settlement.

11 **A. The requested 25% fee is equal to the Ninth Circuit’s**  
12 **“benchmark” and is reasonable under the circumstances.**

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 *Id.* (citing *Vizcaino*, 290 F.3d at 1047). “However, in most common fund cases, the  
16 award *exceeds* that [25%] benchmark.” *Id.* (citing *In re Omnivision Techs.*, 559 F.  
17 Supp. 2d 1036, 1047 (N.D. Cal. 2007) (emphasis added)). “Absent extraordinary  
18 circumstances that suggest reasons to lower or increase the percentage, the rate  
19 should be set at 30%.” *Id.* (citing *Omnivision*, 559 F. Supp. 2d at 1048).

20 “Because the benefit to the class is easily quantified in common-fund  
21 settlements,” courts may “award attorneys a percentage of the common fund in lieu  
22 of the often more time-consuming task of calculating the lodestar.” *In re Bluetooth*  
23 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). “The use of the  
24 percentage-of-the-fund method in common-fund cases is the prevailing practice in  
25 the Ninth Circuit for awarding attorneys’ fees and permits the Court to focus on  
26 showing that a fund conferring benefits on a class was created through the efforts of  
27 plaintiffs’ counsel.” *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2013 WL  
28 7985367, at \*1 (C.D. Cal. Dec. 23, 2013). The percentage-of-the-fund method

1 confers “significant benefits...including consistency with contingency fee  
2 calculations in the private market, aligning the lawyers’ interests with achieving the  
3 highest award for the class members, and reducing the burden on the courts that a  
4 complex lodestar calculation requires.” *Tait v. BSH Home Appliances Corp.*, 2015  
5 WL 4537463, at \*11 (C.D. Cal. July 27, 2015); *see* 5 William B. Rubenstein,  
6 *Newberg on Class Actions* §§ 15:62, 15:65 (5th ed. 2020).<sup>5</sup> The key purpose of the  
7 common fund doctrine is to share the burden of a party’s litigation expenses among  
8 those who benefit from them. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*,  
9 19 F.3d 1291, 1300 (9th Cir. 1994).

10 **1. The substantial benefits to the Class support the requested**  
11 **fees.**

12 The benefits Interim Settlement Class Counsel secured for the Classes are the  
13 most important factor in evaluating the reasonableness of a requested fee.  
14 *Bluetooth*, 654 F.3d at 942; *Omnivision Techs.*, 559 F. Supp. 2d at 1046.

15 The relief here is a strong result for the Class in light of the costs and risks of  
16 delay of litigation. As detailed in Plaintiffs’ Motion for Preliminary Approval, the  
17 non-reversionary \$45 million Settlement provides Settlement Class Members with  
18 substantial monetary relief on its own. When viewed in combination with the \$50  
19 million monetary relief achieved in the settlement with Amplify, the \$95 million  
20 result in under two years is extraordinary. The combined \$95 million represents a  
21 substantial portion of the Classes’ estimated damages. *See* Dkt. 739-4 (Phillips  
22 Decl.), ¶ 13.

23 The outstanding result of the Settlement supports the requested fees.

24  
25  
26 <sup>5</sup> The common fund approach is also endorsed by California law, a relevant  
27 consideration given that many of the Settlement Classes’ claims are brought under  
28 this state’s law. *See Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 503 (2016)  
(endorsing percentage of the fund approach and affirming an award equal to one-  
third of the common fund); *see also Vizcaino*, 290 F.3d at 1047.

1                   **2. The risk of continued litigation supports the requested fees.**

2                   “The risk that further litigation might result in Plaintiffs not recovering at all,  
3 particularly [in] a case involving complicated legal issues, is a significant factor in  
4 the award of fees.” *Spencer-Ruper*, 2021 WL 4895740, at \*2 (C.D. Cal. Sept. 24,  
5 2021) (Carter J.) (citing *Omnivision*, 559 F. Supp. 2d at 1046-47).

6                   Litigation against the Shipping Defendants—a constellation of companies  
7 from across the globe—was complicated and risky from the start. The Shipping  
8 Defendants each moved to dismiss Plaintiffs’ claims for a variety of reasons,  
9 including that maritime law barred their claims. *See* Dkts. 467, 469. Those motions  
10 were still pending when the parties settled.

11                   Plaintiffs also faced the challenges associated with the Limitation Action and  
12 the related trial that had been approaching at the time of settlement. If the Ships had  
13 proven at that trial that they were not liable for the Oil Spill,<sup>6</sup> or that their damages  
14 should be limited, Class Plaintiffs would have either recovered nothing or  
15 potentially significantly less than their full damages—especially considering that  
16 Amplify would have also claimed very significant damages in any concursus  
17 related to any limited funds identified in the Limitation Action. If the Court had  
18 granted limitation, Plaintiffs also faced the challenge of demonstrating that a class  
19 claim was proper in a Limitation Action—which the Shipping Defendants had  
20 strenuously opposed and which this Court had not yet decided.

21                   Even if Plaintiffs had prevailed on every measure in the Limitation Action  
22 and it was dismissed, Plaintiffs would then still face the gauntlet of prevailing on  
23 class certification, *Daubert*, summary judgment, liability and damages at trial, and  
24 an inevitable appeal. Each of these would be hotly contested. The Shipping  
25 Defendants would also likely seek to shift liability onto Amplify. And even if

26 \_\_\_\_\_  
27 <sup>6</sup> “Oil Spill” refers to the “San Pedro Bay Incident” defined in the Settlement as the  
28 release of crude oil from Amplify’s P00547 Pipeline in San Pedro Bay on or about  
October 1–2, 2021.

1 Plaintiffs secured a complete victory at a merits trial on both liability and damages,  
2 it is a near certainty that the Shipping Defendants would engage in “vigorous post-  
3 trial motion practices . . . and likely appeals to the Ninth Circuit—delaying any  
4 recovery for years.” *Baker v. SeaWorld Ent., Inc.*, No. 14-CV-02129-MMA-AGS,  
5 2020 WL 4260712, at \*7 (S.D. Cal. July 24, 2020).

6 In considering the Settlement, Plaintiffs and Interim Settlement Class  
7 Counsel carefully balanced the risks of continuing to engage in protracted and  
8 contentious litigation against the benefits to the Settlement Classes, including the  
9 significant monetary benefit and speed. *See* Dkt. 739-1 (Declaration of Lexi J.  
10 Hazam in support of Preliminary Approval or “Hazam Prelim. Decl.”) ¶ 33.  
11 Furthermore, the Settlement was negotiated with an experienced mediator, who  
12 “strongly support[s] the Court’s approval of the Settlement in all respects.” Dkt.  
13 739-4 (“Phillips Decl.”), ¶ 13.

14 For these reasons, “the risks of continued litigation not only support the  
15 Settlement, the result obtained for the Class also supports the reasonableness of the  
16 requested fees.” *See Spencer-Ruper*, 2021 WL 4895740, at \*2 (Carter, J.).

17 **3. Interim Co-Lead Counsel’s skill and expertise supports the**  
18 **requested fees.**

19 “The ‘prosecution and management of a complex [ ] class action requires  
20 unique legal skills and abilities’ that are to be considered when evaluating fees.”  
21 *See id.* (citing *Omnivision*, 559 F. Supp. 2d at 1047).

22 This case required a high degree of skill and experience to prosecute and  
23 manage. As this Court recognized in appointing Interim Settlement Class Counsel  
24 as Interim Co-Lead Counsel at the beginning of this hard-fought litigation, Interim  
25 Settlement Class Counsel has a depth of experience handling class actions and other  
26 complex litigation, including “litigation involving similar facts and issues to those  
27 in th[is] case,” they engaged in significant work “investigating potential claims in  
28 this action,” and they have knowledge of the laws at issue in this case, including

1 environmental law. *See* Dkt. 38 at 3 (appointing Interim Co-Lead Counsel).

2 Following their appointment, Interim Co-Lead Counsel filed their  
3 Consolidated Amended Complaint to bring claims against the Shipping Defendants,  
4 Dkt. 102, and soon after some of those Shipping Defendants filed petitions under  
5 the Limitation of Liability Act of 1851, 46 U.S.C. §§ 30502, *et seq.*, which were  
6 consolidated into the Limitation Action. The interplay between this action and the  
7 Limitation Action required significant research, strategizing, and briefing to  
8 navigate in order to maintain the claims of the three Settlement Classes. *See* Dkt.  
9 739 at 4-7 (detailing Limitation Action-related litigation, including briefing  
10 regarding the action in which Plaintiffs' claims should proceed, whether any claims  
11 should be stayed, whether class claims could be maintained in a limitation action,  
12 the sufficiency of the Limitation Action notice, and the scope of the Limitation  
13 Action trial).

14 Discovery against the Shipping Defendants was extensive. The Class  
15 Representatives collected 8 GB of data for search and review responsive to the  
16 Shipping Defendants' requests. Hazam Decl., ¶ 15. Plaintiffs obtained and reviewed  
17 more than 180,000 documents from the Shipping Defendants, including numerous  
18 highly technical documents relating to ship engineering and navigation. *Id.*  
19 Plaintiffs cross-noticed and participated in the depositions of more than 40  
20 witnesses around the world, including at ports of call in Europe. Plaintiffs also  
21 participated in the inspections of the *M/V Beijing*, the oil platform that controlled  
22 the pipeline at the location and time of the spill, and the pipeline during its removal.  
23 *Id.* Leading up to the deadline for expert reports, Plaintiffs developed several  
24 maritime experts and worked with various liability experts. *Id.*

25 As to damages, Plaintiffs engaged some of the same experts that survived  
26 *Daubert* challenges in similar litigation, *Andrews v. Plains All American Pipeline,*  
27 *L.P.*, No. 2:15-cv-04113-PSG (C.D. Cal.), a similar class action lawsuit on behalf  
28 of businesses and property owners harmed by a Southern California oil spill. These

1 experts include an expert in the field of real estate damages, an economist, and a  
2 marine scientist, who submitted confidential preliminary reports for purposes of  
3 mediation to support Plaintiffs' claims and damages. Hazam Decl., ¶ 22. The  
4 Parties exchanged and submitted detailed mediation statements addressing liability  
5 and damages, including expert reports and rebuttal reports. *See* Phillips Decl., ¶ 6.  
6 As the mediator recognized, substantial work went into mediation preparation, and  
7 the mediation involved complex issues that required significant thought. *Id.* ¶¶ 6,  
8 11.

9 Finally, Interim Settlement Class Counsel successfully handled this litigation  
10 against a multitude of Defendants with significant financial and legal resources,  
11 represented by prominent litigation firms. "In addition to the difficulty of the legal  
12 and factual issues raised, the court should also consider the quality of opposing  
13 counsel as a measure of the skill required to litigate the case successfully." *In re*  
14 *Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at \*22 (C.D. Cal. July 28,  
15 2014).

16 This factor, too, strongly supports Interim Settlement Class Counsel's  
17 requested fees. *Cf.* Dkt. 726 (recognizing complexity of this case and skill exhibited  
18 by same Interim Settlement Class Counsel in approving 25% fee request in Amplify  
19 settlement).

20 **4. Settlement Class Counsel's undertaking of this case on a**  
21 **contingency-fee basis supports the requested fees.**

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

27 Interim Settlement Class Counsel bore not insignificant risks to achieve this  
28 result. Interim Settlement Class Counsel took the case purely on contingency,

1 devoting thousands of hours and advancing hundreds of thousands of dollars in  
2 litigation expenses, all with no guarantee of reimbursement. Hazam Decl., ¶ 9. In so  
3 doing, Interim Settlement Class Counsel “turn[ed] down opportunities to work on  
4 other cases to devote the appropriate amount of time, resources, and energy  
5 necessary to responsibly handle this complex case.” *In re Volkswagen “Clean  
6 Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at \*3 (N.D.  
7 Cal. Mar. 17, 2017).

8 This factor also strongly supports Interim Settlement Class Counsel’s  
9 requested fee.

10 **5. The requested fee percentage is in line with percentages**  
11 **approved in other cases.**

12 A court should also consider fee awards from similar cases. *Vizcaino*, 290  
13 F.3d at 1049-50. The requested fee is equal to the Ninth Circuit’s “benchmark,” and  
14 in fact is lower than the fees often awarded in similar cases. *See Beaver v. Tarsadia  
15 Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at \*10 (S.D. Cal. Sept.  
16 28, 2017) (citing several cases awarding 33%). Indeed, in another oil spill case  
17 along the California coast, the court awarded a 32% fee. *See Andrews v. Plains All  
18 Am. Pipeline L.P.*, No. CV154113PSGJEMX, 2022 WL 4453864, at \*4 (C.D. Cal.  
19 Sept. 20, 2022) (awarding a 32% fee and citing cases awarding up to 42% in fees).  
20 This Court awarded a 25% fee for the similar settlement with Amplify, and notably  
21 none of the class members there—who are the same as the class members here—  
22 objected to that fee request. *See* Dkt. 726 at 8.

23 The requested 25% fee is also below a traditional contingency fee, which  
24 further supports its reasonableness. *Vinh Nguyen v. Radiant Pharms. Corp.*, No.  
25 SACV 11-00406 DOC, 2014 WL 1802293, at \*9 (C.D. Cal. May 6, 2014) (Carter,  
26 J.) (awarding 28% in fees, noting that 28% is “commensurate with, and even  
27 slightly below, a traditional contingency fee) (citing *Blum v. Stenson*, 465 U.S. 886,  
28 904 (1984) (“In tort suits, an attorney might receive one-third of whatever amount

1 the plaintiff recovers.”)).

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

6 **B. A lodestar cross-check further confirms the reasonableness of the**  
7 **fees requested.**

8 Courts sometimes employ a “streamlined” lodestar analysis to “cross-check”  
9 the reasonableness of a requested award. *Vizcaino*, 290 F.3d at 1050. “[W]hile the  
10 primary basis of the fee award remains the percentage method, the lodestar may  
11 provide a useful perspective on the reasonableness of a given percentage award.”  
12 *Id.* “The aim is to do rough justice, not to achieve auditing perfection.” *In re Apple*,  
13 2021 WL 1022866, at \*7 (citation omitted); *see also In re Capacitors Antitrust*  
14 *Litig.*, 2018 WL 4790575, at \*6 (N.D. Cal. Sept. 21, 2018) (holding that a lodestar  
15 cross-check does not require “mathematical precision [or] bean-counting”).

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

20 Here, the lodestar cross-check reveals that the requested fee is reasonable,  
21 because the resulting multiplier is comfortably in the middle of the acceptable  
22 range. *See* Hazam Decl. (attaching exhibit summarizing time and lodestar);  
23 Declaration of Stephen G. Larson (“Larson Decl.,” filed concurrently herewith)  
24 (attaching exhibits summarizing time and lodestar, including of firms that worked  
25 at the direction of Interim Co-Lead Counsel); Declaration of Wylie A. Aitken,  
26 (“Aitken Decl.,” filed concurrently herewith) (attaching exhibit summarizing time  
27 and lodestar).

28 First, as detailed in the accompanying declarations, Interim Settlement Class

1 Counsel devoted a substantial number of hours to the litigation specifically against  
2 the Shipping Defendants. *See* Hazam Decl., ¶¶ 9, 39. Interim Settlement Class  
3 Counsel took care not to double-count—no hours submitted in support of this fee  
4 request were submitted in support of the fee requested for achieving the Amplify  
5 settlement. *Id.* at ¶ 26. The hours submitted with this motion were important to  
6 achieving the Settlement with the Shipping Defendants, and reflect Interim  
7 Settlement Class Counsel’s careful and thorough work balanced with efforts to  
8 coordinate to gain efficiencies. *Id.* at ¶¶ 25, 28.

9 Second, Class Counsel’s rates are consistent with market rates in their area.  
10 *See* Hazam Decl., ¶¶ 29-30; Larson Decl., ¶¶ 10-11; Aitken Decl., ¶¶ 10-11; *see*  
11 *also Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at  
12 \*14 (N.D. Cal. Dec. 18, 2018) (approving rates from \$650 to \$1,250 for partners or  
13 senior counsel, \$400 to \$650 for associates); *In re Volkswagen “Clean Diesel”*  
14 *Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL  
15 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (approving rates from \$275 to \$1600 for  
16 partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals); *Dickey v.*  
17 *Advanced Micro Devices, Inc.*, 2020 WL 870928, at \*8 (N.D. Cal. Feb. 21, 2020)  
18 (approving rates between \$275 and \$1,000 for attorneys); *In re Lidoderm Antitrust*  
19 *Litig.*, 2018 WL 4620695, at \*2 (N.D. Cal. Sept. 20, 2018) (approving rates  
20 between \$300 and \$1,050). This Court recently approved the same rates in granting  
21 the fee request relating to the Amplify settlement. Dkt. 726 at 12-13.

22 The resulting lodestar of \$5,035,745.40 yields a total multiplier of 2.23 for  
23 work performed to date related to the Shipping Defendants settlement. This  
24 multiplier is in the middle of the “presumptively acceptable range of 1.0-4.0” in this  
25 Circuit. *Dyer*, 303 F.R.D. at 334 (approving 2.83 multiplier); *see also Vizcaino*, 290  
26 F.3d at 1051 (approving 3.65 multiplier); *Flo & Eddie Inc., v. Sirius XM Radio,*  
27 *Inc.*, , 2017 WL 4685536, at \*9 (C.D. Cal. May 8, 2017) (approving multiplier of  
28 up to 2.5). And the multiplier will only decrease as Interim Settlement Class

1 Counsel continue to work on the approval and implementation of this proposed  
2 Settlement. Hazam Decl., ¶ 39.<sup>7</sup> Allocation to attorneys of any fees awarded as a  
3 multiplier will be determined by Interim Co-Lead Counsel.

4 The reasonableness of the requested fee is even clearer when this Settlement  
5 is considered together with the Amplify settlement, where the total requested 25%  
6 fee yields a total multiplier of 1.63.

7 This factor strongly supports Interim Settlement Class Counsel’s requested  
8 25 percent fee, and demonstrates that such a fee will not result in a “windfall” to  
9 Counsel.

10 **II. CLASS COUNSEL’S EXPENSES ARE REASONABLE AND**  
11 **APPROPRIATE.**

12 Class Counsel may “recover their reasonable expenses that would typically  
13 be billed to paying clients in non-contingency matters.” *Brown v. CVS Pharmacy,*  
14 *Inc.*, 2017 WL 3494297, at \*9 (C.D. Cal. Apr. 24, 2017) (citation omitted); *see also*  
15 *Staton v. Boeing*, 327 F.3d 938, 974 (9th Cir. 2003); Fed. R. Civ. P. 23(h). This  
16 includes expenses that are reasonable, necessary, and directly related to the  
17 litigation. *See Willner v. Manpower Inc.*, 2015 WL 3863625, at \*7 (N.D. Cal. June  
18 22, 2015).

19 Here, Interim Settlement Class Counsel established a joint cost fund to  
20 manage the bulk of the hard costs incurred, such as for transcripts, expert fees, and  
21 mediation expenses. Hazam Decl., ¶¶ 33-36. Combined with each firm’s held costs,  
22 the total costs for which Interim Settlement Class Counsel seek reimbursement is  
23 \$1,134,254.91 in costs. *Id.* at ¶ 39. None of the costs requested here were requested  
24 or reimbursed in the Amplify settlement. *Id.* at ¶ 34.

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25 <sup>7</sup> Interim Settlement Class Counsel has already spent more than 300 hours assisting  
26 with implementation of the Amplify settlement after they filed their motion  
27 requesting fees for that settlement, corresponding to more than \$200,000 in  
28 lodestar. This time will not be compensated, and Interim Settlement Class Counsel  
are not claiming it as part of the time submitted for the present fee request. *See*  
Hazam Decl. ¶ 40.

1           These costs benefited the Settlement Classes and are commensurate with the  
2 stakes, complexity, novelty, and intensity of this particular litigation. As indicated  
3 in the accompanying declarations, Interim Settlement Class Counsel expended costs  
4 on the typical categories, *e.g.*, experts, depositions, document management systems,  
5 mediation fees, and necessary travel, in addition to soft costs attributable to the  
6 litigation. *See, e.g.*, Hazam Decl., ¶¶ 34-35, Ex. 2. While this highly technical case  
7 was expensive to prosecute, “[Interim Settlement] Class Counsel had a strong  
8 incentive to keep expenses at a reasonable level due to the high risk of no recovery  
9 when the fee is contingent.” *Beesley v. Int’l Paper Co.*, 2014 WL 375432, at \*3  
10 (S.D. Ill. Jan. 31, 2014).

11           Interim Settlement Class Counsel expended only that which they believed  
12 was necessary to advance the interests of the Classes. The requested costs are  
13 reasonable and should be reimbursed.

14 **III. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS**  
15 **ARE REASONABLE AND WELL-DESERVED.**

16           In addition to any settlement distributions they receive, the Court-appointed  
17 Class Representatives request service awards of \$7,500 to compensate them for the  
18 time and effort they spent pursuing this matter on behalf of their respective Classes.  
19 Courts have discretion to approve service awards based on the amount of time and  
20 effort spent, the duration of the litigation, and the personal benefit (or lack thereof)  
21 as a result of the litigation. *See, e.g., Van Vracken v. Atl. Richfield Co.*, 901 F. Supp.  
22 294, 299 (N.D. Cal. 1995). Each of the Class Representatives here searched for and  
23 provided facts used to compile the Complaints, helped Interim Settlement Class  
24 Counsel analyze claims, produced voluminous documents that were responsive to  
25 discovery requests both by Amplify and by the Shipping Defendants, provided  
26 information to respond to written discovery requests served by the Shipping  
27 Defendants, and reviewed and approved the proposed Settlement. *See Hazam Decl.*,  
28 ¶¶ 42-44.

1 In declarations submitted in support of the Amplify settlement, each Class  
2 Representative estimated the substantial number of hours each had spent on this  
3 case through January 24, 2023. *See* Dkt. 667 Exs. 10-26. The majority of those  
4 hours supported litigation against the Shipping Defendants (as well as Amplify),  
5 and those estimates excluded additional time each Class Representative spent  
6 related to the Shipping Defendants after January 24, 2023.

7 Service awards “are fairly typical in class action cases.” *Rodriguez v. W.*  
8 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Service awards of \$7,500 or  
9 greater are often awarded in this Circuit. *See, e.g., In re Wells Fargo & Co.*  
10 *S’holder Derivative Litig.*, 445 F. Supp. 3d 508, at 534 (N.D. Cal. 2020) (granting  
11 \$25,000 service awards to each institutional investor plaintiff); *In re Nat’l*  
12 *Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.* (“*In re NCAA*”),  
13 2017 WL 6040065, at \*11 (N.D. Cal. Dec. 6, 2017), *aff’d*, 768 F. App’x 651 (9th  
14 Cir. 2019) (awarding each of the four class representatives \$20,000 service awards);  
15 *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at \*17 n.8 (N.D. Cal.  
16 Apr. 22, 2010) (collecting Ninth Circuit cases with service awards of \$20,000 or  
17 higher); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804,  
18 at \*7 (C.D. Cal. Nov. 18, 2014) (Carter, J.) (awarding service award of \$15,000).

19 If considered together with the \$10,000 service awards granted by this Court  
20 for the Class Representatives’ total service awards would amount to \$17,500 each  
21 (out of a total \$95 million recovery), which is still below the amount often awarded  
22 in this Circuit. *See In re NCAA*, 2017 WL 6040065, at \*11 & n.69 (citing several  
23 cases awarding between \$20,000 and \$120,000), *aff’d*, 768 F. App’x 651 (9th Cir.  
24 2019). Awarding multiple, separate service awards for successive settlements in the  
25 same litigation is also appropriate. *See In re High-Tech Emp. Antitrust Litig.*, No.  
26 11-CV-02509-LHK, 2015 WL 5158730, at \*17 (N.D. Cal. Sept. 2, 2015) (awarding  
27 \$80,000–\$120,000 to each class representative on top of \$20,000 awarded to each  
28 for prior settlements).



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*Interim Co-Lead Counsel for Plaintiffs and  
the Proposed Classes*

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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)

**[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.<sup>1</sup> 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.<sup>2</sup> 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

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23  
24 <sup>1</sup> 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.  
27 SA, Mediterranean Shipping Co. S.r.l., MSC Shipmanagement Ltd., and *MSC*  
28 *Danit* (collectively, “Dordellas”). See Dkt. 739-2, ¶ 1. Unless otherwise stated,  
capitalized terms have the definitions set forth in the Settlement Agreement.

<sup>2</sup> Amplify” refers collectively to Amplify Energy Corporation, Beta Operating  
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 \$1,134,254.91 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 Plaintiffs secured a complete victory at a merits trial on both liability and damages,  
2 it is a near certainty that the Shipping Defendants would engage in “vigorous post-  
3 trial motion practices . . . and likely appeals to the Ninth Circuit—delaying any  
4 recovery for years.” *Baker v. SeaWorld Ent., Inc.*, No. 14-CV-02129-MMA-AGS,  
5 2020 WL 4260712, at \*7 (S.D. Cal. July 24, 2020).

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

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

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

13 As this Court recognized in appointing Interim Settlement Class Counsel as  
14 Interim Co-Lead Counsel at the beginning of this hard-fought litigation, Interim  
15 Settlement Class Counsel has a depth of experience handling class actions and other  
16 complex litigation, including “litigation involving similar facts and issues to those  
17 in th[is] case,” they engaged in significant work “investigating potential claims in  
18 this action,” and they have knowledge of the laws at issue in this case, including  
19 environmental law. *See* Dkt. 38 (appointing Interim Co-Lead Counsel).

20 The Court finds that Interim Settlement Class Counsel deftly applied their  
21 legal skills and abilities to this litigation and settlement. The interplay between this  
22 action and the Limitation Action required significant research, strategizing, and  
23 briefing to navigate in order to maintain the claims of the three Settlement Classes.  
24 *See* Dkt. 739 at 4-7 (detailing Limitation Action-related litigation). Interim  
25 Settlement Class Counsel also engaged in extensive discovery, collecting an  
26 producing enormous amounts of data and documents, reviewing and interpreting  
27 understand voluminous and highly-technical documents from Defendants,  
28 participating in depositions of more than 40 witnesses around the world, and

1 participating in inspections of one of the container ships, the oil platform that  
2 controlled the pipeline at the location and time of the spill, and the pipeline itself  
3 during removal. Dkt. 739-1, ¶ 25. Plaintiffs also retained and worked with experts  
4 related both to liability and damages, in fields including marine science, real estate  
5 damages, and economics. *Id.* ¶ 26.

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

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

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

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

23 Interim Settlement Class Counsel bore not insignificant risks to achieve this  
24 result. Interim Settlement Class Counsel took the case purely on contingency,  
25 devoting thousands of hours and advancing hundreds of thousands of dollars in  
26 litigation expenses, all with no guarantee of reimbursement. Fees Mot. at 10. In so  
27 doing, Interim Settlement Class Counsel “turn[ed] down opportunities to work on  
28 other cases to devote the appropriate amount of time, resources, and energy

1 necessary to responsibly handle this complex case.” *In re Volkswagen “Clean*  
2 *Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at \*3 (N.D.  
3 Cal. Mar. 17, 2017).

4 This factor also strongly supports Interim Settlement Class Counsel’s  
5 requested fee.

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

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

18 The requested fee is also below a traditional contingency fee, which further  
19 supports its reasonableness. *Vinh Nguyen v. Radiant Pharms. Corp.*, No. SACV 11-  
20 00406 DOC, 2014 WL 1802293, at \*9 (C.D. Cal. May 6, 2014) (Carter, J.)  
21 (awarding 28% in fees, noting that 28% is “commensurate with, and even slightly  
22 below, a traditional contingency fee) (citing *Blum v. Stenson*, 465 U.S. 886, 904,  
23 (1984) (“In tort suits, an attorney might receive one-third of whatever amount the  
24 plaintiff recovers.”)).

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



1 \*5 (N.D. Cal. Mar. 17, 2017) (billing rates ranging from \$275 to \$1600 for partners,  
2 \$150 to \$790 for associates, and \$80 to \$490 for paralegals found to be reasonable);  
3 *see also* No. 15-cv-4922, *Dickey v. Advanced Micro Devices, Inc.*, 2020 WL  
4 870928, at \*8 (N.D. Cal. Feb. 21, 2020) (approving rates between \$275 and \$1,000  
5 for attorneys); *In re Lidoderm Antitrust Litig.*, No. 14-md-2521, 2018 WL 4620695,  
6 at \*2 (N.D. Cal. Sept. 20, 2018) (approving rates between \$300 and \$1,050). This  
7 Court recently approved the same rates in granting the fee request relating to the  
8 Amplify settlement. Dkt. 726 at 12-13.

9 The resulting lodestar of \$5,035,745.40 yields a modest multiplier of 2.23 for  
10 work performed to date related to the Shipping Defendants settlement. This  
11 multiplier is in the middle of the “presumptively acceptable range of 1.0-4.0” in this  
12 Circuit. *Dyer*, 303 F.R.D. at 334; *see also Vizcaino*, 290 F.3d at 1051 n.6  
13 (approving 3.65 multiplier); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 13-cv-  
14 5693, 2017 WL 4685536, at \*9 (C.D. Cal. May 8, 2017) (approving multiplier of  
15 up to 2.5). And the multiplier will only decrease as Interim Settlement Class  
16 Counsel continue to work on the approval and implementation of this proposed  
17 Settlement. Allocation to attorneys of any fees awarded as a multiplier will be  
18 determined by Interim Co-Lead Counsel.

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

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

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

27 **B. Litigation Expenses**

28 Class Counsel may “recover their reasonable expenses that would typically

1 be billed to paying clients in non-contingency matters.” *Brown v. CVS Pharmacy,*  
2 *Inc.*, No. 15-cv-7631, 2017 WL 3494297, at \*9 (C.D. Cal. Apr. 24, 2017) (citation  
3 omitted); *see also Staton v. Boeing*, 327 F.3d 938, 974 (9th Cir. 2003); Fed. R. Civ.  
4 P. 23(h). This includes expenses that are reasonable, necessary, and directly related  
5 to the litigation. *See Willner v. Manpower Inc.*, No. 11-cv-2846, 2015 WL  
6 3863625, at \*7 (N.D. Cal. June 22, 2015).

7 Here, Interim Settlement Class Counsel established a joint cost fund to  
8 manage the bulk of the hard costs incurred, such as for depositions, transcripts,  
9 expert fees, and mediation expenses. Fees Mot. at 13. Combined with each firm’s  
10 held costs, the total costs for which Class Counsel seek reimbursement is  
11 \$1,134,254.91. *Id.* Interim Settlement Class Counsel confirms that none of the costs  
12 requested here were requested or reimbursed in the Amplify settlement. *Id.*

13 These costs benefited the Settlement Classes and are commensurate with the  
14 stakes, complexity, novelty, and intensity of this particular litigation. Interim  
15 Settlement Class Counsel expended costs on the typical categories, *e.g.*, experts,  
16 document management systems, mediation fees, and necessary travel, in addition to  
17 soft costs attributable to the litigation. *Id.* at 14. While this highly technical case  
18 was expensive to prosecute, “[Interim Settlement] Class Counsel had a strong  
19 incentive to keep expenses at a reasonable level due to the high risk of no recovery  
20 when the fee is contingent.” *Beesley v. Int’l Paper Co.*, No. 06-cv-703, 2014 WL  
21 375432, at \*3 (S.D. Ill. Jan. 31, 2014).

22 The Court is satisfied that the costs are reasonable, and therefore GRANTS  
23 Plaintiffs’ motion for costs in the amount of \$1,134,254.91.

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

25 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W.*  
26 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). In addition to any settlement  
27 distributions they receive, the Court-appointed Class Representatives request  
28 service awards of \$7,500 to compensate them for the time and effort they spent

1 pursuing this matter on behalf of their respective Classes. Courts have discretion to  
2 approve service awards based on the amount of time and effort spent, the duration  
3 of the litigation, and the personal benefit (or lack thereof) as a result of the  
4 litigation. *See, e.g., Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D.  
5 Cal. 1995). Each of these Class Representatives searched for and provided facts  
6 used to compile the Complaints, helped Interim Settlement Class Counsel analyze  
7 claims, produced voluminous documents that were responsive to discovery requests  
8 both by Amplify and by the Shipping Defendants, provided information to respond  
9 to written discovery requests served by the Shipping Defendants, and reviewed and  
10 approved the proposed Settlement. They each have submitted declarations further  
11 explaining the time and effort they expended to benefit the class. Fees Mot. at 14.

12 Service awards of \$7,500 or larger are often awarded in this Circuit. *See, e.g.,*  
13 *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D.  
14 Cal. 2020) (granting \$25,000 service awards to each institutional investor plaintiff);  
15 *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.* (“*In*  
16 *re NCAA*”), No. 14-md-2541, 2017 WL 6040065, at \*11 (N.D. Cal. Dec. 6,  
17 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (awarding each of the four class  
18 representatives \$20,000 service awards); *Garner v. State Farm Mut. Auto. Ins. Co.*,  
19 No. 08-cv-1365, 2010 WL 1687832, at \*17 n.8 (N.D. Cal. Apr. 22, 2010)  
20 (collecting Ninth Circuit cases with service awards of \$20,000 or higher); *Boyd v.*  
21 *Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at \*7 (C.D. Cal.  
22 Nov. 18, 2014) (Carter, J.) (awarding a service award of \$15,000).

23 If considered together with the \$10,000 service awards granted by this Court  
24 for the Class Representatives' total service awards would amount to \$17,500 each  
25 (out of a total \$95 million recovery), which is still below the amount often awarded  
26 in this Circuit. *See In re NCAA*, 2017 WL 6040065, at \*11 & n.69 (citing several  
27 cases awarding between \$20,000 and \$120,000), *aff'd*, 768 F. App'x 651 (9th Cir.  
28 2019). Awarding multiple, separate service awards for successive settlements in the

1 same litigation is also appropriate. *See In re High-Tech Emp. Antitrust Litig.*, No.  
2 11-CV-02509-LHK, 2015 WL 5158730, at \*17 (N.D. Cal. Sept. 2, 2015) (awarding  
3 \$80,000–\$120,000 to each class representative on top of \$20,000 awarded to each  
4 for prior settlements).

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

9 Accordingly, the Court GRANTS Plaintiffs’ request for service awards in the  
10 amount of \$7,500 per Plaintiff, for a total of \$127,500.

11 **III. CONCLUSION**

12 For the reasons stated above, Plaintiffs’ motion for approval of attorneys’  
13 fees, expenses, and incentive awards is GRANTED. Accordingly, it is HEREBY  
14 ORDERED AS FOLLOWS:

15 1. Class Counsel is awarded 25 percent of the total settlement amount, or  
16 \$11.25 million, in attorneys’ fees and \$1,134,254.91 in costs.

17 2. Each of the seventeen Class Representatives is awarded \$7,500 in  
18 service awards.

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

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IT IS SO ORDERED.

Dated: \_\_\_\_\_

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Hon. David O. Carter