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13 *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*  
20 *al.*,

21 Plaintiffs,

22 v.

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

24 Defendants.

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

**DECLARATION OF WYLIE A.  
AITKEN IN SUPPORT OF  
MOTIONS FOR FINAL  
SETTLEMENT APPROVAL, PLANS  
OF DISTRIBUTION, AND  
ATTORNEYS' FEES AND COSTS**

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

1 I, Wylie A. Aitken, declare:

2 1. I am a founding partner of the law firm of Aitken Aitken Cohn  
3 (“Aitken”), and serve as Court-appointed Interim Settlement Class Counsel (“Class  
4 Counsel”) for the Plaintiffs in this action. I have personal knowledge of the facts set  
5 forth in this Declaration based on my day-to-day participation in the prosecution  
6 and settlement of this case, and, if called as a witness, could and would testify  
7 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 **A. Settlement Approval**

13 3. Since being appointed Interim Co-Lead Class Counsel (Dkt. 38), my  
14 co-counsel and I have personally supervised and directed every aspect of the  
15 prosecution and resolution of this litigation on behalf of the Plaintiffs and the  
16 Settlement Classes.

17 4. In my judgment, Class Counsel have the skill and experience to judge  
18 the strengths and weaknesses of the case based on the significant discovery  
19 conducted to date, and as a result of complex mediation sessions that involved  
20 detailed mediation statements and supporting exhibits addressing liability and  
21 damages, including expert reports, rebuttal declarations, and rebuttal expert reports.  
22 As the mediator reported, “[t]he work that went into the mediation statements and  
23 competing presentations and arguments was substantial.” Dkt. 739-4 (Declaration  
24 of Layn Phillips in Support of Plaintiffs’ Motion for Preliminary Approval) ¶ 6.

25 5. It is my judgment and the judgment of all Class Counsel that the  
26 proposed Settlement is an excellent result, readily meets the Rule 23 “fair,  
27 reasonable, and adequate” standard, and is in the best interests of the Classes.  
28 Further, the Plans of Distribution represent a fair and equitable allocation of the

1 settlement proceeds grounded in the classwide damages models Plaintiffs' experts  
2 developed over the course of many years, and that Class Counsel were prepared to  
3 present at trial.

4 **B. Lodestar and Expenses**

5 6. My firm and our fellow Class Counsel litigated this case on a purely  
6 contingent basis, foregoing other work in order to handle this complex matter with  
7 no guarantee of recovery. While Class Counsel request attorneys' fees as a  
8 percentage of each common fund, for the Court's reference, I report Aitken's and  
9 associated Class Counsel's summary time, lodestar, and costs incurred in this  
10 litigation and for the benefit of the settling Classes.

11 7. Plaintiffs seek fees and expenses at this time only for work that was  
12 performed in furtherance of litigation against the Shipping Defendants and  
13 settlement thereof. Class Counsel seek fees and expenses primarily for work that  
14 they performed or authorized to be performed that post-dates the Settlement with  
15 Amplify, in addition to work before that date that specifically relates to the  
16 Shipping Defendants. The lion's share of Class Counsel's time and expenses  
17 submitted in support of this motion date from October 17, 2022 (the date Plaintiffs  
18 filed their motion for preliminary approval of the Amplify settlement, *see* Dkt. 476)  
19 through the date of this motion. Class Counsel have taken care not to submit any  
20 time in support of this motion that was submitted in support of the fee requested for  
21 the Amplify settlement, to avoid any double-counting.

22 8. All Aitken time-keepers are required to contemporaneously record  
23 their time in 6-minute increments. Attorneys working under my supervision audited  
24 my firm's time records to confirm their accuracy. This included removing any time  
25 relating only to the settlement with Amplify and certain hours as a matter of billing  
26 judgment.

27 9. Aitken allocated work to maximize efficiency. To the extent  
28 practicable, senior attorneys did not perform work that could be accomplished by

1 more junior attorneys, and attorneys did not perform work that could be completed  
2 by paralegals.

3 10. Aitken billed the same rates for the litigation and settlement related to  
4 the Shipping Defendants as the rates this Court approved related to the Amplify  
5 settlement. *See* Dkt. 726 at 12-13. These hourly rates charged by Aitken fall within  
6 the range of market rates charged by attorneys of equivalent experience, skill, and  
7 expertise. Aitken's rates reflect the market rates in the markets within which  
8 Aitken's primary offices are located and from which this matter has been handled—  
9 namely, Santa Ana and Riverside. Except in rare circumstances, Aitken does not  
10 bill at different rates for different clients or different types of cases.

11 11. Federal courts have approved rates comparable to the rates requested  
12 here. *See, e.g., Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL  
13 6619983, at \*14 (N.D. Cal. Dec. 18, 2018) (rates from \$650 to \$1,250 for partners  
14 or senior counsel, \$400 to \$650 for associates); *In re Volkswagen "Clean Diesel"*  
15 *Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL  
16 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (billing rates ranging from \$275 to \$1600  
17 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals found to be  
18 reasonable).

19 12. Attached as Exhibit 1 is a true and correct summary lodestar chart  
20 which lists: (1) the name of each Aitken timekeeper who recorded time in this case;  
21 (2) their title or position; (3) the total number of hours they worked on the case; (4)  
22 their current hourly rate; and (5) their lodestar. As reflected in Exhibit 1, the total  
23 number of hours expended in support of the litigation against and settlement with  
24 the Shipping Defendants by Aitken on behalf of the Classes is 872.5. The total  
25 lodestar for my firm for that period is \$958,597.50.

26 13. Attorneys with four other firms also performed work at Class  
27 Counsel's direction on behalf of the Classes. Attached to the concurrently filed  
28 declaration of Stephen G. Larson as Exhibits 2-5 are, for each such firm, (1) the

1 name of each timekeeper who recorded time in this case; (2) their title or position;  
2 (3) the total number of hours they worked on the case; (4) their current hourly rate;  
3 and (5) their lodestar. In sum, those four firms performed the following hours and  
4 lodestar in support of the litigation and settlement with the Shipping Defendants:

5

<u>Exhibit to Larson Declaration</u>	<u>Law Firm</u>	<u>Hours</u>	<u>Lodestar</u>
2	McCune Law Group	1,195.5	\$748,775.00
3	Aqua Terra Aeris Law Group	179.7	\$92,099.00
4	Milberg Coleman Bryson Phillips Grossman, PLLC	169.1	\$95,626.40
5	Cotchett, Pitre & McCarthy, LLP	36.3	\$19,062.50

11

12 14. Class Counsel maintained a Common Fund for expenses incurred  
13 during the course of this litigation, which was managed by Lief Cabraser Heimann  
14 & Bernstein LLP. The three Interim Co-Lead Counsel firms all made contributions  
15 to the Common Fund at periodic intervals as costs were incurred. Lief Cabraser  
16 maintained the books and records for the Common Fund and disbursed monies to  
17 cover case expenses as needed. Class Counsel have taken care not to submit any  
18 expenses in support of this motion that were submitted in support of the costs  
19 requested for the Amplify settlement, to avoid any double-counting.

20 15. Aitken separately spent \$815.36 in connection with the prosecution  
21 and settlement of the case against the Shipping Defendants. The expenses are  
22 presented in summary form in Exhibit 2, which was generated from my firm's  
23 books and records. These expenses primarily consist of travel and printing. These  
24 expenses were reasonably and necessarily incurred in Class Counsel's efforts to  
25 prosecute this case. The expenses here are in line with expenses Aitken has incurred  
26 in other large, complex class action lawsuits it has successfully prosecuted over the  
27 years, and are the type typically billed by attorneys to clients.

28

1           16. Three of the other firms that performed work at Class Counsel’s  
 2 direction also advanced costs in connection with the prosecution and settlement of  
 3 this case, as reflected in Exhibits 7-9 attached to the concurrently filed declaration  
 4 of Stephen G. Larson. In sum, those three firms advanced the following costs in  
 5 support of the litigation and settlement with the Shipping Defendants:

<u>Exhibit to Larson Declaration</u>	<u>Law Firm</u>	<u>Expenses</u>
7	McCune Law Group	\$15,013.41
8	Aqua Terra Aeris Law Group	\$3,753.49
9	Cotchett, Pitre & McCarthy, LLP	\$2.20

11           17. These expenses were advanced by Aitken and the other firms working  
 12 on behalf of the Classes with no guarantee of recovery. As a result, Class Counsel  
 13 had a strong incentive to keep costs to a reasonable level and did so.

14           18. I expect Class Counsel’s hours will increase through final settlement  
 15 approval and settlement administration, meaning that any multiplier that Class  
 16 Counsel receive on their lodestar will continue to decrease over time.

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

19           Executed on July 31, 2023, in Anaheim, California.

20           DocuSigned by:  
 21           Wylie Aitken  
 22           8871BF85627741C...

# **EXHIBIT 1**

<b>AITKEN AITKEN COHN</b>			
<b>Time and Lodestar Summary</b>			
<b>PARTNER</b>			
<b>NAME</b>	<b>HOURS</b>	<b>RATE</b>	<b>TOTAL</b>
Wylie A. Aitken	435.9	1250	544,875.00
Darren O. Aitken	114.1	975	111,247.50
Megan G. Demshki	240.3	975	234,292.50
Michael A. Penn	65.7	975	64,057.50
<b>TOTAL</b>			\$954,472.50
<b>PARALEGAL</b>			
<b>NAME</b>	<b>HOURS</b>	<b>RATE</b>	<b>TOTAL</b>
Jennifer Smith	16.5	250	4,125.00
<b>TOTAL</b>			\$4,125.00
<b>MATTER TOTALS</b>	872.5		\$958,597.5



# **EXHIBIT 2**

Aitken, Aitken, Cohn

Expenses

<b>AAC Costs Incurred by Category</b>	<b>Cost</b>
Mileage/Travel to Depositions & Hearings	\$243.01
Parking at Depositions & Hearing	\$101.50
Printing & Delivery	\$470.85
TOTAL	\$815.36