Adam S. Heder, CSB #270946
adam@jurislawyer.com
JurisLaw LLP
Three Centerpointe Drive
Suite 160
Lake Oswego, OR 97035
Phone: 503-968-1475
Fax: 503-968-2003

Of Attorneys for Plaintiff PETER JOHNSON, individually and on behalf of all others similarly situated

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

PETER JOHNSON, individually and on behalf of all other similarly situated,

Plaintiff,

v.

MAKER ECOSYSTEM GROWTH HOLDINGS, INC., NKA METRONYM, INC., a foreign corporation,

Defendant.

Case No. 3:20-cv-02569-MMC

MOTION FOR ATTORNEY FEES AND CLASS REPRESENTATIVE SERVICE AWARD BY PLAINTIFF

DATE: February 9, 2024
TIME: 9:00 a.m.
Courtroom: 7
Judge: Hon. Maxine M. Chesney

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PLEASE TAKE NOTICE that at 9:00 a.m. on February 9, 2024, in the Courtroom of the Honorable Maxine M. Chesney, located at 450 Golden Gate Avenue, Courtroom 7, 19th Floor, San Francisco, CA 94102 Plaintiff Peter Johnson's Motion for Attorney Fees and Class Representative Service Award is scheduled to be heard.

Class Counsel respectfully requests as its attorney fees in this matter, 30% of the Settlement Fund, or $348,000.00, plus costs. And Class Representative, Peter Johnson, requests a service award of $25,000.00.

Counsel's request is reasonable and appropriate for at least the following reasons: First, thirty percent of the common fund is customary and within the range approved by the Court; Second, the overall size of settlement in this case is, relatively speaking, not large and thus a 30% award would not result in a windfall to counsel; Third, 30% of the common fund is *less than* the anticipated value of counsel's attorney fees in this matter under the lodestar method, underscoring the reasonableness of the fee request; and Fourth, the novelty of the cryptocurrency-related issues at hand – not to mention the questions of arbitrability that had to be resolved – justify a 30% award.

Mr. Johnson's request is similarly reasonable and appropriate. Class Counsel conferred with numerous individuals; nobody except Mr. Johnson would agree to be the Class Representative. He has been instrumental from day one in this litigation, shedding any anonymity he might have otherwise enjoyed. The Court previously ordered this matter to go to arbitration, where Mr. Johnson's attestations were determinative in whether this case was arbitrable. He was intimately involved at each stage of that proceeding. He has provided numerous declarations in this matter. He traveled for mediation. And he was indispensable in educating counsel, and therefore the Court, on the mechanics of the crypto platform at issue. He deserves proper

compensation for his service on behalf of the class in the amount of $25,000.00.

I. CLASS COUNSEL'S REQUEST IS CUSTOMARY, REASONABLE, AND APPROPRIATE.

For their extensive work prior to the filing of the Complaint and throughout the pre-trial and settlement phases of this litigation, Class Counsel seek attorney fees equal to 30% of the monetary settlement benefits provided to the class, and reimbursement of expenses and costs incurred. Such an award to Class Counsel will represent $348,000 plus $18,024.37 in costs, *less than* their total lodestar of $353,370.00 (plus costs).[1]

Class counsel is entitled to attorney fees for the benefit obtained in a class settlement. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The United States Supreme Court and the Ninth Circuit Court of Appeals expressly approve of calculating attorney fees by applying two methods: the "lodestar method" and the "percentage-of-recovery" method (or "common fund" method) to the total monetary value of the settlement. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (en banc).

The common fund doctrine is a well-recognized exception to the general American rule that a litigant must bear its own attorney fees. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 257-58 (1975) (*superseded by statute on other grounds*). The Ninth Circuit has held that the common fund doctrine applies in class actions when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum [settlement]

[1] Declaration of Adam Heder in Support of Motion for Attorney Fees and Class Representative Service Award("Heder Decl.") ¶¶ 5-9, Exs. 1-2. This figure for the lodestar calculation includes anticipated future time spent on the matter.

recovered on his behalf." *Id.* at 271 (citing *Van Gernert*, 444 U.S. at 479). When facing a "common fund" case, the Ninth Circuit has opined that "a district court . . . can apply the lodestar method to determine the amount of attorney[ ] fees" and may also "apply a risk multiplier when using the lodestar approach." *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).[2]

Alternatively, "where the settlement or award creates a large fund for distribution to the class," the district court may, at its discretion, employ a "percentage method." Under that method, "the court simply awards the attorneys a percentage of the fund." *Id*. In the Ninth Circuit, if a district court employs the percentage method, "25% of the common fund [is the] benchmark award for attorney fees," *id.*, with "20-30% as the usual range." *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002). Ninth Circuit cases have regularly exceeded that norm, however. *See, e.g.*, *In Re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming attorney's fee of 33 1/3 % of the recovery); *Morris v. Lifescan, Inc.*, 54 Fed. App:x. 663, 664 (9th Cir. 2003) (affirming fee award of 33% of the recovery). In fact, "[t]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases." *Wert v. United States Bancorp*, Case No. 13-cv-3130-BAS-AGS, 2017 U.S. Dist. LEXIS 185428, *16 (S.D. Cal. Nov. 7, 2017) (citing *Vizcaino*, 290 F.3d at 1047). And "[i]n many cases, the benchmark is closer to 30%." *Id.*

When assessing whether to award more or less than a 25% benchmark, courts consider (but are not limited to) the following: "(a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.

[2] A "multiplier" is a number, such as 1.5 or 2, by which the base lodestar figure is multiplied in order to increase (or decrease) the award of attorney fees on the basis of such factors as the risk involved and the length of the proceedings. *Staton v. Boeing Co.*, 327 F.3d 938, 967.

482, 492 (E.D. Cal. 2010); *see also Morris v. Lifescan, Inc.*, 54 Fed. Appx. at 664 (focusing on exceptional results, complexity of the issues, and risk); *In re Hyundai*, 926 F.3d 549, 570 (9th Cir. 2019) (examining the "quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.")

Under the lodestar method, courts consider a variety of similar, and overlapping, factors: "(1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the requisite legal skill necessary; (4) the preclusion of other employment due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount at controversy and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Fulford v. Logitech, Inc.*, No. 08-CV-02041 MMC, 2010 U.S. Dist. LEXIS 144437, at *4 (N.D. Cal. Mar. 5, 2010).

Here, whether under the lodestar method or the percentage method, Class Counsel's requested fee of $348,000 is reasonable. Indeed, Class Counsel's lodestar calculation will soon outstrip $348,000. And once Class Counsel's lodestar calculation outstrips the requested award, the common fund percentage will be a negative multiplier to the lodestar, and "[a] negative multiplier 'suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by class counsel.'" *Chen v. Chase Bank USA, N.A.*, Case No. 19-CV-01082-JSC, 2020 U.S. Dist. LEXIS 110755 * 32-32 (N.D. Cal. June 23, 2020) (quoting *Chun-Hoon v. McKee Foods Corp.,* 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010)).

i. The Amount at Controversy and the Results Obtained

The result achieved for the class is the most important factor in assessing the reasonableness of a requested fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)

("most critical factor is the degree of success obtained") (*superseded by statute on other grounds*). Here, the Class obtained an excellent result and benefit. This case is factually and legally complex, involving individuals and persons from across the globe who participated in cutting-edge financial technology platforms. Despite the diversity of Class members, referral to arbitration, and the continued pressure from defense counsel on both legal and factual grounds, Class Counsel obtained a fair settlement with the help of an experienced class-action mediator. Given this Court's prior dismissal of the complaint, a seven-figure settlement is undoubtedly an outcome to be celebrated.[3]

Notably, the Court previously ordered this case to be sent to arbitration where the arbitrability of the legal issues at hand were to be decided, in the first instance, by an arbitration panel. Plaintiff prevailed in persuading the arbitration panel to send the case back to federal district court. Had the case remained in arbitration, a class action would not have been possible and countless of the class members' claims likely would have never been litigated or resolved (because the amounts in controversy did not likely incentivize a separate proceeding). This victory was crucial in achieving a class action settlement, and its importance cannot be overstated.[4]

Cryptocurrency represents a brave new world for most consumers and certainly for the financial world. The universe of those conversant in its mechanics and products is small. The universe of those litigating in the space is downright minute.

Further the Settlement also provides for benefits to Class Members now, without delay and without the typical risks and costs associated with protracted class-action litigation

[3] Heder Decl. ¶¶ 14-25.
[4] Heder Decl. ¶¶ 14-22.

(including the as-yet-unresolved questions of class certification and discovery scope, not to mention the difficulty in prevailing on complex questions of law and fact).

ii. Prosecuting this case entailed considerable risk.

Class counsel took this case on a contingent fee basis. That is, they assumed the risk of nonpayment and the outlay of significant out-of-pocket expenses, while having no idea how long litigation would last. In this case, by the time monies are paid out, it will be approximately four years that counsel carried that risk. A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the outlay of out-of-pocket expenses by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high. *See, e.g., Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007). As the *Pinto* court put it, Class Counsel's risk is the "foremost factor" in determining an appropriate fee award. *See id*. In *Behrens v. Wometco Enterprises, Inc.*, the court noted:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer . . . . A contingency fee arrangement often justifies an increase in the award of attorneys' fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

118 F.R.D. 534, 548 (S.D. Florida, 1988) (citations omitted).

This Court itself has noted the importance of this factor, determining that it is satisfied when "Class Counsel undert[akes a] class action on a purely contingent basis, with no assurance of recovering expenses or attorney fees." This is especially so, when they "expend[ ] considerable time and resources to prosecute the case successfully on behalf of the Settlement Class, since "[t]he time Class Counsel devote[s] to th[e] matter could not be devoted to other potentially profitable work." *Fulford.*, 2010 U.S. Dist. LEXIS 144437, at *10.

Such was the case here, where the fee was purely contingent on success in a complex, novel lawsuit where even the question of arbitrability, let alone class certification, was hotly contested. Indeed, Class Counsel expended a total of 666.35 hours through September 4, 2023 – for a total of $353,370.00 – and will likely expend at least an additional 110 hours through completion of this matter, for a total of $353,370.00. Again, assuming the risk of nonpayment for over 750 hours' worth of attorney time is not a small risk. Class counsel have robust litigation practices with paying clients and/or contingent matters that they have established track records in. To wade into a novel area of law – cryptocurrency litigation – that required nearly four years' worth of labor certainly precluded counsel from other lucrative work.[5]

Further, Class Counsel were willing to take on this most complex of actions when no other lawyers or firms would. Class Counsel has expended extensive time, labor, and skill in developing this case and are, to date, the only lawyers who have done so.

iii. The Complexity and Novelty of the Questions at Issue

The record makes clear that this case presents novel and complex questions of law and fact. Class action matters are generally complex, but this one is particularly so, involving the exchange, investment, and trade of digital cryptocurrencies and ensuing claims for negligence against Metronym.

Further, this case presented unique and difficult issues surrounding whether and to what extent Class members had agreed to waive class-action suits, participate in arbitration, or otherwise limit their rights when participating on Defendant's platform. Indeed, as the Court knows, this case required a battle on arbitrability before it could even reach a battle on the pleadings (where the parties ultimately reached settlement).[6] It only makes sense Defendant hired

[5] Heder Decl. ¶¶ 11-12.
[6] Heder Decl. ¶¶ 14-22.

one of the top law firms in the world to defend it. Again, by no measure did any party treat or view this matter as involving exclusively simple or straightforward legal issues.

Notably, by the time this case is resolved, it will have been approximately four years since the complaint was filed. In four years, the case never proceeded past the pleadings. Instead, for four years, the parties battled over the arbitrability and the pleadings. That is because of the myriad and complex legal issues. This was no run-of-the mill personal injury or commercial matter.

iv. The Customary Fee

"The percentage method of awarding fees in class actions is consistent with, and is intended to mirror, practice in the private marketplace where attorneys typically negotiate percentage fee arrangements with their clients." *Pinto*, 513 F. Supp. 2d at 1340.

In individual cases, attorneys typically contract with clients for contingent fees between 30 and 40 percent. These percentages are the prevailing market rates throughout the United States for contingent representation. *See Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986); *Smith v. Grimm*, 534 F.2d 1346, 1349 (9th Cir. 1976) (authorizing a 50 percent contingent fee agreement); *See also, Craft v. County of San Bernadino*, 624 F. Supp. 2d 1113, 1124 (C. D. Cal. 2008) ("one study, done of four districts in 1996 by the Federal Judicial Center, found that most fee awards in common fund class actions were between 20% and 40%... the other study, done by National Economic Research Associates, an economics consulting firm, in 1994, found that attorneys' fees in these class actions averaged approximately 32% of the recovery, regardless of the case size"); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (collecting nine other class action cases in the Eastern District in which courts approved attorney fee awards equal to or in excess of 30 percent of the common fund and then approving an attorney fee award of 33% of the class recovery fund, or $430,000). *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec.*

Litig.), 213 F.3d 454 (9th Cir. 2000) (affirming district court's approval of contingent fees of 33 and 1/3 percent on a $1.75 million common fund). In this case, Class Counsel's engagement letter with Mr. Johnson calls for a 30% recovery, again, consistent with prevailing market rates.[7]

v. Awards in Similar Cases

Although the cryptocurrency industry is relatively nascent, at least one class action case has been brought and settled that is strikingly similar to the facts presented here. In *Leidel et al v. Coinbase, Inc.*, Case No. 9:16-CV-81992-MARRA (So. Dist. Fla.), the class asserted $8.2MM in damages arising out of the preeminent United States cryptocurrency exchange, Coinbase, allowing a foreign national to sell assets belonging to his customers. The class alleged that the founder of Cryptsy absconded with customer cryptocurrencies and liquidated them through Coinbase. Of note, the attorneys in *Leidel* were awarded "up to 33.33% of the Settlement Fund, plus expenses and costs" or 3.33% more than Plaintiff's counsel have requested here. The *Leidel* Settlement Agreement and other pleadings are available at https://coinbasesettlement.com/important-documents.php.[8]

Another similar case, *Beltran v. SOS Ltd.*, No. 21-7454 (RBK/EAP), 2023 U.S. Dist. LEXIS 9971 (D.N.J. Jan. 3, 2023), was a securities class action against SOS Ltd. for making false statements about its entrance into the cryptocurrency mining market in order to inflate the value of its share prices. Once an investigation revealed SOS Ltd. was an intricate "pump and dump" scheme, and that its stated transition into cryptocurrency mining was false, the price of SOS securities cratered, causing damage to the class members who had purchased SOS securities based on those false misrepresentations. *Id.* at *1, 30. The court in *Beltran* was asked to approve

[7] Heder Decl. ¶11.
[8] For the Court's convenience, a copy of the court's final order approving this amount of attorney fees is attached as Exhibit 3 to Mr. Heder's declaration.

a settlement of $5 million dollars and attorney fees of one-third of the settlement amount, or $1,666,666.67. The court determined that the settlement was reasonable, and further that "the fees typically awarded to class counsel generally range between 19% to 45% of the Settlement Fund [citation omitted]. Therefore, an award of $1,666,666.67, equating to one-third of the Settlement Fund, is well within the typical range and is reasonable." *Id.* at 20-21.

a. The Court Should Award the Requested Expenses.

The Ninth Circuit allows recovery of pre-settlement litigation costs in the context of a class action settlement. *Staton v. Boeing Co.,* 327 F.3d 938, 974 (9th Cir.2003); *Grays Harbor Adventist Christian School v. Carrier Corp.,* No. 05-05437 RBL, 2008 U.S. Dist. LEXIS 1065515, at *10-11 (W.D. Wash. Apr. 24, 2008). Class Counsel incurred $17,911.52 in actual expenses in the prosecution of this action to date.[9] These expenses include, for example, travel costs, mediator fees, court filing fees, and other associated costs.

b. A Service Award of $25,000 to the Class Representative Is Appropriate.

The Court should approve a service award of $25,000 for the Representative Plaintiff. In instituting this litigation, Mr. Johnson has acted as private attorney general seeking a remedy for what appeared to be a public wrong. Private class action suits are a primary weapon in the enforcement of laws designed for the protection of the public.

Mr. Johnson has spent countless hours and been instrumental in preparing pleadings, attesting to numerous declarations at various stages of litigation, providing informal discovery, educating Counsel—and through Counsel, the Court—on complex matters unique to the cryptocurrency industry, and in reviewing and editing pleadings. Plaintiff traveled to and

[9] Heder Decl. ¶¶ 8-9, Ex. 1 (of that number, $15,911.52 was incurred as of September 4, 2023, counsel expects to incur approximately $2,000.00 in future costs related to travel for the hearing, etc.).

attended the mediation of this matter which resulted in a successful settlement. And, given Plaintiff's prominence in the cryptocurrency community in his jurisdiction and elsewhere, Plaintiff had to cast off the anonymity that would otherwise shroud Class members who may wish to retain their privacy.[10]

Plaintiff otherwise dutifully satisfied the duties of the Class Representative: he kept in communication with his lawyers; timely and fully produced documents, information, and materials; and participated in a full-day mediation of this matter where he clearly demonstrated his understanding of the case, his role as the Class Representative, and the goals of this class action; and he was instrumental in achieving the settlement.[11] It is not an exaggeration to say that without his extensive help in deconstructing and explaining to counsel the intricacies of the complex SAI, DAI, and exchange mechanisms which resulted in the Black Swan event, that the class would not have been able to recover any award at all. An award of $25,000 is, accordingly, more than fair.

CONCLUSION

Plaintiff respectfully request the Court grant this motion for Class Counsel's attorney fees and expenses and the representative plaintiff's service award.

DATED: September 8, 2023.

JURISLAW LLP

By: */s/ Adam S. Heder*
Adam S. Heder, CSB #270946
Of Attorneys for Plaintiff PETER JOHNSON, individually and on behalf of all others similarly situated

[10] Heder Decl. ¶¶27-31.
[11] *Id.*