

Jon M. Egan, OSB 002467
Jegan@eganlegalteam.com
Jon M. Egan, PC
547 Fifth Street
Lake Oswego, OR 97034-3009
Telephone: (503) 697-3427
Fax: (866) 311-5629
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KRISTIN SWEARINGEN,

Plaintiff,

v.

AMAZON.COM SERVICES, INC. and
AMAZON.COM INC., Delaware corporations,
and, AMAZON.COM.DEDC, LLC, a Delaware
limited liability company,
Defendants.

Case No. 3:19-cv-01156-JR

DECLARATION OF JON M. EGAN

I, Jon M. Egan, do hereby declare and say:

1. I am the attorney for plaintiff in this action. I have personal knowledge of all of the facts herein and am competent to testify thereto.
2. Paralegal Michèle Lauzier's \$225 hourly rate is at or below the going market rate for paralegals of similar background, education, and experience. Ms. Lauzier is a naturalized U.S. Citizen and has a bachelor's degree in Sociology from York University in Toronto, Canada. Ms. Lauzier has been a paralegal in my firm for the last 18 years, specializing in wage-and-hour law for that entire time, and she is an active member of the Oregon Trial Lawyers Association's paralegal section. She has been the assigned paralegal on all of the wage-and-hour class and collective actions identified below, and she has attended, viewed, or listened to all of the same CLEs that I have over that span.

She is therefore able to provide more value for each of her hours of work in this specialized field. Paralegals with such substantial wage-and-hour experience and training are rare, if not impossible, to find in this market. My hourly rate does not incorporate the cost of billable work performed by non-attorneys. Assigning tasks to Ms. Lauzier allows me to reduce the overall attorney fee bill, as her rate is lower than mine. When Ms. Lauzier performs some specific task in connection with firm work product, she is doing different work than I am. Although the OSB Economic Survey contains no information regarding paralegal billing rates, federal judges in this District have noted that a reasonable hourly rate for a paralegal should not exceed that of a first year associate. *Knowledge Learning Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, No. 3:10-cv-00188-ST, 2011 U.S. Dist. LEXIS 57174, at *16-17, 2011 WL 2133824 (D.Or. Apr. 19, 2011) (reducing requested paralegal hourly rate from \$215 and awarding hourly rate of \$165 based on paralegal's extensive experience); *Nance v. May Trucking Co.*, No. 3:12-CV-01655-HZ, 2014 WL 6633111, at *4 (D. Or. Nov. 21, 2014). The seven-year-old Oregon State Bar 2017 Economic Survey¹ has the following information for hourly rates of first-year Portland associates: a mean of \$236, a median of \$235, and a 25th percentile of \$207. Adjusted for inflation, those figures today would be \$295, \$294, and \$259, respectively.² Ms. Lauzier's hourly rate is well below each of those figures.

¹ Though the Survey was published in 2017, its survey results are from responses indicating attorneys' 2016 hourly rates. *See, e.g.*, Q14 on page 57 ("When you charged on an hourly basis, what was your usual billing rate per hour in 2016?"). We therefore used January 2016 as the base month.

² Inflation calculated using the U.S. Bureau of Labor Statistics Consumer Price Index Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm. Though the Bar Survey was published in 2017, its survey results are from responses indicating attorneys' 2016 hourly rates. *See, e.g.*, Q14 on page 57 ("When you charged on an hourly basis, what was your usual billing rate per hour in 2016?"). Calculating inflation, we used

3. My hourly rate is \$588 per hour, and I do charge that rate on the rare occasion when I bill clients by the hour. The seven-year-old Oregon State Bar 2017 Economic Survey has the following information for hourly rates of Portland attorneys with 21 to 30 years of practice experience: a 75th percentile of \$475 and a 95th percentile of \$525. Adjusted for inflation through December 2022 (the latest month for which figures are available), those figures today would be \$595 and \$658, respectively. My hourly rate is in accordance with each of those figures. Similarly, attorneys practicing in categories of law other than the common ones specifically identified in the Survey (those with a category of “Other”) had hourly rates of \$450 at the 75th percentile and \$600 at the 95th percentile. Adjusted for inflation, those figures would be \$564 and \$752 today, again supporting the reasonableness of my hourly rate. It is a reasonable rate, commensurate with my extensive experience in the specialized field of wage-and-hour class and collective actions.

4. I am the former Head Page of the United States Senate and a graduate of Yale University and the University of Texas School of Law. I am admitted in Oregon state court as well as the United States District Court for the District of Oregon and the United States Court of Appeals for the Ninth Circuit. I am in my 23rd year of practicing law, specializing in Oregon state and federal wage-and-hour litigation for the past 18-plus years, and have extensive experience in this area. I have recovered over \$52 Million for my wage-and-hour clients through verdicts, judgments, and settlements. I have served as counsel of record in over 120 reported federal opinions and over 20 appeals,

January 2016 as the base month. December 2022 is the latest month for which CPI-U figures are available at the time of filing. The CPI-U rose a total of 25.3% from January 2016 through December 2022.

including 10 of them in the Ninth Circuit Court of Appeals (one of which I co-argued with the U.S. Solicitor of Labor's office).

5. Federal courts have long recognized that I have “unique expertise in the area of wage-and-hour litigation.” *Wright v. Soniq Servs., Inc.*, No. 3:17-CV-01990-AC, 2018 WL 4997678, at *3 (D. Or. Aug. 16, 2018), *report and recommendation adopted*, No. 3:17-CV-01990-AC, 2018 WL 4996574 (D. Or. Oct. 15, 2018). I regularly field wage and hour questions from my colleagues in the Bar, and they refer wage and hour cases to me on a regular basis. I was the author of key portions of 2016 SB 1587, the Wage Theft Bill that successfully passed into law, and I have participated in the drafting of the Oregon Uniform Civil Jury Instructions for wage-and-hour claims. I have been invited to speak and have presented at several CLEs, always on wage-and-hour topics, and have edited pamphlets and provided legal advice and assistance on wage and hour issues to nonprofit organizations such as the Portland Restaurant Workers Association, the Northwest Workers Justice Project, the Oregon Center for Public Policy, and the Oregon Trial Lawyers Association. I also routinely field requests for background information and legal explanation of wage-and-hour topics from members of the media; I and my cases have been featured in articles in the NATIONAL LAW REVIEW, the UNIVERSITY OF CHICAGO LAW REVIEW, the YALE JOURNAL ON REGULATION, the Society for Human Resource Management, *Forbes*, *Law360*, *Lexis Legal News*, KATU, KBOO, KOIN, KXL, NPR, OPB, Q13 Fox Seattle, the Associated Press, *US News and World Report*, *the Oregonian*, *Willamette Week*, *the Portland Mercury*, *the Vancouver Columbian*, *the Salem Statesman Journal*, *Eater Magazine*, *Food News*, *Courthouse News*, *The Hill*, *Oregon Business Magazine*, *California Employment Lawyers Association Bulletin*, *topverdict.com*, *Class Actions Reporter*, and *topclassactions.com*, as well as discussed in

the Federal Register.

6. I am a member of the national Wage and Hour Clearinghouse (an invitation-only professional association open only to attorneys who exclusively practice wage-and-hour law on behalf of plaintiffs); the Low-Wage Workers Legal Network; the Employment Law Section of the Oregon Trial Lawyers Association; the Wage and Hour and Class and Collective Sections of the National Employment Lawyers Association; the Employment and Litigation Sections of the Oregon State Bar Association; and the Rule 23, Class Actions and Derivative Suits, Employment and Labor Relations, and Employment Law Committees of the Litigation Section of the American Bar Association; and the Impact Fund Class Action Forum.

7. While working as an associate attorney at the law firm of Bailey Pinney & Associates LLC, I was employed exclusively for wage and hour individual and collective and class action cases, including acting as one of the counsel of record in *McElmurry et al. v. US Bank N.A.*, USDC No. 3:04-cv-00642-HA. Since leaving Bailey Pinney, I have been lead counsel on the following wage and hour collective and class action cases: *Cooper v. Thomason et al.*, USDC No. 3:06-cv-01018-KI; *Nielsen v. American Home Mortgage Corp.*, USDC No. 6:06-cv-01161-AA; *Richins v. Jack Fabel et al.*, MCCC No. 0708-08879; *Jackson v. Plew et al.*, MCCC No. 0712-15516, USDC No. 3:08-cv-00099-BR (after removal); *Rother et al. v. Lupenko et al.*, USDC No. 3:08-cv-161-MO / Ninth Circuit No. 11-35922 (first appeal) / Ninth Circuit No. 14-35771 (second appeal); *Cumbie v. Woody Woo, Inc. et al.*, USDC No. 3:08-cv-504-PK, Ninth Circuit No. 08-35718; *Lopes et al. v. Bush Gardens of Oregon, Inc. et al.*, USDC No. 3:08-cv-1492-HU; *Di Giovanni et al. v. Alu, Inc. et al.*, USDC No. 3:09-cv-314-PK; *Norris et al. v. Butler Investments, Inc. et al.*, USDC No. 3:09-cv-339-AC; *Jones et al. v. Columbia*

Helicopters, Inc., USDC No. 3:09-cv-691-PK; *Perillo et al. v. Conklin et al.*, USDC No. 3:10-cv-359-ST; *Weir et al. v. Jolie et al.*, USDC No. 3:10-cv-898-HA; *Gessele et al. v. Jack In The Box, Inc. et al.*, USDC No. 3:10-cv-960-BR / on refiling MCCC No. 14CV06380 / on removal 3:14-cv-01092-BR / Ninth Circuit Nos. 14-80155 and 15-35262; *Fredrickson et al. v. Starbucks Corporation*, MCCC No. 1212-15734 / USDC No. 3:13-cv-29-HU / Ninth Cir. No. 13-36067 / Oregon Supreme Court No. S065165; *Chastain et al. v. Cam et al.*, USDC No. 3:13-cv-1802-SI; *Allison et al. v. Dolich et al.*, USDC No. 3:14-cv-01005-AC (federal case) / MCCC No. 14CV07294 / USDC No. 3:14-cv-1179-AC (on removal, then remanded) / Oregon Court of Appeals A170480 / NLRB Nos. 19-CA-131696 and 19-CA-132787; *Safaty v. Columbia Medical Clinic, P.C. et al.*, MCCC No. 14CV09397; *Wright v. Special Logistics Portland, LLC*, USDC No. 3:15-cv-02058-BR / MCCC No. 18CV02544; *Wilder v. Jirak et al.*, MCCC No. 16CV26313, USDC No. 3:16-cv-01652-SB; *Banks v. Dave & Busters of Oregon*, NLRB 19-CA-181845 / MCCC No. 16CV25618 / on removal 3:16-cv-01825-AC / USDC No. 3:16-cv-01754-YY; *Duffard v. Vibrant Table Catering and Events, Inc.*, MCCC No. 16CV15430; *Rodgers v. Canby Post No. 122, The American Legion*, USDC No. 3:16-cv-02381-PK; *Brinkmann v. ABM Onsite Services – West, Inc.*, USDC No. 3:17-cv-00275-BR / MCCC No. 17CV06683; *Westphal v. Ed’s Mufflers Unlimited, Inc.*, USDC No. 3:17-cv-00299-YY / MCCC No. 17CV07802; *Astle v. Dave & Buster’s Management Corporation, Inc.*, MCCC No. 17CV08556; *Wright v. Soniq*, USDC No. 3:17-cv-01990-AC / MCCC No. 17CV54170; *Ferguson et al. v. Gladstone Auto, LLC et al.*, MCCC No. 18CV07330 / USDC No. 3:18-cv-00372-SB; *Spencer v. Mel-Mic Enterprises, Inc.*, MCCC No. 18CV05714 / CCCC No. 18CV20434; *Spencer v. Henson*, USDC No. 3:18-cv-00308-MO; *Zarrabi v. Earthman LLC*, 18CV50716; *Zarrabi v. Jurj*, MCCC No. 18CV50717; *Perkins v. Danwei Canting*,

MCCC No. 19CV14620; *Swearingen v. Amazon.com*, MCCC No. 19CV22154 / USDC 3:19-cv-01156-JR; *Wright v. Metro Metals Northwest, Inc.*, MCCC No. 19CV24377; *Gaskin v. Restaurants Unlimited, Inc.*, MCCC No. 19CV29722 / Delaware Bankruptcy Court No. 19-11511; *Davidoff v. R.L.K. and Company*, MCCC No. 19CV45422 / *Marshall v. R.L.K. and Company*, USDC No. 3:20-cv-11547-JR; *Rosenberry v. Roberti Food, LLC*, MCCC No. 19CV51287 / USDC No. 3:20-cv-00026-YY; *Durland v. Straub Construction*, MCCC No. 19CV51696 / USDC No. 3:20-cv-00031-IM; *Coffey v. Marinepolis U.S.A., Inc.*, MCCC No. 19CV53667; *Wright v. Atech Logistics, Inc.*, MCCC No. 19CV56327; *Eisele v. Home Depot U.S.A., Inc.*, MCCC No. 20CV30398; *South v. Armstrong d/b/a McDonald's*, MCCC No. 20CV29671; *Athena v. Pelican Brewing Company et al.*, MCCC No. 20CV33103; and; as well as numerous individual wage and hour cases.

8. Below are the total costs and expenses reasonably and necessarily incurred in the prosecution of this case. Westlaw charges apportioned to each client constitute that client's pro rata share of the firm's monthly negotiated rate with Westlaw, based on the research conducted for each client in a given month. Court filing fees, transcripts, printing fees, process service, delivery, and postage listed are actual amounts charged by those entities and paid by the firm. PACER charges are actual amounts billed by PACER, at \$0.10 per page.

Cost/expense	Amount
Court filing fees	\$1,065.00
Deposition transcripts	\$1,987.23
Appeal brief printing fee	\$474.91
PACER fees	\$111.80
Postage, service, and delivery	\$271.34
Westlaw charges	\$1,643.43

Total \$5,553.71

9. Below are the 1,888 hours spent by attorney Jon M. Egan by category reasonably and necessarily spent in the prosecution of this case. None of those hours include any time on the motion for attorney fees, administration expenses, or service payment, nor on this Declaration.

Category of time	Hours
State-court activities	101
Removal/remand briefing	235
Discovery, data analysis, compel	122
Certification briefing	324
Response to Amazon's MSJ (not filed)	103
Obj to certification F&R (both sides)	321
23(f) appeal—cross-petitions	269
23(f) appeal—my opening brief	294
Mediation/settlement	54
Settlement briefing/administration	65

Total: 1,888

10. Paralegal Michèle Lauzier spent a total of 1,133 hours on this case in all phases.

11. This yields the following total lodestar figures:

\$ 1,110,144.00	Total JME charges (1,888 hrs @ 588/hr)
\$ 254,925.00	Total MLL charges (1,133 hrs @ 225/hr)
+ \$ 5,553.71	Costs and Expenses
<u>\$ 1,370,622.71</u>	Total pre-multiplier lodestar

\$ 6,000,000.00 4.38 multiplier to reach requested 33% attorney fee award

12. The figures received from the settlement administrator as of today's date are as follows: There were 10,779 total class members identified in defendant's payroll records. There were 1,659 returned notices by mail, of which 1,057 were able to be resent to an updated mailing address. 100 of those resent notices were returned as undeliverable. Thus, there was a mailing deliverable rate of 94%. Of the 10,778 email notices sent, there were 764 that were returned as undeliverable. Of those, 259 were able to be resent,

with only 34 of those returned. Thus, there was an email deliverable rate of 95%. Of the 10,453 text notices sent, 3,438 were returned as undeliverable. Of those, 1,776 were able to be resent, with 1,026 of them returned. Thus, there was a text message deliverable rate of 74%. Combining all of the notice delivery methods, there were only 9 class members who were unable to be reached by any method—an aggregate deliverable rate of 99.92%. January 13, 2023 was the deadline for class members to opt out. Of the 10,779 total class members, four timely opted out. That is a participation rate of 99.96%. January 13, 2023 was also the deadline for eligible class members to file claim forms. Of the 7,396 claim-eligible class members, 2,746 timely submitted claims.³ Thus, 37.1% of eligible claimants submitted claims, for 37.8% of the claimable funds. To date, no class member has submitted any objection to any aspect of the settlement.

13. A Declaration from the settlement administrator testifying to the final figures will accompany the motion for final approval on February 13, 2023.

DATED this 19th day of January, 2023

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

JON M. EGAN, P.C.

s/ Jon M. Egan

 JON M. EGAN, OSB # 002467
 Attorney for Plaintiff

³ The reaction of the class was even greater than indicated by these figures. There were 3,794 total claims submitted by class members; some of those claimants were not eligible for either of the penalty subclasses and so have been excluded from these figures.