

David A. Schuck, OSB 993564
E-Mail: dschuck@wageclaim.org
Stephanie J. Brown, OSB 030019
E-Mail: sbrown@wageclaim.org
Karen A. Moore, OSB 040922
E-Mail: kmoore@wageclaim.org
SCHUCK LAW, LLC
Attorneys at Law
208 E 25th Street • Vancouver, WA 98663
Tel (360) 566-9243
Attorneys for Plaintiff and Class

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CANAN SCHUMANN, individually and
on behalf of all similarly situated,

Plaintiff,

v.

AMAZON.COM SERVICES LLC;
AMAZON.COM, INC., a foreign
corporation,

Defendants.

Case No. 20-cv-01751-JR

**DECLARATION OF DAVID A.
SCHUCK SUPPORTING
PLAINTIFF'S UNOPPOSED
MOTIONS FOR AWARD OF
ATTORNEY FEES, EXPENSES,
AND COSTS,
ADMINISTRATION
EXPENSES, AND APPROVAL
OF SERVICE AWARD TO
PLAINTIFF**

I, David A. Schuck, hereby declare:

1. I am one of the attorneys for Plaintiff and the Class herein. I make this declaration upon personal knowledge and in support of the Plaintiff's Unopposed Motions for Award of Attorney Fees, Costs and Expenses, and Administration Expenses, and Approval of Service Award to Plaintiff. All of the amounts requested are allocated in the Stipulation and Settlement of Class Action Claims. ECF 42.

Page 1 - Declaration of David A. Schuck Supporting Plaintiff's Unopposed Motion For Award of Attorney Fees, Expenses, and Costs; Administration Expenses, and Service Award to Plaintiff

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2. The fact that Plaintiff's claims are small makes an award of a full measure of damages all the more imperative. Statutory purposes can only be effected by an award of the full amount of attorneys' fees to encourage an attorney to prosecute the small yet difficult claims, and to discourage employers from litigating cases where clear liability exists.

3. On October 7, 2020, Plaintiff, and his attorneys, provided written notice of the wage claim before filing the case. ORS 652.200. ECF 39-1.

4. The Settlement Administrator advised via email on July 31, 2023 that:

- a. There were a total of 22,035 class members who were sent Notice.
- b. They had received over 5,250 claim forms from those designated as Group B. This number is likely to increase before the Response Deadline.
- c. There have not been any objections received by the Settlement Administrator.
- d. Only 14 individuals have requested exclusion from the case.
- e. There were 2,604 returned notices via mail of which 1,948 were remailed. Of those remailed, 178 were returned again.
- f. The Notice was emailed to 21,946 class members with 747 being undeliverable.
- g. The Notice was sent via text messages to 21,946 class members with 1,581 that were undeliverable.

5. The attorneys at Schuck Law worked with attorney Jon Egan in the *Swearingen* matter by reviewing and contributing to arguments at all stages in the litigation, including Article III judge review and on appeal. Schuck Law attorneys did so to assist the litigation in both cases, and prepare for likely appellate review in this case. Our knowledge gained through assisting on

Swearingen benefitted the class members here by protecting their interests in this case. This further lead to this settlement and early resolution of this case.

6. Time records are entered by all time keepers, including me, directly into the computer system via time sheets for all matters for each clients. Those records are then downloaded to provide to the Court. Attached as exhibit 1 is a statement of services rendered as of August 1, 2023. This does not include all time incurred assisting in the *Swearingen* matter or that will necessarily be incurred to finalize the settlement after final approval.

7. Schuck Law, LLC was founded in 2009. It was founded by attorney Stephanie Brown and myself. The firm has grown and now has four attorneys. All attorneys at Schuck Law are experienced, we do not have any junior attorneys. Each attorney has their own case load. All of our attorneys have represented clients at trial, however, I have been at all trials Schuck Law has had to date, and participated in most arbitrations. The more complex or demanding the case is, the more likely that multiple attorneys will be assigned to work on the case. Most trials we do have multiple attorneys present to ensure the best possible representation for our clients.

8. Attached as exhibit 2 are the costs incurred in this case totaling \$4,423.35.

9. Most of my hours recorded on this petition were entered on a daily basis contemporaneously with the activity performed. Some hours were recorded reasonably soon thereafter.

10. All hours listed in the statement of costs and attorney fees supported by this Declaration were necessary and reasonable in the prosecution of this case.

11. I worked with each time keeper at Schuck Law to determine the hourly rates that

are charged by that time keeper. In determining these rates, I reviewed the Oregon State Bar Economic Surveys taken in 2002, 2007, 2008 supplement, 2012, 2017, and 2022. By comparing each survey I determined the average rate that hourly attorney fee rates increased per year. I then determined what each rate from the survey would be in 2023 given the average rate of increase since 2021. (The 2022 survey is based on 2021 data). I considered that the survey did not differentiate between hourly rates charged by attorneys working on a contingent bases to those attorneys whose attorney fees are fixed. Fixed hourly rates are not subject to the same type of review and are paid no matter the outcome. This must be accounted for when determining a reasonable rate. I reviewed spreadsheets of rates received by counsel through court hearings. I also reviewed the Morones Survey of Commercial Litigation Fees the same way, with the latest being put out in 2022. I reviewed the rates of other attorneys who prosecute and defend wage and hour cases. For instance, David P.R. Symes of the Symes Law Office LLC states his billing rate is \$525. He says it is consistent with what he billed while working at other defense firms. I faced Mr. Symes as defense attorney during the time he worked for the defense firm of Littler Mendelson a nationwide defense firm with an office in Portland, Oregon. I also considered the fact that defense counsel rates are not set to cover or front costs as defense attorneys generally have the client separately pay those costs, which are not deducted from the billed attorney fees. I considered the fact that some costs, such as deposition costs, hotel fees, gas, and other mileage expenses may not be recoverable. While these non-recoverable costs in a lawsuit are issues for contingency fee based employees, defendants generally pay these type of costs separate from the attorney fees charged by their defense attorney.

I considered the rate at which defense counsel has increased their hourly rates.¹ Other employment/wage and hour defense attorneys bill similar rates to Davis Wright Tremaine.² In 2002, Stoel Rives partners billed between \$275 and \$345 per hour. The most recent declaration from Stoel Rives I have is from 2009 and billing at \$450.00 per hour. This data shows that rates at Stoel Rives have increased somewhere between \$15.00 and \$25.00 per year.³

In my opinion, there are two driving factors that increase the hourly rates charged by attorneys. First, is that as attorneys gain experience, their reasonable rates increase for that reason. Second, is inflation. Both consumer price index and the cost of doing business rises over time due to inflation. This too raises the hourly rate that attorneys charge.

For instance, in 2012, I had 13 years of experience and would have fallen in the category of 13-15 years, whereas in 2017, I fell in the category of 16-20, and in the 2022 survey I fall into the 21-30 year category as I have 24 years of experience. Each driving factor plays its part in the rates charged. Further, we have had extremely high inflation, the worst we have seen in the United States in the last 40 years. Mixing increased experience levels with extremely high rate of inflation, attorney hourly rates are and will continue to increase correspondingly.

¹ For instance, the rates for Carol Bernick at Davis Wright Tremaine, LLP increased on average \$25 per year from 2003 to 2007. In 2010, her rates were at least \$400 per hour, though US Bank National Association received a discounted rate of \$389.59.

² It is rare that Schuck Law is able to get rates for defense counsel in normal practice because the employee plaintiff must lose the case/claim and the claim must be one that includes the ability for the employer defendant to seek its attorney fees. Even when objecting to fees, it is a very rare case where a defendant will put in the record what they paid, the number of hours billed, or the hourly rates they were charged.

³ Paula Barron's rate was \$300 per hour in 2002. Stacey Mark's hourly rate in 2002 was also \$300 per hour. Both attorneys regularly defend employment and wage cases.

The data from the OSB 2022 survey was taken in 2021.⁴ The OSB's 2022 survey no longer provides the data for the 25th or 75th percentiles. Instead, the survey is limited to the "low," "high," "mean," "median," and 95th percentile. The data shows attorneys Brown, Moore, and I in these categories based on our experience level:

21-30 Years (Schuck 24 years)

Percentile	Hourly Rate
Mean	\$447.00
Median	\$450.00
95 th	\$697.00

16-20 Years (Brown 20 years;
Moore 19 years)

Percentile	Hourly Rate
Mean	\$445.00
Median	\$425.00
95 th	\$683.00

Id. at p. 39 (Portland data). Projecting these amounts to 2023, the date of this petition, the figures adjust to:

OSB 21-30 Years (Projected 2023)

Percentile	Hourly Rate
Mean	\$502.25
Median	\$505.62
95 th	\$783.15

OSB 16-20 Years (Projected 2023)

Percentile	Hourly Rate
Mean	\$500.00
Median	\$477.53
95 th	\$767.42

Formula Survey rate * (1+interest rate)ⁿ where "n" is the number of years. *E.g.* \$447 * (1+0.06)² = \$502.25.

Morones Analytics performs data gathering and analysis to determine what hourly rates are being charged by commercial litigation attorneys in Oregon. It was first retained to perform these services in 2002. It also puts out an update about every two years. The most recent data is

⁴ https://www.osbar.org/_docs/resources/Econsurveys/22EconomicSurvey.pdf

below:

		2022	2020
20-29 Years of (Schuck/Brown) Experience	Average	\$574.00	\$499.00
	Median	\$555.00	\$478.00
10-19 Years of (Moore) Experience	Average	\$512.00	\$451.00
	Median	\$495.00	\$440.00

Id. The survey also averages the 15 highest hourly rates from the survey at \$897 with their median at \$863. Id. Adjusting these figures to 2023

		2023 (projected)	2022
20-29 Years of Experience	Average	\$608.44	\$574.00
	Median	\$588.30	\$555.00

Finally, I considered the present value of money. I.e. at the same 6% rate of increase,⁵ my \$550.00 per hour collected 1 years later is the equivalent to \$518.87 per hour.⁶ As the case ages, the value lessens.⁷ This case is about a year old, so there has been a year delay in payment. As the delay in payment increases, so does the loss in value. The same analysis can be done for rates of all Schuck Law attorneys. Attorneys Karen Moore and Stephanie Brown bills at \$450 per hour. Thus, the calculated rate if paid today for them is \$424.53. Defense counsel's rates, which are included in the OSB and Morenes surveys, do not consider the time value of money, only the

⁵ I used the conservative rate of 6% increase based upon the survey.

⁶ Calculations: $\$550/(1+.06)^1$ or Present value = future value/(1 + interest rate)ⁿ. Where n=the number of years the rate is applied. The example with figures shows a single year having passed. See http://financeformulas.net/Present_Value.html.

⁷ Cases at Schuck Law vary in how long they litigate. Some cases take 3-6 months because they settle quickly. Others require extensive litigation. Schuck Law has one case that recently went to trial after 10 years of litigation, including two interlocutory appeals. As the delay increases, so does the loss in value. This is part of the additional risk attorneys take on when representing employees. Defense counsel rates, which are included in the OSB surveys, do not consider the time value of money because they bill at regular intervals instead of waiting until the end of the case.

rate charged. This is important because defense counsel usually bill their clients at regular intervals instead of waiting until the end of the case. They also do not front costs, but instead, obtain costs from the client directly.

After re-considering these factors in July 2022, I determined that a reasonable hourly rate for my services is \$550.00 per hour. This would equate to slightly more than the average rate given the 2023 extrapolated rates.

12. In 2023, Jackson County Circuit Court awarded my rate at \$550 per hour and \$450 for attorneys Moore and Brown. In 2021, the Supreme Court awarded my hourly rate of \$430, and awarded 100% of the time sought. *Mathis v. St Helens Auto Center, Inc.*, S067064.

13. In January 2021, the Marion County Circuit Court awarded my hourly rate of \$430, and awarded 100% of the time sought. *Jones v. Four Corners Rod & Gun Club*, Marion Co Case No 13c12103 (2021).

14. In February 2017, the Honorable Douglas Beckman (retired) found my previous rate of \$400 per hour within the reasonable range for lawyers of with my experience and status. This rate increased in January 2021 to \$430 per hour.

15. In January 2014, Judge (now Justice) Stephen Bushong awarded attorney fees at my then hourly rate of \$380. *Roberts v. Azzip, Inc.*, Mult. Co. case no. 130710579 (2014). This rate increased to \$400 per hour in 2017.

16. Before that, I billed at \$360 per hour. This began well before I started Schuck Law, LLC on May 1, 2009 and continued until 2014. Multiple courts in both Oregon and Washington awarded attorney fees on wage and hour cases at my then rate of \$360.00 per hour. E.g. (a) Coos County, (b) Jackson County, and (d) Multnomah County. I have also received my

rate of \$360.00 in court mandated arbitration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2023.

Schuck Law, LLC

/s/ David A. Schuck

DAVID A. SCHUCK, Esquire

OSB # 993564, WSB # 37285

(360) 566-9243

Attorney for Plaintiff and Class Members