

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Harvey Rosenfield (SBN: 123082)
harvey@consumerwatchdog.org
Jerry Flanagan (SBN: 271272)
jerry@consumerwatchdog.org
Laura Antonini (SBN: 271658)
laura@consumerwatchdog.org
CONSUMER WATCHDOG
2701 Ocean Park Blvd., Suite 112
Santa Monica, CA 90405
Tel: (310) 392-0522
Fax: (310) 392-8874

Attorneys for Plaintiffs

[ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE]

**IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

**ANTHEM BLUE CROSS
AFFORDABLE CARE ACT CASES**

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 06 2016

Sherrill J. Vetter, Executive Officer/Clerk
By: Stephanie Amador, Deputy
Stephanie Amador

Judicial Council Coordination
Proceeding No.: 4805

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR ORDER
APPROVING ATTORNEYS' FEES,
PAYMENTS TO CLASS
REPRESENTATIVES, AND
REIMBURSEMENT OF EXPENSES**

Final Approval Hearing Scheduled Per April
5, 2016 Preliminary Approval Order:

Hearing Date: August 12, 2016
Time: 9:00 a.m.
Courtroom: Department 323

Honorable Elihu M. Berle

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. HISTORY OF THE LITIGATION..... 4

**III. THE ATTORNEYS’ FEES AND EXPENSES OF \$3.95 MILLION AS SET FORTH
IN THE SETTLEMENT AGREEMENT SHOULD BE APPROVED..... 4**

A. The Standard for Determining a Reasonable Fee..... 4

B. The Lodestar Method 5

C. A Multiplier of 1.35 is Appropriate Under These Circumstances..... 8

 1. Novelty and Difficulty of Questions Involved..... 9

 2. Skill of Counsel and Results Obtained 9

 3. The Contingent Nature of the Fee Award 10

 4. Public Policy Effectuated by this Settlement 12

D. Percentage-of-the-Fund-Method 12

**IV. REIMBURSEMENT AND PAYMENT OF CLASS COUNSEL’S EXPENSES
SHOULD BE AWARDED 14**

V. INCENTIVE AWARDS FOR NAMED PLAINTIFFS 14

VI. CONCLUSION..... 16

TABLE OF AUTHORITIES

CASES

1		
2	CASES	
3	<i>Barel v. Bank of America</i> (E.D. Pa. 2009) 255 F.R.D. 393	15
4	<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715.....	13
5	<i>Bernardi v. County of Monterey</i> (2008) 167 Cal.App.4th 1379	5
6	<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	11
7	<i>Cazares v. Saenz</i> (1988) 208 Cal.App.3d 279	9
8	<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78	11
9	<i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785	14
10	<i>Graciano v. Robinson Ford Sales, Inc.</i> (2006) 144 Cal.App.4th 140.....	7
11	<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553.....	10
12	<i>In re Cellphone Termination Cases</i> (2010) 186 Cal.App.4th 1380	14, 15
13	<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	4
14	<i>In re Ins. Brokerage Antitrust Litig.</i> MDL No. 1663 (D.N.J. 2009), 2009 WL 411856.....	15
15	<i>In re Lugo</i> (2008) 164 Cal.App.4th 1522.....	10
16	<i>In re Pac. Enterprises Sec. Litig.</i> (9th Cir. 1995) 47 F.3d 373	13
17	<i>In re Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495.....	11
18	<i>In re Warner Commc'ns Sec. Litig.</i> (S.D.N.Y. 1985) 618 F. Supp. 735.....	7, 10
19	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	8, 9, 10, 11
20	<i>Lealao v. Beneficial Finance Corp.</i> (2000) 82 Cal.App.4th 19	4, 7, 8, 12
21	<i>Margolin v. Reg'l Planning Comm'n.</i> (1982) 134 Cal.App.3d 999.....	5
22	<i>Mark v. Spencer</i> (2008) 166 Cal.App.4th 219	4
23	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399.....	15
24	<i>Natural Gas Anti-Trust Cases</i> (Cal. Super. Ct. Dec. 11, 2006) <i>I, II, III & IV</i> , No. 4221, 4228, 4224, 4226, 2006 WL 5377849	4, 9, 11, 14, 15
25	<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084	4, 5, 8
26	<i>Rader v. Thrasher</i> (1962) 57 Cal.2d 244	11
27	<i>San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino</i> (1984) 155 Cal.App.3d 738.....	9
28	<i>Sanders v. City of Los Angeles</i> (1970) 3 Cal.3d 252.....	13
	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	8
	<i>Shaffer v. Superior Court</i> (1995) 33 Cal.App.4th 993	8
	<i>State of California v. Meyer</i> (1985) 174 Cal.App.3d 1061	8, 12
	<i>Steiny & Co. v. Ca. Elec. Supply Co.</i> (2000) 79 Cal.App.4th 285	5
	<i>Thayer v. Wells Fargo Bank</i> (2001) 92 Cal.App.4th 819	10
	<i>The People ex rel. Dep't. of Transp. v. Yuki</i> (1995) 31 Cal.App.4th 1754	8
	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294.....	15

1	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	13
2	<i>Weber v. Langholz</i> (1995) 39 Cal.App.4th 1578	5
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	4, 5, 8, 11
4	<i>Woodland Hills Residents Ass'n, Inc. v. City Council</i> (1979) 23 Cal.3d 917	9
5	RULES	
6	Cal. Rules of Court, rule 3.769	4
7	Cal. Rules of Professional Conduct § 2-200	4
8	OTHER AUTHORITIES	
9	Conte, <i>Attorney Fee Awards</i> , § 2.08 at 50-51 (2d ed. 1977)	14
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Class Counsel¹ respectfully submit this Memorandum of Points and Authorities in
2 Support of their Application for an Order Approving Attorneys’ Fees, Payments to Class
3 Representatives, and Reimbursement of Expenses in connection with the Settlement reached with
4 Defendant Anthem.

5 **I. INTRODUCTION**

6 After over a year of exhaustive settlement negotiations, Plaintiffs’ Counsel are proud to
7 present the Court with the Settlement Agreement. The proposed Settlement of the Lawsuits is a
8 tremendous benefit to the Class because the relief is specifically tailored to address the underlying
9 issues in the litigation and will be provided to the Settlement Class on an expedited basis.

10 Plaintiffs filed the Lawsuits to remedy alleged misrepresentations regarding Anthem’s
11 Affordable Care Act (“ACA”) provider networks. The terms of the Settlement—providing both
12 (i) prospective protections to help ensure that consumers do not face similar unexpected medical
13 bills in the future due to out-of-network providers; and, (ii) 100% reimbursement of Settlement
14 Class Members’ Out-of-Pocket Expenses—are specifically tailored to address these concerns.

15 Under the Settlement, Anthem has agreed to pay Fourteen Million, Nine Hundred Fifty-
16 Nine Thousand, Four Hundred Thirty-Five Dollars and Zero Cents (\$14,959,435.00) in direct
17 payments with no claims process required to impacted Settlement Class Members. (Declaration
18 of Jerry Flanagan in Support of Application for Final Approval of Class Action Settlement,
19 Award of Attorneys’ Fees, Payments to Class Representatives, and Reimbursement of Expenses
20 (“Flanagan Dec.”), ¶¶ 4, 10.) Reimbursement checks will be mailed directly to each affected
21 Settlement Class Member who does not opt-out of the settlement. Additionally, all Class
22 Members will have an opportunity to recover 100% of their Out-of-Pocket Expenses for which
23 Anthem does not have a record under two claims processes: (i) first, Settlement Class Members
24 may submit a claim if the direct payment they receive does not compensate them for 100% of
25 their Out-of-Pocket Expenses; and, (ii) second, any Settlement Class Member who has a claim for
26

27 ¹ Unless otherwise stated herein, all capitalized terms shall have the same meanings as set forth in
28 the Settlement Agreement and Release, effective March 18, 2016, between Plaintiffs and
Defendant Anthem (“Settlement Agreement” or “Settlement”).

1 medical services rendered by an Out-of-Network EPO or Out-of-Network PPO Professional that
2 was not previously submitted to Anthem will be able to submit such claim(s). All valid and
3 timely claims will be fully reimbursed out of an uncapped fund. Finally, there will be no
4 reversion of Settlement Funds to Anthem. Any Settlements Funds not distributed will be paid to
5 the *cy pres* recipient chosen by the parties: St. Jude Children's Research Hospital.

6 Moreover, Anthem has also agreed to undertake significant process enhancements
7 necessary to protect consumers in the future. (See § III(C)(4), *infra.*)

8 Anthem has also agreed to pay, as approved by the Court, reasonable attorneys' fees,
9 including reimbursement of expenses, to Plaintiffs' Counsel in an amount not to exceed
10 \$3,950,000 and incentive awards in the amount of \$5,000 to each of the ten Class
11 Representatives. *These amounts will not reduce any of the benefits provided to Settlement Class*
12 *Members under this Settlement.*² The requested award of attorneys' fees and incentive awards
13 were recommended by the mediator, Justice Edward A. Panelli (ret.) of JAMS, and agreed to
14 between the Parties after all material Settlement terms benefitting the Settlement Class Members
15 had been agreed to in principle. (Flanagan Dec., ¶¶ 11, 35, 52, 62.) The amount requested
16 reflects the work of Plaintiffs' Counsel to prosecute and successfully resolve this litigation
17 through May 25, 2016. (*Id.*, ¶¶ 11, 51.)

18 Plaintiffs' Counsel used May 25, 2016 as the cut-off date for their hours expended in
19 order to build in enough time to prepare this filing, due June 6, 2016, with the requisite lodestar
20 and expense figures. (*Id.*, ¶ 51). Plaintiffs' Counsel anticipates expending significant additional
21 hours on the case prior to the August 12, 2016 Fairness hearing, in order to review and respond to
22 any objections that may be filed (objections are due July 5, 2016; responses are due August 1,
23 2016), review materials provided by Rust Consulting (class action administrator's report is due
24 August 1, 2016), respond to Class Member inquiries, prepare any additional briefing requested by
25 the Court, and prepare for the Fairness hearing. (*Ibid.*) Through May 25, 2016, the attorneys' fees

26 _____
27 ² The proposed attorneys' fees and incentive awards for the Class Representatives are *in addition*
28 *to* the Settlement Funds to be provided to Settlement Class Members. Therefore, the full
\$14,959,435.00 will be provided to Settlement Class Members and all valid claims will be
reimbursed out of an uncapped fund. (Flanagan Dec., fn. 3, ¶¶ 10, 35.)

1 requested results in a multiplier of 1.35, which is at the low end of the range courts in California
2 have found to be reasonable to compensate counsel based on the various factors appropriately
3 considered in determining an adjustment to the lodestar amount. (*Id.*, ¶ 54.) Including expenses,
4 the multiplier is reduced to approximately 1.34. The attorneys' hourly rates used in this Action
5 are supported by the Declaration of Mr. Richard M. Pearl ("Pearl Dec."), a recognized expert on
6 attorneys' fees issues in the California market, filed concurrently.

7 Since this Action was commenced, Class Counsel have expended tremendous effort and
8 resources investigating, understanding and reaching a resolution of the Settlement Class
9 Members' claims that is tailored to the underlying issues sought to be addressed through this
10 litigation. (See § III(B), *infra.*)

11 As reflected in the Flanagan Decl. at ¶ 51, Class Counsel has expended 5,171.87 hours
12 litigating the Action with a total lodestar of \$2,878,688.70 and expenses of \$53,183.16.³ It is on
13 this basis and for the reasons set forth more fully below and in the accompanying Flanagan Dec.,
14 Declaration of Laura Antonini In Support of Application for Award of Attorneys' Fees and
15 Reimbursement of Expenses ("Antonini Decl."); Robert S. Arns In Support of Application for
16 Award of Attorneys' Fees and Reimbursement of Expenses ("Arns Dec."), Declaration of
17 Michael J. Bidart In Support of Application for Award of Attorneys' Fees and Reimbursement of
18 Expenses ("Bidart Dec."), Declaration of Scott C. Glovsky In Support of Application for Award
19 of Attorneys' Fees and Reimbursement of Expenses ("Glovsky Dec."), Declaration of Ralph G.
20 Martinez In Support of Application for Award of Attorneys' Fees and Reimbursement of
21 Expenses ("Martinez Dec."), and the Pearl Dec., that Plaintiffs' Counsel respectfully request that
22 fees and expenses in the amount of \$3,950,000 be approved by this Court. (Antonini Dec., Arns
23 Dec., Bidart Dec., Glovsky Dec., and Martinez Dec. are attached as Exhibits 7 through 11 to the
24 Flanagan Dec. The Pearl Dec. is attached as Exhibit 13 to the Flanagan Dec.)

25
26
27 ³ Declarations containing each law firm's lodestar and expenses are attached to the Flanagan Dec.
28 as Exhibits 7-11. A summary of lodestar and expenses is attached to the Flanagan Dec. as Exhibit
12.

1 Plaintiffs' Counsel have agreed to, and the clients have consented to, the following
2 division of attorneys' fees in this Action based on the requested \$3,950,000 in total attorneys'
3 fees and expenses: 22.8% to Consumer Watchdog, 22.8% to Shernoff Bidart Echeverria Bentley
4 LLP, 22.8% to the Law Offices of Scott C. Glovsky, APC, 22.8% to the Arns Law Firm, and
5 8.8% to Martinez Law Office, Inc. All clients have given written approval of the fee sharing
6 agreement. (See Class Counsel Declarations Confirming Client Approval of Fee Sharing, Mar.
7 25, 2016; *Mark v. Spencer* (2008) 166 Cal.App.4th 219; Cal. Rules of Professional Conduct § 2-
8 200; Cal. Rules of Court, rule 3.769(b); Flanagan Dec., ¶ 36.)

9 **II. HISTORY OF THE LITIGATION**

10 A detailed description of the history of the Lawsuits, the claims asserted, negotiations and
11 terms of the Settlement, together with the risks and uncertainties of continued litigation, are set
12 forth in the accompanying Memorandum of Points and Authorities in Support of Application for
13 Final Approval of Class Action Settlement (the "Final Approval Brief") and the Flanagan Dec.
14 For the sake of brevity and non-duplication, Class Counsel respectfully refer the Court to those
15 documents and incorporate by reference those discussions.

16 **III. THE ATTORNEYS' FEES AND EXPENSES OF \$3.95 MILLION AS SET FORTH** 17 **IN THE SETTLEMENT AGREEMENT SHOULD BE APPROVED**

18 **A. The Standard for Determining a Reasonable Fee**

19 California state courts recognize two methods for evaluating the fairness and
20 reasonableness of attorneys' fees in class action settlements: (1) the lodestar/multiplier method;
21 and (2) the percentage-of-the-fund method. (*In Re Consumer Privacy Cases* (2009) 175
22 Cal.App.4th 545, 557; *Lealao v. Beneficial Finance Corp.* (2000) 82 Cal.App.4th 19, 50;
23 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Natural Gas Anti-Trust Cases*
24 *I, II, III & IV*, No. 4221, 4228, 4224, 4226 (Cal. Super. Ct. Dec. 11, 2006) 2006 WL 5377849, at
25 *3.) As detailed below, the requested award of attorneys' fees is reasonable under either
26 approach.

1 **B. The Lodestar Method**

2 The determination of what constitutes a reasonable fee generally “begins with the
3 ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly
4 rate.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1085; *Wershba, supra*, 91
5 Cal.App.4th at 254.) “California courts have consistently held that a computation of time spent
6 on a case and the reasonable value of that time is fundamental to a determination of an
7 appropriate attorneys’ fee award.” (*Margolin v. Reg’l Planning Comm’n.* (1982) 134 Cal.App.3d
8 999, 1004.) California case law permits fee awards in the absence of detailed time sheets. (See,
9 e.g., *Wershba, supra*, 91 Cal.App.4th at 255 [“California case law permits fee awards in the
10 absence of detailed time sheets”]; *Steiny & Co. v. Ca. Elec. Supply Co.* (2000) 79 Cal.App.4th
11 285, 293 [same]; *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587 [fees awarded on the
12 declaration of counsel]; *PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at 1095, fn. 4 [fees
13 awarded based on reconstructed records].) “The trial court could make its own evaluation of the
14 reasonable worth of the work done in light of the nature of the case, and of the credibility of
15 counsel’s declaration unsubstantiated by time records and billing statements.” (*Bernardi v.*
16 *County of Monterey* (2008) 167 Cal.App.4th 1379, 1398, citing *Weber v. Langholz* (1995) 39
17 Cal.App.4th 1578, 1587.)

18 In support of its Application, Plaintiffs’ Counsel have submitted extensive summaries of
19 the attorney time expended in this Action. (See Antonini Dec., Arns Dec., Bidart Dec., Glovsky
20 Dec., and Martinez Dec., attached as Exhibits 7-11 to the Flanagan Dec.) Each Class Counsel
21 and paralegal who worked on this matter has provided their lodestar from inception of the case to
22 the present indicating how much time was spent on the Lawsuits.⁴

23 In determining that the hours expended are reasonable, courts review the information
24 submitted by counsel to determine that the work performed was reasonable under all the
25 circumstances, including the nature of the litigation, its difficulty, the amount involved, the skill
26 required in its handling, the skill employed, the attention given, the success or failure, and other
27 circumstances in the case. (*PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at 1096.) Based on

28 ⁴ See footnote 3, *supra*.

1 the information provided in the Antonini Dec., Arns Dec., Bidart Dec., Glovsky Dec., and
2 Martinez Dec., it is clear that the hours expended by counsel to achieve this result were
3 reasonable under the circumstances. As the Flanagan Dec. shows, Class Counsel have spent
4 substantial time litigating this highly complex Action (5,171.87 hours) and advanced all costs,
5 without payment or reimbursement to date. (See Flanagan Dec., ¶¶ 51, 59.) Here, Class Counsel:

- 6 ➤ Conducted an extensive investigation before and during the litigation of the legal and
7 factual underpinnings of the claims, including research of relevant case law and debriefing
8 class members impacted by the challenged practices;
- 9 ➤ Drafted five Class Action complaints;
- 10 ➤ Reviewed filings in connection with the Judicial Council coordination proceeding and
11 attended the hearing regarding the same;
- 12 ➤ Reviewed 1,500 pages of information produced informally by Anthem at the request of
13 Class Counsel regarding Anthem's provider networks and corrective actions that Anthem
14 began to undertake following the filing of the Lawsuits regarding the marketing and sale
15 of ACA Health Plans;
- 16 ➤ Conducted six in-person depositions under oath;
- 17 ➤ Hired an independent actuary to review Anthem's expert actuary's detailed claims
18 accounting, and participated in a telephonic conference with Anthem's expert actuary
19 regarding that accounting (Declarations from Class Counsel's and Anthem's experts are
20 attached as Exhibits R and S to the Flanagan Decl. ISO Preliminary Approval);
- 21 ➤ Received and reviewed several thousand pages of documents regarding Anthem's ACA
22 provider networks in response to a Public Records Act ("PRA") request to the Department
23 of Managed Health Care;
- 24 ➤ Reviewed hundreds of pages of Anthem premium rate increase filings that contain
25 enrollment, provider network, and coverage data;
- 26 ➤ Submitted two PRA requests to the California insurance exchange, Covered California,
27 and received and reviewed over 1,700 pages of documents regarding Anthem's provider
28 networks, pricing of those networks, and geographic-spread of those networks;

- 1 ➤ Served as the principal negotiators of the Settlement and a principal interface with counsel
- 2 for Anthem, the mediator, and Settlement Class Members;
- 3 ➤ Engaged in extensive settlement negotiations over more than one year, including four in-
- 4 person mediation sessions and extensive negotiations over the terms of the memorandum
- 5 of understanding, Settlement Agreement, and other settlement documents;
- 6 ➤ Drafted papers in support of preliminary approval (including supplemental briefing
- 7 requested by the Court) and final approval of the Settlement; and
- 8 ➤ Appeared at the hearings on the Motion for Preliminary Approval before this Court.

9 (Antonini Dec., ¶¶ 3, 11; Arns Dec., ¶¶ 8, 12-13; Bidart Dec., ¶¶ 9, 14, 18; Glovsky Dec., ¶¶ 3,
10 10, 20; and Martinez Dec., ¶¶ 3, 10.)

11 Moreover, the quality of opposing counsel is also relevant in determining if the lodestar is
12 reasonable. (See, e.g., *In re Warner Commc'ns Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749
13 [“The quality of opposing counsel is also important in evaluating the quality of plaintiffs’
14 counsels’ work.”].) Here, Anthem is represented vigorously by experienced and able counsel
15 from prominent firms with ample resources. (Flanagan Dec., ¶ 56.) The fact that Class Counsel
16 negotiated such a favorable settlement with Anthem being represented by such high caliber legal
17 advocates militates in favor of granting the application for attorneys’ fees and expenses:

18 The amount of attorney fees typically negotiated in comparable litigation
19 should be considered in the assessment of a reasonable fee in representative
20 actions in which a fee agreement is impossible. Given the unique reliance of
21 our legal system on private litigants to enforce substantive provisions of law
22 through class and derivative actions, attorneys providing the essential
 enforcement services must be provided incentives roughly comparable to those
 negotiated in the private bargaining that takes place in the legal marketplace, as
 it will otherwise be economic for defendants to increase injurious behavior.

23 (*Lealao v. Beneficial Finance Corp.*, *supra*, 82 Cal.App.4th at 47.)

24 Next, to ascertain the reasonable hourly rate to use in calculating the lodestar, “the court
25 engages in a relevant objective analysis: to determine the prevailing rate in the community for
26 *comparable* professional legal services, that is, services rendered by counsel on consumer fraud
27 issues.” (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 156, emphasis in
28 original.) Here, the hourly rates utilized by Class Counsel are rates charged by counsel

1 performing similar work on similar types of cases, and similar rates have been approved by
2 California courts. (Antonini Dec., ¶¶ 7-10; Arns Dec., ¶ 7; Bidart Dec., ¶ 12; Glovsky Dec., ¶ 7;
3 and Martinez Dec., ¶ 7.) Based on the information provided in the Pearl Dec., it is clear that
4 hourly rates utilized by Class Counsel are reasonable. (Pearl Dec., ¶¶ 8-12). (The Pearl Dec. is
5 attached as Exhibit 13 to the Flanagan Dec.) Class Counsel’s hourly rates are reasonable as
6 compared to the legal community for similar work. (*PCLM Group, Inc. v. Drexler, supra*, 22
7 Cal.4th at 1095; *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002; Antonini Dec., ¶¶ 7-
8 8; Arns Dec., ¶ 7; Bidart Dec., ¶ 12; Glovsky Dec., ¶ 8; and Martinez Dec., ¶ 8.)

9 Thus, where, as here, the parties negotiate a reasonable fee after all other terms benefitting
10 the Class Members have been agreed to in principle, which fee is reasonable under a lodestar
11 calculation, they have “mimicked the market” by setting a fee at a level that the market would set.
12 (*Lealao v. Beneficial Finance Corp., supra*, 82 Cal.App.4th at 47.) The Settlement Agreement
13 thus is to be given significant weight in determining that the requested fee is reasonable, being
14 that it is negotiated under market forces, and as here, was based on the recommendation of the
15 mediator. (*Wershba, supra*, 91 Cal.App.4th at 254; Flanagan Dec. ¶¶ 11, 35, 52.)

16 **C. A Multiplier of 1.35 is Appropriate Under These Circumstances**

17 Under the lodestar method, the basic fee for legal services in the community for attorneys
18 performing comparable work is then to be adjusted, using a multiplier, including by the following
19 factors: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in
20 presenting them; (3) the contingent nature of the fee award (See *Serrano v. Priest (Serrano III)*
21 (1977) 20 Cal.3d 25, 49); and, (4) the “public service element, and motivation to represent
22 consumers and enforce laws.” (*State of California v. Meyer* (1985) 174 Cal.App.3d 1061, 1073).
23 There is no rigid formula and each factor should be considered only where appropriate. (See
24 *ibid.*; *The People ex rel. Dep’t. of Transp. v. Yuki* (1995) 31 Cal.App.4th 1754, 1771.)

25 Multipliers are utilized to reflect the reality that counsel cannot normally handle public
26 interest or class action litigation for straight hourly fees payable only if they win, particularly
27 since, as here, plaintiffs are typically unable to finance such expensive litigation on their own.
28 (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33; Flanagan Dec. ¶¶ 57-58.)

1 In determining the appropriate multiplier, the ultimate goal is “to encourage suits
2 effectuating a *strong [public] policy* by awarding substantial attorney’s fees . . . to those who
3 successfully bring such suits” (*Woodland Hills Residents Ass’n, Inc. v. City Council* (1979)
4 23 Cal.3d 917, 933, emphasis added.) To accomplish that purpose, the fee award must be large
5 enough “to entice competent counsel to undertake difficult public interest cases.” (*San*
6 *Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738,
7 755.) While Class Counsel believe the result achieved is excellent, the significant risk and delay
8 in payment alone justify applying a multiplier. (*Cazares v. Saenz* (1988) 208 Cal.App.3d 279, 288
9 [a multiplier of 2.0 or more based on consideration of risk and delay factors alone is proper].) For
10 the reasons detailed below, all relevant factors justify a multiplier of 1.35. Indeed, California
11 Courts have even applied multipliers of more than four. (*Natural Gas Anti-Trust Cases, supra,*
12 2006 WL 5377849, at *4 [“This Court and numerous cases have applied multipliers of between 4
13 and 12 to counsel’s lodestar in awarding fees.”].)

14 **1. Novelty and Difficulty of Questions Involved**

15 The issues asserted in the Lawsuits were novel and complex, requiring the time and
16 expertise of counsel experienced in handling class action and particularly healthcare litigation,
17 including issues regarding the nature of provider networks under the federal Affordable Care Act
18 and alleged misrepresentations regarding Anthem’s provider networks. (*See Ketchum v. Moses,*
19 *supra,* (2001) 24 Cal. 4th at 1138-39 [“[a] more difficult legal question typically requires more
20 attorney hours].) As discussed above, Class Counsel worked tirelessly to achieve the benefits of
21 the Settlement. This required extensive knowledge of the underlying issues and analysis of the
22 most effective way to reach resolution that benefited the Class. In short, the result achieved is the
23 clearest reflection of Class Counsel’s skill and expertise. (Flanagan Dec., ¶ 55.)

24 **2. Skill of Counsel and Results Obtained**

25 The Settlement was achieved by Class Counsel, comprised of attorneys with significant
26 experience in litigating class and healthcare actions. (See Flanagan Dec., Exs. 7-11.) Here, Class
27 Counsel performed an extensive legal and factual investigation, drafted five complaints, reviewed
28 voluminous materials produced by Anthem and obtained from public sources, engaged in

1 extensive settlement negotiations to reach the Settlement Agreement, drafted and revised the
2 settlement documents, and made presentations before the Court in furtherance of preliminary
3 approval of the Settlement. (See, e.g., Flanagan Dec., ¶¶ 13-26.)

4 Class Counsel presented and resolved the Settlement Class Members' claims with great
5 skill and ingenuity. Class Counsel should therefore be rewarded for their effort and result by
6 application of a modest multiplier. In fact, in *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th
7 819, the Court noted that "[t]he California cases appear to incorporate the 'results obtained' factor
8 into the 'quality' factor: *i.e.*, high quality work may produce greater results in less time than
9 would work of average quality, thus justifying a multiplier." (*Id.* at 838; see *In re Lugo* (2008)
10 164 Cal.App.4th 1522, 1546 [affirming multiplier based in part on finding that "the statewide
11 results achieved by pursuing the matter as a class action resulted from class counsel's legal skills
12 and persistence"]; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 582 ["The 'results
13 obtained' factor can properly be used to enhance a lodestar calculation where an exceptional
14 effort produced an exceptional benefit"].) Thus, the extensive experience of Class Counsel in
15 litigating complex consumer protection cases merits the deference of the Court when considering
16 the appropriateness of the time they spent in connection with this litigation, especially
17 considering the magnitude of the success of their efforts in the benefits of the Settlement to Class
18 Members.

19 3. The Contingent Nature of the Fee Award

20 Class Counsel undertook this Action on an entirely contingent fee basis, assuming a
21 substantial risk that they would have to devote a significant amount of time and incur substantial
22 expenses in prosecuting this Action without any assurance of being compensated for their efforts.
23 (Flanagan Dec., ¶ 57.)⁵ Courts in California and across the country have consistently recognized
24 that the risk of receiving little or no recovery is a major factor in considering an award of
25 attorneys' fees and determining that the resulting multiplier is reasonable. (See, e.g., *Ketchum*,

26 ⁵ Under *Serrano III*, *supra*, 20 Cal.3d at 49, a multiplier may be applied to the lodestar figure to
27 take into account the fact that the litigation precluded attorneys from accepting other
28 employment. Here, because of the magnitude of the Action and the Settlement, Class Counsel
was required to devote many hours of their time, preventing them from working on other cases.

1 *supra*, 24 Cal.4th at 1128; *In re Warner Communications*, *supra*, 618 F.Supp. at 747-49 (citing
2 cases).)

3 In *Ketchum*, the plaintiff had sought and obtained a multiplier of two times prevailing
4 rates. In support of his motion for a fee multiplier, the moving party supplied declarations that
5 the Court referred to in finding that multipliers of two to four times hourly rates are standard in
6 contingent risk cases. (*Ketchum*, *supra*, 24 Cal.4th at 1128; see also *Wershba*, *supra*, 91
7 Cal.App.4th at 255 [multipliers can range between 2 and 4 and even higher]; *In re Sutter Health*
8 *Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 [affirming a multiplier of 2.52];
9 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 [affirming a multiplier of 2.53]; *City of*
10 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 [affirming a multiplier of 2.34]; *Natural*
11 *Gas Anti-Trust Cases*, *supra*, 2006 WL 5377849, at *4.)

12 Thus, a negotiated and agreed-to fee award that results in a multiplier less than what
13 California courts have found to be within the common range should be presumptively reasonable.
14 The California Supreme Court emphasized throughout *Ketchum* that attorneys who accept cases
15 on a contingent basis need to be additionally compensated for the risk involved and the clients
16 they represent. The Court stated: “[a] contingent fee contract, since it involves a gamble on the
17 result, may properly provide for a larger compensation than would otherwise be reasonable.”
18 (*Ketchum*, *supra*, 24 Cal.4th at 1132, quoting *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253.) The
19 Court in *Ketchum* emphasized that attorneys should be paid for the risk they take in accepting
20 contingency fee cases, as it is a just and fair way to compensate them for taking such risk.
21 (*Ketchum*, 24 Cal.4th at 1138.)

22 Here, the contingent nature of this representation was extremely important to obtain
23 qualified representation, since Plaintiffs did not have the funds to litigate this type of case in
24 terms of up-front expenses, let alone pay for the attorneys’ fees incurred. (Flanagan Dec., ¶¶ 57-
25 58.) Thus, if the case had been lost, Class Counsel would have gone unpaid. (*Ibid.*; see Pearl
26 Dec., ¶ 14 [“a significant lodestar enhancement would be consistent with the market value of the
27 work of Plaintiffs’ counsel in the legal marketplace and therefore reasonable [and] an enhanced
28 lodestar ... is consistent with the risk involved in preparing and litigating this case on a wholly

1 contingent basis and the result achieved”].) Accordingly, the risks of non-payment in this case
2 weigh heavily in favor of approving the award of attorneys’ fees and demonstrates that a 1.35
3 multiplier is reasonable under the circumstances.

4 **4. Public Policy Effectuated by this Settlement**

5 The “public service element, and motivation to represent consumers and enforce laws” has
6 been a factor considered by courts in setting a reasonable fee award. (*State of California v. Meyer*,
7 *supra*, 174 Cal.App.3d at 1073; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19,
8 53 [trial courts should consider the need for private enforcement necessary to vindicate legal
9 rights, as well as the role representative actions play in relieving the courts of the need to
10 separately adjudicate numerous claims].)

11 Under the Settlement, in addition to guaranteeing Class Members the right to recover
12 100% of their Out-of-Pocket Expenses, Anthem also agrees to implement a series of process
13 enhancements regarding their marketing, sale and implementation of ACA Health Plans,
14 including measures to improve member, provider, and broker understanding about ACA Plans,
15 access to in-network providers, and accuracy of provider lists. In particular, going forward,
16 Anthem will treat a provider as in-network for billing purposes if a provider is listed in-network
17 on Anthem’s Provider Directory and a member relies on that network status when seeking
18 medical services. (Settlement Agreement, Exhibit 8.)

19 All Californians will benefit from the programmatic fixes, including the requirement that
20 Anthem compensate members at the in-network rate for any provider listed as in-network. This
21 injunctive relief prevents significant increased costs in the future and fulfills a central public
22 policy goal of the litigation: consumers get the benefit of their bargain and can count on
23 Anthem’s representations about their plans and recover 100% of out-of-pocket costs due to
24 inaccuracies in Anthem’s Provider Directory in the future.

25 **D. Percentage-of-the-Fund-Method**

26 Under the Settlement, Anthem has agreed to pay, with no claims process required,
27 impacted Settlement Class Members \$14,959,435.00 (“Settlement Funds”) in addition to
28 reimbursement of all valid claims. The proposed attorneys’ fees and incentive awards for the

1 class representatives are *in addition to* the Settlement Funds to be provided to Settlement Class
2 Members. Moreover, the full \$14,959,435.00 will be provided to Settlement Class Members with
3 no reversion of any funds to Anthem. (Flanagan Dec., ¶ 7.) Therefore, the proposed Settlement
4 and attorneys' fee award is not a true percentage-of-the-fund settlement because attorneys' fees
5 will not be deducted from funds allocated to Settlement Class Members. However, Plaintiffs'
6 Counsel below compares the requested award of attorneys' fees in this Action to percentage-of-
7 the-fund settlements to provide a benchmark for deciding whether the requested fees are
8 reasonable.

9 Under a percentage-of-the-fund settlement, attorneys' fees are awarded as a percentage of
10 the "common fund" available to pay all awards and costs under a settlement including payments
11 to class members. (*Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726, *as modified on*
12 *denial of reh'g* (Mar. 9, 2004).) Courts have consistently found that attorneys' fees of more than
13 25% of the common fund are reasonable. For example, the California Supreme Court in *Sanders*
14 *v. City of Los Angeles* held that a lower court properly awarded attorneys' fees that were 25% of
15 the common fund. (*Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 261.) The court in *Bell v.*
16 *Farmers Ins. Exch.* awarded to plaintiffs' counsel attorney fees in the amount of 25% of the total
17 damages fund recovered for the class, consisting of back pay and interest, plus expenses in the
18 sum of \$941,884.73. (*Bell, supra*, 115 Cal.App.4th at 726; see also *Vizcaino v. Microsoft Corp.*
19 (9th Cir. 2002) 290 F.3d 1043, 1048-1049 [holding that 28% of the common fund was a
20 reasonable award for attorneys' fees due to the complexity and risk of the case and the
21 performance and results achieved by the attorneys]; *In re Pac. Enterprises Sec. Litig.* (9th Cir.
22 1995) 47 F.3d 373, 379; [holding that 33% of the common fund (\$4,000,000 out of a \$12,000,000
23 fund) was reasonable].)

24 Here, if there had been a common fund to compensate both Settlement Class Members
25 and pay attorneys' fees, the fund would equal more than \$18.91 million (\$14,959,435.00 in
26 recovery to Settlement Class Members + \$3,950,000 in attorneys' fees and expenses). As a
27 percentage of that hypothetical "common fund," the attorneys' fees award would be
28 approximately 21%, which is reasonable under California law given the complexity of this

1 Action. Moreover, Anthem will pay claims submitted under the Settlement out of an uncapped
2 fund. That amount is unknown at this time, but the hypothetical “common fund” might be larger
3 than \$18.91 million.

4 **IV. REIMBURSEMENT AND PAYMENT OF CLASS COUNSEL’S EXPENSES**
5 **SHOULD BE AWARDED**

6 Expenses are also awarded in addition to the fee and are routinely reimbursed in
7 contingency fee cases. (*Natural Gas Anti-Trust Cases*, *supra*, 2006 WL 5377849 at *4, quoting
8 Conte, *Attorney Fee Awards*, § 2.08 at 50-51 (2d ed. 1977).) Here, Class Counsel expenses are
9 included in the \$3,950,000.

10 Class Counsel have expended \$53,183.16 toward expenses through the present. These
11 expenses include Court filing fees and E-service fees, Court reporter and transcription fees,
12 postage and courier fees, telephonic conferences, research materials, and mediator and expert
13 costs. These expenses were critical to Class Counsel’s success in achieving the Settlement and
14 were reasonable and appropriately incurred. (Antonini Dec., ¶¶ 24-25; Arns Dec., ¶ 15; Bidart
15 Dec., ¶ 20; Glovsky Dec., ¶ 22; and Martinez Dec., ¶ 13.) Anthem does not oppose this payment
16 for expenses. It should therefore be granted as part of the overall fee award.

17 **V. INCENTIVE AWARDS FOR NAMED PLAINTIFFS**

18 Class Counsel respectfully requests that the Court approve the payment of an incentive
19 award of \$5,000 to each of the ten Plaintiffs for their services as representatives of the Settlement
20 Class in this Action. Each Plaintiff actively and effectively fulfilled their obligations as a Class
21 Representative and provided assistance to counsel in the filing and resolution of this Action.
22 (Flanagan Dec., ¶¶ 61-62, Ex. 14 [Declarations of Class Representatives].)

23 Each of the ten Class Representatives engaged in more than 50 hours of work on behalf of
24 the unnamed Settlement Class Members, as explained in the declarations submitted by each Class
25 Representative. (Flanagan Dec., Ex. 14; *see Clark v. Am. Residential Servs. LLC* (2009) 175
26 Cal.App.4th 785, 806-807 [holding that specificity of the time and efforts expended by a class
27 representative is a critical factor in determining reasonableness of class representative
28 enhancements]; *In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395

1 [holding that evidence showing how each class representative “actively participated” in litigation
2 justified incentive awards].)

3 Furthermore, the proposed incentive awards are reasonably proportionate to the sums
4 other Settlement Class Members will receive under the Settlement. (See *Munoz v. BCI Coca-Cola*
5 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [holding that class representative
6 enhancements that are proportionate to what other class members will receive are not
7 objectionable]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299
8 [granting an incentive award of \$50,000 to the class representative].) Here, under the terms of the
9 Settlement, individual Settlement Class Members who were enrolled in an EPO plan may receive
10 up to an estimated \$52,500.00, and who were enrolled in a PPO plan may receive up to an
11 estimated \$21,250.00, in checks sent as direct payments with no claims process required;
12 additionally, they will have the opportunity to claim-in for additional Out-of-Pocket Expenses.
13 (Flanagan Decl., ¶ 63.) The requested enhancements for Class Representatives were not
14 conditioned on whether Plaintiffs supported the Settlement as they were negotiated after all
15 material Settlement terms benefitting the Settlement Class Members had been agreed to in
16 principle. (*Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165;
17 Flanagan Decl., ¶ 62, Ex. 14.)

18 Finally, the amount requested is comparable to amounts awarded in analogous
19 settlements. (See, e.g., *In re Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at 1393-
20 5 [affirming award of \$10,000 incentive awards to each of the class representatives]; *Natural Gas*
21 *Anti-Trust Cases*, *supra*, 2006 WL 5377849 at *4 [approving incentive fees totaling \$45,000 to be
22 paid out of the \$92.1 million settlement fund]; *Barel v. Bank of America* (E.D. Pa. 2009) 255
23 F.R.D. 393, 402-03 [approving award of \$10,000 to class representative for services performed
24 for the benefit of the class]; *In re Ins. Brokerage Antitrust Litig.* MDL No. 1663 (D.N.J. 2009)
25 WL 411856, *10 [approving \$10,000 incentive award for each named plaintiff].)

26 //

27 //

28 //

1 VI. CONCLUSION

2 For all of the foregoing reasons, Class Counsel respectfully request that the Court award
3 them attorneys' fees and expenses in the amount of \$3,950,000 and an incentive award of \$5,000
4 to each of the Plaintiffs.

5 Respectfully Submitted,

6
7 DATED: June 6, 2016

8 By: 

Jerry Flanagan (SBN: 271272)
jerry@consumerwatchdog.com

9
10 Harvey Rosenfield (SBN 123082)
harvey@consumerwatchdog.org
11 Laura Antonini (SBN 271658)
laura@consumerwatchdog.org
12 **Consumer Watchdog**
2701 Ocean Park Blvd., Suite 112
13 Santa Monica, CA 90405
Tel: (310) 392-0522
14 Fax: (310) 392-8874

15 Robert S. Arns (SBN 65071)
rsa@arnslaw.com
16 Julie C. Erickson (SBN 293111)
jce@arnslaw.com
17 **The Arns Law Firm**
A Professional Corporation
18 515 Folsom St., 3rd Floor
San Francisco, CA 94109
19 Tel: (415) 495-7800
20 Fax: (415) 495-7888

21 Michael J. Bidart (SBN 60582)
22 Travis Corby (SBN 268633)
23 **Shernoff Bidart Echeverria Bentley LLP**
600 South Indian Hill Boulevard
24 Claremont, CA 91711
Telephone: (909) 621-4935
25 Facsimile: (909) 625-6915

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Scott C. Glovsky (SBN 170477)
sglovsky@scottglovskylaw.com
Ari Dybnis (SBN 272767)
adybnis@scottglovskylaw.com
Law Offices Of Scott C. Glovsky, APC
100 E. Corson Street, Suite 200
Pasadena, CA 91103
Tel: (626) 243-5598
Fax: (866) 243-2243

Ralph G. Martinez (SBN 82463)
ralph@martinezlawoffice.com
Martinez Law Office, Inc.
24422 Avenida De La Carlota, Ste. 310
Laguna Hills, CA 92653
Tel: (949) 586-0123
Fax: (949) 586-1033

Attorneys for Plaintiffs