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

**REBECCA LEHMAN & HEATHER
WOMICK, individually and on behalf of all
others similarly situated;**

Plaintiffs,

v.

**HEALTH NET OF CALIFORNIA, INC., and
HEALTH NET LIFE INSURANCE
COMPANY and DOES 1 through 100 inclusive,**

Defendants.

Case No.: BC567361

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
9, 2018 Preliminary Approval Order:

Judge: Hon. Kenneth R. Freeman
Dept.: 14
Hearing Date: Jul. 12, 2018
Time: 11:00 a.m.

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

5 **I. INTRODUCTION**

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

11 Plaintiffs filed this action to remedy alleged misrepresentations regarding Health Net’s
12 provider networks. The terms of the Settlement—providing both (i) prospective protections to help
13 ensure that consumers do not face similar unexpected medical bills in the future due to out-of-
14 network providers; and (ii) a claims process that will provide 100% reimbursement of Settlement
15 Class Members’ Out-of-Pocket Expenses—are specifically tailored to address these concerns.

16 Under the Settlement, Health Net has agreed to significant injunctive relief as well as
17 considerable programmatic changes to the maintenance of its provider networks. Health Net will,
18 for four years from the Settlement Effective Date, treat individual and family plan PPO providers
19 as “in-network” for billing purposes under the applicable terms of members’ Certificates of
20 Insurance or Evidences of Coverage including the amounts owed by California consumers enrolled
21 in any Health Net PPO individual health plans, if it is reasonably established that those providers
22 were incorrectly represented as in-network in Health Net’s provider directory or by a Health Net
23 employee. (Settlement Agreement, ¶ III.A; Declaration of Jerry Flanagan in Support of Application
24 for Final Approval of Class Action Settlement, Award of Attorneys’ Fees, Payments to Class
25 Representatives, and Reimbursement of Expenses (“Flanagan Dec.”), ¶ 39.)

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 20, 2018, between Plaintiffs and Defendant
Health Net (“Settlement Agreement” or “Settlement”).

1 Additionally, Health Net has agreed, for four years from the Settlement Effective Date, to
2 make certain disclosures and remedial measures with respect to its Health Maintenance
3 Organization (“HMO”) Plans, Exclusive Provider Organization (“EPO”) Plans, and Health Care
4 Service (“HSP”) Plans even though the Settlement Class and claims release provisions include only
5 members of individual PPO ACA Health Plans. (Settlement Agreement, ¶ III.A).

6 Finally, Health Net has agreed to use a comprehensive claims process to reimburse all
7 Settlement Class Members who, as a result of any alleged provider network misinformation or
8 inaccuracy, received health care services rendered by Out-of-Network Medical PPO Professionals
9 in 2014 that they believed were in-network, for 100% of their Out-of-Pocket expenses incurred as
10 a result. (Flanagan Dec. ¶ 5; Settlement Agreement, ¶ III.A.). All valid and timely claims will be
11 fully reimbursed out of an uncapped fund.

12 Health Net has also agreed to pay, as approved by the Court, reasonable attorneys’ fees,
13 including reimbursement of expenses, to Plaintiffs’ Counsel in an amount not to exceed \$625,000
14 and incentive awards in the amount of \$5,000 to each of the two Class Representatives. The agreed-
15 to proposed attorneys’ fees are *significantly less than* Plaintiffs’ Counsel’s lodestar in this action.
16 Moreover, these amounts will not reduce any of the benefits provided to Settlement Class Members
17 under this Settlement.² The attorneys’ fees and expenses and the incentive awards were agreed upon
18 after the other material terms of the settlement had been agreed upon in principle. (Flanagan Dec.,
19 ¶¶ 3, 10, 27, 55.) The amounts requested are reasonable and reflect the work of Plaintiffs’ Counsel
20 to prosecute and successfully resolve this litigation through June 5, 2018. (*Id.*, ¶¶ 10, 44.)

21 Plaintiffs’ Counsel used June 5, 2018 as the cut-off date for their hours expended in order
22 to build in enough time to prepare this filing, due June 12, 2018, with the requisite lodestar and
23 expense figures. (*Id.*, ¶ 44). Plaintiffs’ Counsel anticipates expending significant additional hours
24 on the case prior to the July 12, 2018 Fairness hearing, in order to review and respond to any
25 objections that may be filed (objections are due June 25, 2018; responses are due July 6, 2018),
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. All valid claims will be
reimbursed out of an uncapped fund. (Flanagan Dec., fn. 3, ¶¶ 4, 25.)

1 review materials provided by Garden City Group (class action administrator’s report is due July 6,
2 2018), respond to Class Member inquiries, prepare any additional briefing requested by the Court,
3 and prepare for the Fairness hearing. (*Ibid.*) Through June 5, 2018, the attorneys’ fees requested
4 results in a *negative* multiplier of 0.74, as Plaintiffs’ Counsel has agreed to receive an amount of
5 attorneys’ fees and expenses considerably less than Plaintiffs’ Counsels’ total lodestar figures,
6 further supporting the reasonableness of the proposed attorneys’ fees. (*Id.*, ¶ 44–53.) The attorneys’
7 hourly rates used in this Action are supported by the Declaration of Mr. Richard M. Pearl (“Pearl
8 Dec.”), a recognized expert on attorneys’ fees issues in the California market, filed concurrently.
9 (Flanagan Dec., Ex. I.)

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

14 As reflected in the Flanagan Dec. at ¶ 44, Class Counsel has expended 1,785.6 hours
15 litigating the Action with a total lodestar of \$845,842.00 and expenses of \$17,503.06.³ It is on this
16 basis and for the reasons set forth more fully below and in the accompanying Flanagan Dec.,
17 Declaration of Benjamin Powell in Support of Application for Award of Attorneys’ Fees and
18 Reimbursement of Expenses (“Powell Dec.”); Declaration of Robert S. Arns in Support of
19 Application for Award of Attorneys’ Fees and Reimbursement of Expenses (“Arns Dec.”),
20 Declaration of Travis M. Corby in Support of Application for Award of Attorneys’ Fees and
21 Reimbursement of Expenses (“Corby Dec.”), and the Pearl Dec., that Plaintiffs’ Counsel
22 respectfully request that fees and expenses in the amount of \$625,000 be approved by this Court.
23 (Powell Dec., Arns Dec., and Corby Dec. are attached as Exhibits E–G to the Flanagan Dec. The
24 Pearl Dec. is attached as Exhibit I 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 E–G. A summary of lodestar and expenses is attached to the Flanagan Dec. as Exhibit
H.

1 Plaintiffs' Counsel have agreed, and the clients have consented, to share the \$625,000 in
2 attorneys' fees equally in this case. All clients have given written approval of the fee sharing
3 agreement. (*See* Flanagan Dec., ¶¶ 27–28, Exhs. E–G; *Mark v. Spencer* (2008) 166 Cal.App.4th
4 219; Cal. Rules of Professional Conduct § 2–200; Cal. Rules of Court, rule 3.769(b); Flanagan
5 Dec., ¶ 30.)

6 **II. HISTORY OF THE LITIGATION**

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

13 **III. THE ATTORNEYS' FEES AND EXPENSES OF \$625,000 AS SET FORTH IN THE** 14 **SETTLEMENT AGREEMENT SHOULD BE APPROVED**

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

16 The leading method for evaluating the fairness and reasonableness of attorneys' fees in class
17 action settlements is the lodestar/multiplier method. Where, as here, injunctive and programmatic
18 relief is the primary form of relief for Settlement Class Members, the lodestar method is not only
19 the correct method for calculation of attorneys' fees, it is the only method for such a determination.
20 (*In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 941; *Hanlon*
21 *v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1029; *see also In re HP Laser Printer Litig.*, 2011
22 WL 3861703, *5 (C.D. Cal. Aug. 31, 2011) (“[B]ecause the primary benefit to the class is injunctive
23 relief, the Court finds it appropriate to base the attorney fees on a lodestar calculation rather than
24 any sort of common fund calculation. *The Court finds it unnecessary to attempt to quantify the*
25 *value of the injunctive relief where a lodestar calculation provides a reasonable way to determine*
26 *attorney fees.*”) (emphasis added, citations omitted).) This is true even where “plaintiffs received
27 no monetary relief. . .” and it is not “relevant that plaintiffs obtained the relief they sought through
28 settlement rather than a judgment in their favor.” (*Friend v. Kolodziejczak* (9th Cir. 1995) 72 F.3d

1 1386, 1390–91.) In sum, the lodestar approach is the appropriate method for determining reasonable
2 attorneys’ fees in a case such as this. As discussed below, the fees requested by Plaintiffs’ Counsel
3 are reasonable under this standard.

4 **B. The Lodestar Method**

5 The determination of what constitutes a reasonable fee generally “begins with the ‘lodestar,’
6 i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate.” (*PLCM*
7 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1085; *Wershba v. Apple Computer, Inc.* (2001) 91
8 Cal.App.4th 224, 254.) “California courts have consistently held that a computation of time spent
9 on a case and the reasonable value of that time is fundamental to a determination of an appropriate
10 attorneys’ fee award.” (*Margolin v. Reg’l Planning Comm’n.* (1982) 134 Cal.App.3d 999, 1004.)
11 California case law permits fee awards in the absence of detailed time sheets. (*See, e.g., Wershba,*
12 *supra*, 91 Cal.App.4th at 255 [“California case law permits fee awards in the absence of detailed
13 time sheets”]; *Steiny & Co. v. Ca. Elec. Supply Co.* (2000) 79 Cal.App.4th 285, 293 [same]; *Weber*
14 *v. Langholz* (1995) 39 Cal.App.4th 1578, 1587 [fees awarded on the declaration of counsel]; *PLCM*
15 *Group, Inc., supra*, 22 Cal.4th at 1095, fn. 4 [fees awarded based on reconstructed records].) “The
16 trial court could make its own evaluation of the reasonable worth of the work done in light of the
17 nature of the case, and of the credibility of counsel’s declaration unsubstantiated by time records
18 and billing statements.” (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1398,
19 citing *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587.)

20 In support of their Application, Plaintiffs’ Counsel have submitted extensive summaries of
21 the attorney time expended in this Action. (*See Powell Dec., Arns Dec., and Corby Dec., attached*
22 *as Exhibits E–G to the Flanagan Dec.*) Each Class Counsel and paralegal who worked on this
23 matter has provided their lodestar from inception of the case to June 5, 2018 indicating how much
24 time was spent on this action.⁴

25 In determining that the hours expended are reasonable, courts review the information
26 submitted by counsel to determine that the work performed was reasonable under all the
27 circumstances, including the nature of the litigation, its difficulty, the amount involved, the skill

28 _____
⁴ *See* footnote 3, *supra*.

1 required in its handling, the skill employed, the attention given, the success or failure, and other
2 circumstances in the case. (*PLCM Group, Inc., supra*, 22 Cal.4th at 1096.) Based on the
3 information provided in the Powell Dec., Arns Dec., and Corby Dec., it is clear that the hours
4 expended by counsel to achieve this result were reasonable under the circumstances. As the
5 Flanagan Dec. shows, Class Counsel have spent substantial time litigating this highly complex
6 Action (1,785.6 hours) and advanced all costs, without payment or reimbursement to date. (*See*
7 Flanagan Dec., ¶¶ 44–53.) Here, Class Counsel:

- 8 ➤ Conducted an extensive investigation before and during the litigation of the legal and factual
9 underpinnings of the claims, including research of relevant case law and debriefing class
10 members impacted by the challenged practices;
- 11 ➤ Drafted the Class Action complaint;
- 12 ➤ Drafted numerous discovery requests propounded upon the Defendant, including document
13 requests and special interrogatories regarding communications with named class
14 representatives, plan types, plan enrollment, and other issues related to arbitration
15 provisions contained in plan documents;
- 16 ➤ Reviewed discovery responses, drafted multiple discovery meet and confer letters, and held
17 ongoing discussions with the Defendant regarding discovery responses;
- 18 ➤ Reviewed extensive information informally produced by the Defendant regarding
19 Defendant’s provider networks, PPO, HMO, EPO, and HSP health plans, enrollment
20 figures, communications to providers and members, and the provider search tool on
21 Defendant’s website;
- 22 ➤ Reviewed information produced by Defendant reflecting remedial actions summarized in
23 the Settlement that Defendant began to undertake following the filing of the Action
24 regarding the marketing and sale of PPO, HMO, EPO and HSP health plans;
- 25 ➤ Served as the principal negotiators of the Settlement and a principal interface with counsel
26 for Health Net, the mediator, and Settlement Class Members;
- 27 ➤ Engaged in extensive settlement negotiations over more than one year, including an in-
28 person mediation session and extensive negotiations over the terms of the memorandum of

- 1 understanding, Settlement Agreement, and other settlement documents;
- 2 ➤ Drafted papers in support of preliminary approval (including supplemental briefing
- 3 requested by the Court) and final approval of the Settlement; and
- 4 ➤ Prepared for and appeared at the hearings on the Motion for Preliminary Approval before
- 5 this Court.

6 (Powell Dec., ¶¶ 3, 11; Arns Dec., ¶ 3, 8, 11–13; Corby Dec., ¶¶ 11, 20, 21.)

7 Moreover, the quality of opposing counsel is also relevant in determining if the lodestar is

8 reasonable. (*See, e.g., In re Warner Commc'ns Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749

9 [“The quality of opposing counsel is also important in evaluating the quality of plaintiffs’ counsels’

10 work.”].) Here, Health Net is represented vigorously by experienced and able counsel from a

11 prominent firm with ample resources. (Flanagan Dec., ¶ 50.) The fact that Class Counsel negotiated

12 a favorable settlement with Health Net being represented by such high caliber legal advocates

13 militates in favor of granting the application for attorneys’ fees and expenses:

14 The amount of attorney fees typically negotiated in comparable litigation should

15 be considered in the assessment of a reasonable fee in representative actions in

16 which a fee agreement is impossible. Given the unique reliance of our legal

17 system on private litigants to enforce substantive provisions of law through class

18 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.

19 (*Lealao v. Beneficial Finance Corp.* (2000) 82 Cal.App.4th 19, 47.)

20 Next, to ascertain the reasonable hourly rate to use in calculating the lodestar, “the court

21 engages in a relevant objective analysis: to determine the prevailing rate in the community for

22 *comparable* professional legal services, that is, services rendered by counsel on consumer fraud

23 issues.” (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 156, emphasis in

24 original.) Here, the hourly rates utilized by Class Counsel are rates charged by counsel performing

25 similar work on similar types of cases, and similar rates have been approved by California courts.

26 (Powell Dec., ¶¶ 7-10; Arns Dec., ¶ 7; Corby Dec., ¶ 12.) Based on the information provided in

27 the Pearl Dec., it is clear that the hourly rates utilized by Class Counsel are reasonable. (Pearl Dec.,

28 ¶¶ 11–14.) (The Pearl Dec. is attached as Exhibit I to the Flanagan Dec.) Class Counsel’s hourly

1 rates are reasonable as compared to the legal community for similar work. (*PLCM Group, Inc. v.*
2 *Drexler, supra*, 22 Cal.4th at 1095; *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002;
3 Powell Dec., ¶¶ 7-8; Arns Dec., ¶ 7; Corby Dec., ¶ 12.)

4 Thus, where, as here, the parties negotiate a reasonable fee after all other terms benefitting
5 the Class Members have been agreed to in principle, which fee is reasonable under a lodestar
6 calculation, they have “mimicked the market” by setting a fee at a level that the market would set.
7 (*Lealao, supra*, 82 Cal.App.4th at 47.) The Settlement Agreement thus is to be given significant
8 weight in determining that the requested fee is reasonable, being that it is negotiated under market
9 forces, and as here, was based on the recommendation of the mediator. (*Wershba, supra*, 91
10 Cal.App.4th at 254; Flanagan Dec. ¶¶ 3, 10, 29.)

11 **C. Plaintiffs’ Counsel Have Agreed to Less than Their Lodestar Amounts and Have**
12 **Not Requested a Multiplier**

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

21 Multipliers are utilized to reflect the reality that counsel cannot normally handle public
22 interest or class action litigation for straight hourly fees payable only if they win, particularly since,
23 as here, plaintiffs are typically unable to finance such expensive litigation on their own. (*See*
24 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33; Flanagan Dec. ¶¶ 51–53.)

25 In determining the appropriate multiplier, the ultimate goal is “to encourage suits
26 effectuating a *strong [public] policy* by awarding substantial attorney’s fees . . . to those who
27 successfully bring such suits. . . .” (*Woodland Hills Residents Ass’n, Inc. v. City Council* (1979)
28 23 Cal.3d 917, 933, emphasis added.) To accomplish that purpose, the fee award must be large

1 enough “to entice competent counsel to undertake difficult public interest cases.” (*San Bernardino*
2 *Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 755.) While
3 Class Counsel believe the result achieved is excellent, the significant risk and delay in payment
4 alone justify applying a multiplier. (*Cazares v. Saenz* (1988) 208 Cal.App.3d 279, 288 [a multiplier
5 of 2.0 or more based on consideration of risk and delay factors alone is proper].) For the reasons
6 detailed below, all relevant factors justify a multiplier of 2.0. Indeed, California courts have even
7 applied multipliers of more than four. (*Natural Gas Anti-Trust Cases* (Cal. Super. Ct. Dec. 11,
8 2006) *I, II, III & IV*, No. 4221, 4228, 4224, 4226, 2006 WL 5377849, at *4 [“This Court and
9 numerous cases have applied multipliers of between 4 and 12 to counsel’s lodestar in awarding
10 fees.”].) However, Plaintiffs’ Counsel have not requested such a multiplier and have agreed to
11 accept an amount that is considerably less than their lodestar totals indicate. As discussed below,
12 because Plaintiffs’ Counsel have agreed to accept this lower amount, the request for attorneys’ fees
13 should be presumed reasonable.

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

15 The issues asserted in this action were novel and complex, requiring the time and expertise
16 of counsel experienced in handling class action and particularly healthcare litigation, including
17 issues regarding the nature of provider networks under the federal Affordable Care Act and alleged
18 misrepresentations regarding Health Net’s provider networks. (*See Ketchum, supra*, 24 Cal. 4th at
19 1138-39 [“[a] more difficult legal question typically requires more attorney hours.”]) As discussed
20 above, Class Counsel worked tirelessly to achieve the benefits of the Settlement. This required
21 extensive knowledge of the underlying issues and analysis of the most effective way to reach
22 resolution that benefited the Class. In short, the result achieved is the clearest reflection of Class
23 Counsel’s skill and expertise. (Flanagan Dec., ¶ 48.)

24 **E. 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. E–G.*)

27 Class Counsel presented and resolved the Settlement Class Members’ claims with skill and
28 ingenuity. Class Counsel should therefore be rewarded for their effort and result by application of

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

13 **F. The Contingent Nature of the Fee Award**

14 Class Counsel undertook this Action on an entirely contingent fee basis, assuming a
15 substantial risk that they would have to devote a significant amount of time and incur substantial
16 expenses in prosecuting this Action without any assurance of being compensated for their efforts.
17 (Flanagan Dec., ¶ 51.)⁵ Courts in California and across the country have consistently recognized
18 that the risk of receiving little or no recovery is a major factor in considering an award of attorneys’
19 fees and determining that the resulting multiplier is reasonable. (*See, e.g., Ketchum, supra*, 24
20 Cal.4th at 1128; *In re Warner Communications, supra*, 618 F.Supp. at 747-49 (citing cases).)

21 In *Ketchum*, the plaintiff had sought and obtained a multiplier of two times prevailing rates.
22 In support of his motion for a fee multiplier, the moving party supplied declarations that the Court
23 referred to in finding that multipliers of two to four times hourly rates are standard in contingent
24 risk cases. (*Ketchum, supra*, 24 Cal.4th at 1128; *see also Wershba, supra*, 91 Cal.App.4th at 255
25 [multipliers can range between 2 and 4 and even higher]; *In re Sutter Health Uninsured Pricing*

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 *Cases* (2009) 171 Cal.App.4th 495, 512 [affirming a multiplier of 2.52]; *Chavez v. Netflix, Inc.*
2 (2008) 162 Cal.App.4th 43, 66 [affirming a multiplier of 2.53]; *City of Oakland v. Oakland Raiders*
3 (1988) 203 Cal.App.3d 78 [affirming a multiplier of 2.34]; *Natural Gas Anti-Trust Cases, supra*,
4 2006 WL 5377849, at *4.)

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

15 Here, the contingent nature of this representation was extremely important to obtain
16 qualified representation, since Plaintiffs did not have the funds to litigate this type of case in terms
17 of up-front expenses, let alone pay for the attorneys’ fees incurred. (Flanagan Dec., ¶¶ 50–51.)
18 Thus, if the case had been lost, Class Counsel would have gone unpaid. (*Ibid.*; see Pearl Dec., ¶ 21
19 [“If any substantial part of the payment were to be contingent or deferred for any substantial period
20 of time...the fee arrangement would be adjusted accordingly to compensate the attorneys for those
21 factors.”].) Accordingly, the risks of non-payment in this case weigh heavily in favor of approving
22 the award of attorneys’ fees and demonstrates that a fee award of \$625,000, where a considerable
23 multiplier would have been justified under the circumstances, is reasonable.

24 **G. Public Policy Effectuated by This Settlement**

25 The “public service element, and motivation to represent consumers and enforce laws” has
26 been a factor considered by courts in setting a reasonable fee award. (*State of California v. Meyer*,
27 *supra*, 174 Cal.App.3d at 1073; *Lealao, supra*, 82 Cal.App.4th 19 at 53 [trial courts should consider
28 the need for private enforcement necessary to vindicate legal rights, as well as the role

1 representative actions play in relieving the courts of the need to separately adjudicate numerous
2 claims].)

3 Under the Settlement, in addition to guaranteeing Class Members the right to recover 100%
4 of their Out-of-Pocket Expenses, Health Net has agreed to significant injunctive relief as well as
5 considerable programmatic changes to the maintenance of its provider networks. All Californians
6 will benefit from the programmatic fixes, including the requirement that Health Net compensate
7 members at the in-network rate for any provider listed as in-network. This injunctive relief prevents
8 significant increased costs in the future and fulfills a central public policy goal of the litigation:
9 consumers get the benefit of their bargain and can count on Health Net's representations about their
10 plans and recover 100% of out-of-pocket costs due to inaccuracies in Health Net's Provider
11 Directory in the future.

12 **IV. REIMBURSEMENT AND PAYMENT OF CLASS COUNSEL'S EXPENSES**
13 **SHOULD BE AWARDED**

14 Expenses are also awarded in addition to the fees and are routinely reimbursed in
15 contingency fee cases. (*Natural Gas Anti-Trust Cases, supra*, 2006 WL 5377849 at *4, quoting
16 Conte, *Attorney Fee Awards*, § 2.08 at 50-51 (2d ed. 1977).) Here, Class Counsel expenses are
17 included in the \$625,000.

18 Class Counsel have expended \$17,503.06 toward expenses through June 5, 2018. These
19 expenses include Court filing fees and E-service fees, Court reporter and transcription fees, postage
20 and courier fees, telephonic conferences, research materials, expert fees, and mediator costs. These
21 expenses were critical to Class Counsel's success in achieving the Settlement and were reasonable
22 and appropriately incurred. (Powell Dec., ¶¶ 26-27; Arns Dec., ¶ 14-15; Corby Dec., ¶ 22-23.)
23 Health Net does not oppose this payment for expenses. It should therefore be granted as part of the
24 overall fee award.

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

26 Class Counsel respectfully requests that the Court approve the payment of an incentive
27 award of \$5,000 to each of the two Plaintiffs for their services as representatives of the Settlement
28 Class in this Action. Each Plaintiff actively and effectively fulfilled their obligations as a Class

1 Representative and provided assistance to counsel in the filing and resolution of this Action.
2 (Flanagan Dec., ¶¶ 29, 54–55, Ex. J [Declarations of Class Representatives].)

3 Each of the two Class Representatives engaged in more than 50 hours of work on behalf of
4 the unnamed Settlement Class Members, as explained in the declarations submitted by each Class
5 Representative. (Flanagan Dec., Ex. J; *see Clark v. Am. Residential Servs. LLC* (2009) 175
6 Cal.App.4th 785, 806–807 [holding that specificity of the time and efforts expended by a class
7 representative is a critical factor in determining reasonableness of class representative
8 enhancements]; *In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394–95
9 [holding that evidence showing how each class representative “actively participated” in litigation
10 justified incentive awards].)

11 The requested enhancements for Class Representatives were not conditioned on whether
12 Plaintiffs supported the Settlement as they were negotiated after all material Settlement terms
13 benefitting the Settlement Class Members had been agreed to in principle. (*Radcliffe v. Experian*
14 *Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165; Flanagan Decl., ¶ 55, Ex. J.)

15 Finally, the amount requested is comparable to amounts awarded in analogous settlements.
16 (*See, e.g., In re Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th at 1393–95 [affirming
17 award of \$10,000 incentive awards to each of the class representatives]; *Natural Gas Anti-Trust*
18 *Cases, supra*, 2006 WL 5377849, at *4 [approving incentive fees totaling \$45,000 to be paid out
19 of the \$92.1 million settlement fund]; *Barel v. Bank of America* (E.D. Pa. 2009) 255 F.R.D. 393,
20 402–03 [approving award of \$10,000 to class representative for services performed for the benefit
21 of the class]; *In re Ins. Brokerage Antitrust Litig.* MDL No. 1663 (D.N.J. 2009) WL 411856, at *10
22 [approving \$10,000 incentive award for each named plaintiff].)

23 VI. CONCLUSION

24 For all of the foregoing reasons, Class Counsel respectfully request that the Court award
25 them attorneys’ fees and expenses in the amount of \$625,000 and an incentive award of \$5,000 to
26 each of the Plaintiffs.

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Respectfully Submitted,

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