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13 *Attorneys for Plaintiff Manuel I. Figueroa, M.D.,*  
 14 *and the Proposed Class*

15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

18 MANUEL I. FIGUEROA, M.D., for and on  
 19 behalf of himself and other persons similarly  
 20 situated,

21 Plaintiff,

22 vs.

23 MOLINA HEALTHCARE OF  
 CALIFORNIA, INC.,

24 Defendant.

Case No. BC645344  
 (Hon. Kenneth R. Freeman, Dept. 14)

CLASS ACTION

**PLAINTIFF'S MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF MOTION FOR  
 APPROVAL OF ATTORNEYS' FEES  
 AND INCENTIVE AWARD FOR CLASS  
 REPRESENTATIVE**

Date: November 9, 2023  
 Time: 10:30 a.m.  
 Place: Dept. 14, Spring Street Courthouse

Action filed: December 30, 2016  
 Trial Date: Not set

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1 Plaintiff Manuel I. Figueroa, M.D. (“Plaintiff”), on behalf of himself and the Settlement Class,<sup>1</sup>  
2 respectfully submits this Memorandum of Points and Authorities in support of his Motion For  
3 Approval of Attorneys’ Fees and Incentive Award for Class Representative (the “Motion”).

4 **I. INTRODUCTION**

5 Plaintiff and Class Counsel<sup>2</sup> have litigated and successfully resolved this action, which arose  
6 from allegations that Defendant Molina Healthcare of California, Inc. (“Molina” or “Defendant”)  
7 failed to comply with certain provisions of the Affordable Care Act that required it to make enhanced  
8 payments to qualified physicians for covered services provided to Medicaid beneficiaries. Class  
9 Counsel has negotiated a settlement pursuant to which Molina will pay members of the Settlement  
10 Class the full amount of enhanced payments that they should have received for medical services  
11 provided to Medicaid beneficiaries during 2013 and 2014, amounts that total at least \$3,488,489.53.  
12 These payments to the Settlement Class would not have been obtained absent Class Counsel’s time,  
13 effort, and skill in investigating and litigating this matter. Pursuant to the Settlement Agreement,<sup>3</sup>  
14 Molina has agreed to pay, separately, the settlement administration costs, attorneys’ fees, and an  
15 incentive award, which means that payment of these amounts will not reduce the settlement amounts  
16 to be paid to members of the Settlement Class. The requested \$872,122.38 in attorneys’ fees, which  
17 is 25% of the settlement fund, is appropriate and reasonable considering Class Counsel’s success and  
18 investment in this litigation. It is also a discount on Class Counsel’s unmultiplied lodestar. The  
19 requested \$2,500 incentive payment for Plaintiff is similarly reasonable considering his role in  
20 helping to commence and prosecute this litigation. Accordingly, Plaintiff respectfully requests that  
21 the Court grant this Motion, in its entirety.

22 **II. BACKGROUND**

23 The litigation history, settlement negotiations, and terms of the parties’ settlement are set forth  
24 in Plaintiff’s Revised Memorandum of Points and Authorities in Support of Plaintiff’s Motion for  
25

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26 <sup>1</sup> “Settlement Class” refers to the settlement class provisionally certified for settlement purposes pursuant to the Court’s  
27 Order Granting Preliminary Approval of Class Action Settlement entered on October 17, 2022.

<sup>2</sup> “Class Counsel” refers to counsel of record for the Plaintiff.

28 <sup>3</sup> “Settlement Agreement” refers to the Revised Settlement Agreement and Release entered into between the parties in  
this matter. A true and correct copy of the Settlement Agreement is attached as Exhibit 1 to the July 13, 2022 Declaration  
of Douglas P. Dehler in Support of Motion for Preliminary Approval of Class Action Settlement (“Dehler Decl.”).

1 Preliminary Approval of Class Action Settlement and are incorporated herein by reference. Defined  
2 terms not otherwise defined herein have the same meanings assigned to them in the Memorandum of  
3 Points and Authorities in Support of Plaintiff’s Motion for Preliminary Approval of Class Action  
4 Settlement.

5 **A. Class Counsel Undertook Significant Efforts To Prosecute This Action.**

6 Class Counsel made a substantial investment of time and resources to investigate and litigate  
7 this action. As of September 30, 2022, Class Counsel has spent a total of 2,910.7 hours prosecuting  
8 this action over a period of nearly six years. Declaration of Attorney Gregory Lyons in Support of  
9 Motion for Approval of Attorneys’ Fees and Incentive Award for Class Representative (“Lyons  
10 Decl.”), ¶ 6, Ex. 1.

11 **1. Class Counsel’s Pre-Suit Investigation and Preparation of the Complaint**

12 Class Counsel’s efforts include time spent before the lawsuit was filed building the case from  
13 the ground up, including investigating the underlying facts, analyzing the federal Affordable Care  
14 Act and its interaction with the relevant California law, working with Plaintiff and Plaintiff’s staff to  
15 obtain the necessary evidence and evaluate the specific records and data necessary to prosecute the  
16 case, and communicating pre-suit with Molina and its in-house counsel regarding Plaintiff’s claims.  
17 *Id.* ¶ 2. Based on this significant pre-suit investigation and analysis, Class Counsel identified viable  
18 California state law claims and prepared a detailed Class Action Complaint for filing on December  
19 30, 2016. *Id.*

20 **2. Class Counsel’s Defense of Defendant’s Demurrer.**

21 During the meet and confer process, Molina raised various challenges to Plaintiff’s claims  
22 alleged in the initial complaint. The parties ultimately filed a Joint Brief on Defendant’s Arguments  
23 for Demurrer for an informal conference with the Court. *See* September 22, 2017 Joint Brief on  
24 Defendant’s Arguments for Demurrer. Following that conference, Class Counsel filed an Amended  
25 Complaint, based on the Court’s guidance, to narrow and streamline Plaintiff’s claims. *See* October  
26 22, 2021 Declaration of Attorney Laura Lavey in Support of Motion for Preliminary Approval of  
27 Class Action Settlement (“Lavey Decl.”), ¶ 6. Molina then demurred to Plaintiff’s Amended  
28 Complaint. *See* March 6, 2018 Notice of Demurrer and Demurrer to First Amended Complaint.

1 Although the Court sustained Molina’s demurrer in part, Class Counsel successfully defended against  
2 the demurrer with respect to Plaintiff’s claims under the “unlawful” and “unfair” prongs of the Unfair  
3 Competition Law (Bus. & Prof. Code, § 17200) and as to the class allegations, which Molina sought  
4 to strike. *See* May 3, 2018 Minute Order; *see also* Lavey Decl. ¶ 7.

5 **3. Class Counsel’s Review of Molina’s Documents.**

6 With the “unfair” and “unlawful” aspects of Plaintiff’s UCL claim and class allegations intact,  
7 Class Counsel then began the daunting task of demonstrating to defense counsel the strong factual  
8 support that existed for Plaintiff’s claims. At the outset of this process, Molina and its counsel took  
9 the position that Molina had paid all of the Enhanced Payments owed to members of the Settlement  
10 Class. Lyons Decl. ¶ 3. Class Counsel and Plaintiff, however, presented strong arguments to the  
11 contrary and, after many discussions with defense counsel regarding those arguments, the parties  
12 agreed in June 2018 to stay formal discovery and engage in the exchange of data and other  
13 information to assist in mediation and settlement efforts. Lavey Decl. ¶ 9. Class Counsel carefully  
14 scrutinized Molina’s records to find additional support for Plaintiff’s claims and to begin to assess  
15 the extent of the underpayments. *Id.* This required Class Counsel and its expert consultants to analyze  
16 thousands of pages of spreadsheets and data concerning patient encounters for members of the  
17 Settlement Class from the relevant two-year period (2013 and 2014), as well as payment data relating  
18 to those claims, to identify which providers did not receive Enhanced Payments for their claims and  
19 encounters as required by Section 1202 of the Affordable Care Act. *Id.* ¶ 11. To accomplish this,  
20 Class Counsel needed to request multiple rounds of data exchanges; perform extensive review and  
21 analysis of the data obtained; engage in significant consultation with their retained expert consultants;  
22 and conduct numerous joint conferences involving Class Counsel, Plaintiff’s expert consultants,  
23 Molina’s counsel, and Molina’s personnel and technicians. *Id.* Class Counsel also needed to review  
24 and analyze the regulatory framework involving the implementation of Section 1202 of the  
25 Affordable Care Act, the Managed Care Compliance Plan that Molina developed as part of its  
26 compliance with Affordable Care Act Section 1202, the information and data provided by Molina  
27 concerning its systems and databases as well as the processes that Molina used to identify members  
28 of the Settlement Class, and additional Affordable Care Act payment information that Class Counsel

1 obtained from the California Department of Health Care Services in response to open records  
2 requests. *Id.* After multiple rounds of review and analysis of the data and information obtained from  
3 Molina, and after engaging in numerous follow-up conferences with Molina’s counsel, personnel,  
4 and technicians to seek and obtain additional information, Class Counsel determined that Molina still  
5 owed unpaid Enhanced Payments to the 3,464 members of the Settlement Class in the total amount  
6 of \$3,488,489.53. *Id.*

7 **4. Class Counsel Negotiated a Beneficial Settlement Agreement.**

8 After performing this extensive investigation and obtaining the required information from  
9 Molina through negotiations with Molina’s counsel, Class Counsel then successfully negotiated the  
10 Settlement Agreement with Molina, pursuant to which Molina agreed to provide full payment of all  
11 unpaid Enhanced Payments that Class Counsel identified as being due to the Settlement Class through  
12 this process. In light of the extensive investigation and exchange of information, together with the  
13 retention of and consultation with expert witness consultants, this settlement process took a number  
14 of years to complete, and was aided by a full-day mediation session with the Hon. Carl West, which  
15 took place on July 2, 2019. *Id.* Thereafter, the parties entered into a Confidential Term Sheet that  
16 outlined the general terms and procedures for the proposed class settlement (*id.* ¶ 12), negotiated and  
17 entered into an initial settlement agreement signed by the parties on August 30, 2021 (*id.* ¶ 13), and  
18 then entered into an amended Settlement Agreement entered into by the parties on July 13, 2022.  
19 Dehler Decl., ¶ 2, Ex. 1.

20 The Settlement Agreement negotiated by Class Counsel includes terms that are highly  
21 favorable to all members of the Settlement Class. For starters, Molina has agreed to pay a minimum  
22 of \$3,488,489.53 to members of the Settlement Class, which represents 100% of the Enhanced  
23 Payments that were determined to be owed to the Settlement Class according to Molina’s records,  
24 which Class Counsel reviewed and analyzed when negotiating the settlement. *Id.*, Ex. 1 at ¶ 4. This  
25 figure was determined based on the review and analysis of data from patient encounters for Settlement  
26 Class members during 2013 and 2014, the two-year period that is relevant to this case. Lyons Decl.,  
27 ¶ 3. As part of the settlement negotiated by Class Counsel, all of these Enhanced Payments will be  
28 paid to Settlement Class members without them needing to take any affirmative steps to receive their

1 Individual Settlement Payments. Dehler Decl., Ex. 1, ¶¶ 7-10. On top of these payments, the  
2 Settlement Agreement also provides that members of the Settlement Class have the right and  
3 opportunity to seek additional payments from Molina if they provide documentation to the Settlement  
4 Administrator that identifies additional claims or encounters for which the Settlement Class members  
5 believe they are still owed Enhanced Payments from Molina, above and beyond those reflected in  
6 their Individual Settlement Payments. *Id.*, Ex. 1, ¶ 10. Under the Settlement Agreement, the  
7 Settlement Administrator will evaluate any additional claims and encounter data provided and make  
8 the final determination regarding whether any additional settlement payment amounts are owed. *Id.*

9 Furthermore, after compensation was secured for the Class, Class Counsel negotiated and  
10 secured Molina’s agreement to pay Class Counsel’s attorneys’ fees, the costs of the settlement  
11 administration, and an incentive award for Plaintiff on top of the full Enhanced Payments that will  
12 be paid to members of the Settlement Class, so that the total pool of settlement funds will not be  
13 diminished by the payment of these additional amounts. *Id.*, Ex. 1, ¶¶ 13-15. This is extremely  
14 beneficial to the Settlement Class, as in many common fund cases, courts award attorneys’ fees to  
15 class counsel out of the settlement funds, thereby reducing the fund and the amounts distributed to  
16 members of the settlement class. *See, e.g., Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480, 503  
17 (2016) (confirming that, in common fund cases, a trial court may award class counsel a fee out of  
18 that fund by choosing an appropriate percentage of the fund). The percentages awarded to class  
19 counsel are commonly in the neighborhood of one-third (33%) of the common fund. *See, e.g., Beaver*  
20 *v. Tarsadia Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at \*9 (S.D. Cal. Sept. 28, 2017)  
21 (“California courts routinely award attorneys’ fees of one-third of the common fund.”); *Laffitte*, 1  
22 Cal.5th at 506 (affirming attorneys’ fee award of one-third of common fund); *Chavez v. Netflix, Inc.*,  
23 162 Cal.App.4th 43, 66, n. 11 (2008) (describing attorneys’ fee award of 27.9% of a common fund  
24 as “not out of line with class action fee awards calculated using the percentage-of-the-benefit method:  
25 ‘Empirical studies show that, regardless whether the percentage method or the lodestar method is  
26 used, fee awards in class actions average around one-third of the recovery’”) (citation omitted). It is  
27 similarly common for courts in California class actions to pay administrators’ costs out of the  
28 settlement fund. *See, e.g., Dennis v. Kellogg Co.*, No. 09-CV-1786-L(WMc), 2013 WL 6055326, at

1 \*7-8 (S.D. Cal. Nov. 14, 2013) (applying California law, granting attorneys' fee and expense request  
2 seeking \$908,655 in claims notice and administration costs in case with a settlement fund of \$4  
3 million); *see also Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1388, n. 16 (2010)  
4 (referencing unchallenged award of over \$1 million in costs and expenses). Thus, in this case, an  
5 attorneys' fee award and the settlement administrator's expenses might otherwise have resulted in a  
6 reduction of the common fund by approximately \$1.15 million (which is roughly one-third of the  
7 total settlement fund negotiated by Class Counsel), Class Counsel's successful negotiation of more  
8 favorable terms as part of the Settlement Agreement has preserved that amount for members of the  
9 Settlement Class; with Class Counsel's attorneys' fees and the settlement administrator's expenses  
10 being paid separately by Molina. Class Counsel also agreed to absorb a portion of the fees and costs  
11 they have incurred in this action, including sums that Class Counsel paid out-of-pocket to Plaintiff's  
12 experts, thereby providing additional benefits to the members of the Settlement Class. Lyons Decl.,  
13 ¶ 6.

#### 14 **B. Class Counsel's Experience**

15 Class Counsel are experienced in complex class action litigation and complex civil litigation  
16 generally. Attorney Douglas Dehler has over thirty years of complex litigation experience and has  
17 been counsel of record in numerous class action cases across the United States. *Id.*, ¶ 4; Lavey Decl.,  
18 Ex. 2. Attorney Gregory Lyons similarly has over thirty years of complex litigation experience and  
19 has represented clients in courts throughout the country. *Id.* Local counsel Gretchen M. Nelson and  
20 Gabriel Barenfeld are similarly experienced in class action litigation and other complex civil  
21 litigation. October 22, 2021 Declaration of Gretchen M. Nelson in Support of Motion for Preliminary  
22 Approval of Class Action Settlement, ¶ 4 and Ex. 1. Class Counsel litigated this case on a contingency  
23 basis and have thus far received no compensation for their time or out-of-pocket costs. Lyons Decl.,  
24 ¶ 5. If Class Counsel did not successfully resolve this matter, Class Counsel would have been paid  
25 nothing and would have been out approximately \$68,618 in expenses. *Id.*

### 26 **III. ARGUMENT**

#### 27 **A. The Court Should Award Plaintiffs' Counsel the Requested Fee Award.**

28

1 Class Counsel seeks an award of attorneys' fees and costs incurred in the prosecution of this  
2 action of \$872,122.38, which corresponds to 25% of the \$3,488,489.53 minimum amount that Molina  
3 has agreed to pay members of the Settlement Class under the Settlement Agreement. Dehler Decl.,  
4 Ex. 1, ¶ 15. Pursuant to the Settlement Agreement, Molina does not object to this fee and cost payment  
5 in the amount of \$872,122.38, and Molina has agreed to pay this amount directly to Class Counsel in  
6 addition to the payments that it will make to members of the Settlement Class. *Id.* Thus, the requested  
7 award of attorneys' fees and costs will not reduce the amount of settlement payments made to  
8 members of the Settlement Class. *Id.* For the reasons set forth herein, this award is reasonable and  
9 represents a significant discount compared to the fee award that Class Counsel could receive under  
10 either the lodestar/multiplier or percentage of recovery methods commonly used by California courts.

11 **1. Class Counsel is entitled to reasonable attorneys' fees.**

12 “Given the unique reliance of our legal system on private litigants to enforce substantive  
13 provisions of law through class and derivative actions, attorneys providing the essential enforcement  
14 services must be provided incentives roughly comparable to those negotiated in the private bargaining  
15 that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase  
16 injurious behavior.” *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 47 (2000).  
17 Accordingly, “California has long recognized, as an exception to the general American rule that  
18 parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who  
19 has recovered or preserved a monetary fund for the benefit of himself or herself and others.” *Laffitte*,  
20 1 Cal.5th at 488.

21 California state “[c]ourts recognize two methods for calculating attorney fees in civil class  
22 actions: the lodestar/multiplier and the percentage of recovery method.” *Wershba v. Apple Computer*,  
23 *Inc.*, 91 Cal.App.4th 224, 254 (2001), disapproved of on other grounds by *Hernandez v. Restoration*  
24 *Hardware, Inc.*, 4 Cal.5th 260 (2018). “The choice of a fee calculation method is generally one within  
25 the discretion of the trial court, the goal under either the percentage or lodestar approach being the  
26 award of a reasonable fee to compensate counsel for their efforts.” *Laffitte*, 1 Cal.5th at 504; *see also*  
27 *Apple Computer, Inc. v. Superior Court*, 126 Cal.App.4th 1253, 1270 (2005) (“[T]he ultimate  
28 goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the

1 method of calculation.”) (internal quotations omitted). “It is not an abuse of discretion to choose one  
2 method over another as long as the method chosen is applied consistently using percentage figures  
3 that accurately reflect the marketplace.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 65-66 (2008).

4 **2. Class Counsel’s requested fee award is reasonable under the**  
5 **lodestar/multiplier method.**

6 Under the lodestar approach for calculating attorneys’ fees, “[t]he lodestar (or touchstone) is  
7 produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly  
8 rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a  
9 positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality  
10 of the representation, the novelty and complexity of the issues, the results obtained, and the contingent  
11 risk presented.” *Lealao*, 82 Cal.App.4th at 26. “[D]etailed time sheets are not required of class  
12 counsel to support fee awards in class action cases.” *Chavez*, 162 Cal.App.4th at 64.

13 In determining a reasonable rate for the attorney’s services, courts usually consider the  
14 prevailing rate charged by attorneys of similar skill and experience for comparable legal services in  
15 the community, the nature of the work performed, and the attorney’s customary billing rates. *Serrano*  
16 *v. Unruh*, 32 Cal.3d 621, 643 (1982). Generally, “the relevant community is the forum in which  
17 the . . . court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

18 “Once the court has fixed the lodestar, it may increase or decrease that amount by applying a  
19 positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality  
20 of the representation, the novelty and complexity of the issues, the results obtained, and the contingent  
21 risk presented.” *Lealao*, 82 Cal.App.4th at 26. California state and federal courts generally approve  
22 lodestar multipliers between 2 and 4. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th  
23 Cir. 2002) (upholding multiplier of 3.65); *Laffitte*, 1 Cal.5th at 487 (approving fees where multiplier  
24 was “2.03 to 2.13”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even  
25 higher.”); *Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming that  
26 multiplier of 2.52 was “fair and reasonable”).

27 From the inception of this litigation through September 30, 2022, Class Counsel collectively  
28 devoted 2,910.7 hours to this case and have a lodestar of \$1,449,876.00, a sum that is \$577,753.62

1 greater than the actual attorneys' fee award that Class Counsel seeks in this motion. Lyons Decl., ¶  
2 6. A breakdown of hours spent by Class Counsel's lead attorneys, and their average hourly rates, is  
3 set forth below:<sup>4</sup>

4 Timekeeper	Role	Average Rate	Hours	Total
5 Douglas Dehler	Attorney	\$606.08/hour	352.9	\$213,884.00
6 Gregory Lyons	Attorney	\$599.13/hour	890.7	\$533,642.50
7 Laura Lavey	Attorney	\$395.83/hour	1381.8	\$546,955.00

8 The pre-discounted lodestar of \$1,449,876.00 for 2,910.7 hours of work is reasonable. In  
9 evaluating attorneys' hours, "[i]t must also be kept in mind that lawyers are not likely to spend  
10 unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too  
11 uncertain, as to both the result and the amount of the fee. . . . By and large, the court should defer to  
12 the winning lawyer's professional judgment as to how much time he was required to spend on the  
13 case; after all, he won, and might not have, had he been more of a slacker." *Moreno v. City of*  
14 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Additionally, because "this is not a common-fund  
15 case where attorneys' fees are being deducted from a single undifferentiated settlement pool that the  
16 defendant has agreed to fund," this Court may "conduct[] only a cursory review of the attorney fee  
17 request" to confirm "that it appears to be the product of genuine arm's length negotiation." *Atzin v.*  
18 *Anthem, Inc.*, No. 2:17-cv-06816-ODW (PLAx), 2022 WL 4238053, at \*5 (C.D. Cal. Sept. 14, 2022).  
19 Here, the 2,910.7 hours of work by Class Counsel reflect time spent by Class Counsel on relevant  
20 activities including pre-suit investigation, defense of Plaintiff's claims in response to Molina's  
21 demurrer, and the significant amount of time it took Class Counsel and its experts to review and  
22 analyze the voluminous records produced by Molina in connection with this action. *See* Section II.A.,  
23 *supra*; Lyons Decl., ¶¶ 6-7, Ex. 1. These 2,910.7 hours of work on these difficult issues justify the  
24 requested fee award of \$872,122.38 since that work secured the major settlement that delivered  
25 significant monetary benefits to members of the Settlement Class that would not have been obtained  
26 had Class Counsel been "more of a slacker." *Moreno*, 534 F.3d at 1112.

27  
28 <sup>4</sup> Other attorneys and paralegals at Class Counsel's firm performed some additional work, contributing to the total attorneys' fee sum of \$1,449,876.00. A complete table, including these additional timekeepers, is set forth in the accompanying declaration of Attorney Gregory W. Lyons. Lyons Decl., Ex. 1.

1           Class Counsel’s hourly rates used to calculate its pre-discounted lodestar are also reasonable.  
2 As noted above, attorneys Douglas Dehler and Gregory Lyons each have more than thirty years of  
3 experience litigating complex cases like this one. Their average hourly rates of \$606.08/hour and  
4 \$599.13/hour, respectively, are not only reasonable but well below the prevailing rate among  
5 attorneys of similar experience in the Los Angeles market. *See Camacho*, 523 F.3d at 979 (describing  
6 the relevant community for comparing attorneys’ fees as the “forum in which the . . . court sits”). For  
7 example, courts in Los Angeles have found hourly rates in excess of \$700 to be reasonable for  
8 attorneys with fifteen or twenty years of experience, significantly less than the than thirty-plus years  
9 of experience of Attorneys Dehler and Lyons. *See, e.g., Notorious B.I.G. LLC v. Yes. Snowboards*,  
10 No. CV 19-1946-JAK (KSx), 2021 WL 6752168, at \*5 (C.D. Cal. Dec. 22, 2021) (finding hourly  
11 billing rate of \$730.00 per hour for attorney who has practiced law for fifteen years “to be reasonable  
12 in relation to the prevailing market rates in the community, *i.e.*, Los Angeles”); *Tee Turtle, LLC v.*  
13 *Abmask*, No. 2:21-CV-03572-CBM-E(x), 2021 WL 4812947, at \*2 (C.D. Cal. July 8, 2021) (finding  
14 a \$755 hourly rate to be reasonable for a partner with twenty years of experience). Class Counsel’s  
15 other lead attorney, Laura Lavey, had twelve years of experience prior to withdrawing as counsel in  
16 this case to become a judge in Wisconsin state court. Her average billing rate of approximately  
17 \$395.83 per hour was similarly reasonable and below the prevailing rate among attorneys of similar  
18 experience in the Los Angeles market. *See, e.g., Tee Turtle, LLC*, 2021 WL 4812947, at \*2 (finding  
19 rate of \$525 per hour to be reasonable for a partner with ten years of experience).

20           The effective lodestar “multiplier” used by Class Counsel to discount its requested fee award  
21 to \$872,122.38 also confirms the reasonableness of Class Counsel’s requested award. As noted  
22 above, California state and federal courts generally approve lodestar multipliers between 2 and 4.  
23 Here, in contrast, the effective “multiplier” is closer to .64 since Class Counsel does not seek to  
24 multiply its lodestar to obtain a higher fee award, as is typical in cases like these, but rather are  
25 discounting their lodestar and the ultimate award of attorneys’ fees that they seek. Under these  
26 circumstances, an award of attorneys’ fees to Class Counsel in the amount of \$872,122.38 is both  
27 just and reasonable under the lodestar/multiplier method.  
28

1                   **3. Class Counsel’s requested fee award is reasonable under the percentage**  
2                   **of recovery method.**

3                   Under the percentage of recovery method, a court “calculates the [attorneys’] fee as a  
4                   percentage share of a recovered common fund or the monetary value of plaintiffs’ recovery.” *Laffitte*,  
5                   1 Cal.5th at 489. The goal of the method is to provide “a better approximation of market conditions”  
6                   in contingency cases. *Id.* at 503. Under the percentage of recovery method, courts examine whether  
7                   the requested percentage matches “the amount of attorney fees typically negotiated in comparable  
8                   litigation,” as that number “should be considered in the assessment of a reasonable fee in  
9                   representative actions in which a fee agreement is impossible.” *Lealao*, 82 Cal.App.4th at 47. As  
10                  noted above, “California courts routinely award attorneys’ fees of one-third of the common fund” in  
11                  common fund cases. *Beaver*, 2017 WL 4310707, at \*9; *see also* Section II.A.3., *supra* (collecting  
12                  cases discussing awarding percentages of recoveries as attorneys’ fees in common fund cases).

13                  Although this is not a prototypical common fund case since, unlike most common fund cases,  
14                  Class Counsel does not seek a fee award that would diminish the pool of settlement funds available  
15                  to members of the Settlement Class, Class Counsel’s requested fee award is reasonable under the  
16                  above-referenced standards pursuant to which courts review percentage fee requests in common fund  
17                  cases. The \$872,122.38 fee award requested here is not only in line with, but is in fact lower than  
18                  percentage fee awards in common fund cases, since the requested sum is equivalent to 25% of the  
19                  settlement amount in this case rather than the typical one-third. Under the particular circumstances  
20                  of this case, including: the contingent nature of this case; the result achieved in the face of the risks  
21                  of this type of contingent fee litigation; the experience and skill employed by Class Counsel; and the  
22                  highly favorable settlement negotiated for members of the Settlement Class, the 25% equivalent  
23                  requested fee award is fair and reasonable.

24                  The proposed attorneys’ fee award negotiated by Class Counsel here is also reasonable  
25                  because it provides a greater benefit to members of the Settlement Class than settlements in typical  
26                  common fund cases. If counsel negotiated a typical common fund settlement in this case, where  
27                  attorneys’ fees were paid out of the settlement fund, such fee award would diminish the settlement  
28                  fund available to members of the Settlement Class by over \$1.16 million. As noted above, California  
                    courts routinely find such deductive fee awards to be reasonable in common fund cases. Here though,

1 Class Counsel was able to preserve this \$1.16 million for the Settlement Class and negotiate for  
2 Molina to pay Class Counsel's \$872,122.38 proposed fee award separately. This proposed fee award  
3 thus provides an additional \$1.16 million benefit to members of the Settlement Class above and  
4 beyond what the Settlement Class otherwise would have received in a typical common fund case.

5 **B. This Court Should Award Plaintiff the Requested Incentive Award.**

6 “[I]ncentive awards are fairly typical in class action cases.’ These awards ‘are discretionary,  
7 [] and are intended to compensate class representatives for work done on behalf of the class, to make  
8 up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize  
9 their willingness to act as a private attorney general.’” *Cellphone Termination Fee Cases*, 186  
10 Cal.App.4th at 1393-94 (quoting *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir.  
11 2009)) (internal citations omitted). “[C]riteria courts may consider in determining whether to make  
12 an incentive award include: 1) the risk to the class representative in commencing suit, both financial  
13 and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3)  
14 the amount of time and effort spent by the class representative; 4) the duration of the litigation and;  
15 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the  
16 litigation.” *Id.* at 1394-95 (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299  
17 (N.D. Cal. 1995)).

18 Plaintiff seeks a reasonable incentive award payment to the named Plaintiff, Dr. Manuel  
19 Figueroa, for his service as Class representative, in the amount of \$2,500. Like the requested  
20 attorneys' fee award, Molina has also agreed to pay this sum in addition to other payments made to  
21 members of the Settlement Class such that this incentive award payment to Dr. Figueroa will not  
22 reduce the amount of settlement payments made to any other members of the Settlement Class. Here,  
23 Dr. Figueroa devoted significant time and effort to successfully prosecute this case that has been  
24 pending for nearly six years, including, without limitation: reviewing and providing feedback on the  
25 pleadings in this matter; providing documentation relating to his own medical practice, including  
26 claims and encounter information for patients; reviewing and analyzing documents produced by  
27 Molina, and participating in the full-day mediation that took place in connection with this matter.  
28 Declaration of Manuel I. Figueroa, M.D., ¶ 3. Throughout the case, Dr. Figueroa has undertaken these

1 tasks while keeping the best interests of the class in mind and while seeking to do what is in the best  
2 interests of all class members. *Id.* Dr. Figueroa brought this action for the benefit of the class despite  
3 the concern that doing so could negatively affect his practice and despite the possibility that being  
4 the lead plaintiff could bring him unwanted, negative attention. *Id.*, ¶ 2.

5 The modest incentive award of \$2,500 is in line with those regularly approved in class action  
6 settlements and is appropriate given class representatives' important role in lawsuits such as this one.  
7 Courts routinely grant incentive awards in higher amounts. *See, e.g., Dennis*, 2013 WL 6055326, at  
8 \*9 (noting that a request for a \$5,000 incentive payment in connection with a consumer class action  
9 settlement "is well within if not below the range awarded in similar cases"); *Cellphone Termination*  
10 *Fee Cases*, 186 Cal.App.4th at 1395 (finding no abuse of discretion in a \$10,000 incentive award);  
11 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 402, 412 (2010) (finding  
12 no abuse in discretion in \$5,000 incentive awards to two class representatives in action resulting in  
13 \$1.1 million settlement). Moreover, courts typically grant such incentive awards even when payment  
14 of those incentive awards will diminish the settlement pool available to members of the settlement  
15 class. This is not the case here. Accordingly, this Court should award a \$2,500 incentive payment to  
16 Dr. Figueroa in accordance with the Settlement Agreement.

#### 17 **IV. CONCLUSION**

18 For the reasons stated herein, Plaintiff respectfully requests that the Court grant his Motion  
19 for Approval of Attorneys' Fees and Incentive Award for Class Representative and approve the  
20 requested payments as follows: (1) attorneys' fees to Class Counsel in the amount of \$872,122.38;  
21 and (2) a class representative incentive award to Plaintiff Manuel Figueroa in the amount of \$2,500,  
22 all to be paid by Molina separately from the settlement payments being made to members of the  
23 Settlement Class.

1 Dated: December 22, 2022

**O'NEIL, CANNON, HOLLMAN, DEJONG  
& LAING S.C.**

2  
3   
4 Douglas P. Dehler  
Gregory W. Lyons

5 **NELSON & FRAENKEL LLP**  
6 Gretchen M. Nelson  
Gabriel S. Barenfeld

7 *Attorneys for Plaintiff and the Proposed Class*  
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2 **PROOF OF SERVICE**

3 I, the undersigned, declare:

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
5 and not a party to the within action; my business address is 601 So. Figueroa St., Suite 2050, Los  
6 Angeles, California 90017.

7 On December 23, 2022, I served the foregoing documents described as follows:

8 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITES IN**  
9 **SUPPORT OF MOTION FOR APPROVAL OF ATTORNEYS' FEES AND**  
10 **INCENTIVE AWARD FOR CLASS REPRESENTATIVE**

11 on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes  
12 addressed as stated on the attached service list, and in the manner stated below:

13  X  **BY ELECTRONIC SERVICE**

14 served by e-mail through Case Anywhere: I attached a true and correct copy of the above-entitled  
15 document(s) to Case Anywhere by electronic transfer for service on all counsel of record by  
16 electronic service pursuant to the Order Authorizing Electronic Service. This service complies  
17 with C.C.P. §1010.6.

18       **BY MAIL:**

19 I am "readily familiar" with the firm's practice of collection and processing  
20 correspondence for mailing. Under that practice, it would be deposited with the U.S.  
21 Postal Service on that same day with postage thereon fully prepaid at Los Angeles,  
22 California in the ordinary course of business. I am aware that on motion of the party  
23 served, service is presumed invalid if postal cancellation date or postage meter date is  
24 more than one day after date of deposit for mailing in affidavit.

25       **BY PERSONAL SERVICE:**

26 I caused to be delivered such envelope by hand to the offices of the addressee.

27       **BY FEDERAL EXPRESS OR OVERNIGHT CARRIER**

28  X  (State) I declare under penalty of perjury under the laws of the State of California that  
the above is true and correct.

Executed on December 23, 2022, at Los Angeles, California.

26           KARINA TORRES            
27 (Type or Print Name)

26           *Karina Torres*            
27 (Signature)

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**SERVICE LIST**  
**Figueroa, M.D. v. Molina Healthcare of California, Inc., et al.**  
**Case No. BC645344**

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