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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13 MICHAEL DON, EXECUTOR OF
THE ESTATE OF RUBEN DON;
14 TAMARA PELHAM, SPECIAL
ADMINISTRATOR FOR THE
15 ESTATE OF LEROY LITTLE; and
16 CAROLYN JAN LITTLE, Individually,
and as the Class Representatives on
17 behalf of those insureds similarly
18 situated,
19 Plaintiffs,

20 vs.

21 UNUM GROUP, a Delaware
22 Corporation; and UNUM LIFE
23 INSURANCE COMPANY OF
24 AMERICA, a Maine Corporation,

25 Defendants.
26
27

CASE NO.: CV 13-4502-DSF (VBK)

Assigned to: Hon. Dale S. Fischer

**PLAINTIFFS' & CLASS
COUNSEL'S MEMORANDUM OF
POINTS & AUTHORITIES IN
SUPPORT OF MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, & SERVICE AWARDS**

**Hearing: June 27, 2016
Time: 1:30 p.m.
Place: Courtroom 840**

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MEMORANDUM RE: ATTORNEYS' FEES AND COSTS, & SERVICE AWARDS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Settlement that this Court preliminarily approved on March 9, 2016 (Dock
4 No. 199) makes substantial economic relief available to at least 19,000 insureds from
5 approximately 129,000 nationwide insureds who purchased long-term care (“LTC”)
6 policies from Defendant Unum Life Insurance Company of America (“Unum”).
7 Wilkin Decl., Dock. No. 189, p. 11:1-5 of 1.¹ It provides a 100% recovery *after*
8 (i.e., net of) attorneys’ fees for Subclass I (estimated to be 16,099 insureds²),
9 about a 50% recovery *after* attorneys’ fees for Subclass IV (about 3-4,000
10 insureds³), and full relief for Subclass VII. “[A] recovery of 100% of the amount
11 claimed is extraordinary and far exceeds the normal range of recoveries in class
12 actions.” *Newberg on Class Actions*, Appendix IX-A (4th ed. 2002) (fn. omitted).

13
14 After Class Counsel’s investigation began in September 2012, and after three
15 years of litigation, including three rounds of hard-fought, arm’s length day-long
16 settlement mediations before a noted neutral, Robert Kaplan, Class Counsel
17 successfully resolved the class claims nationwide. Under the terms of the Settlement,
18 Unum has agreed to provide multiple forms of economic benefits to the Settlement
19 Class equating to a Total Settlement Fund⁴ value of \$45,988,014.52. Settlement
20 Agreement, Dock. No. 188-1, p. 24:5-9 of 110.

21
22 _____
23 ¹ Plaintiffs’ record citations to filed documents reflect the docket numbers and page
24 numbers in the running header generated by the EFC system (e.g., Docket (“Dock.”),
number (“No.”), page (“p.”) and line (“:”).

25 ² See Wilkin Decl. Dock No.189, p. 4:16-18, p. 5:14 to 6:2 of 11.

26 ³ See March 7, 2016 Reporter’s Transcript, Sheno Decl., Exh. O, p. 3:8-10 of 4.

27 ⁴ Settlement Agreement, Dock. No. 188-1, p. 8:5-9 of 110 (defining the term “Total
28 Settlement Fund”). This represents the total present day value of the components of the
Settlement.

1 By this motion, Class Counsel seek an award of attorneys' fees and expenses
2 for their efforts litigating this hotly contested case and ultimately achieving the
3 preliminarily approved Settlement. Class Counsel's efforts to date have been without
4 compensation of any kind and their ability to recover any attorneys' fees has always
5 been wholly contingent upon the result achieved. ShenoI Decl. ¶ 31. Under the
6 Settlement Agreement, Unum does not oppose and has agreed to pay Class
7 Counsel's attorneys' fees up to \$9,518,406.12 and expenses up to \$81,593.91.
8 Settlement Agreement, Dock. No. 188-1, p. 24:5-9 of 110. The amounts sought
9 in this Motion are separate and apart from the relief provided to the Settlement
10 Class, and such an award of attorneys' fees and expenses will *not* in any way
11 reduce the amount of the benefits available to the Settlement Class.

12 Under a "common fund" percentage of recovery ("POR") method of the Total
13 Settlement Fund (*see* Settlement Agreement, Dock. No. 188-1, p. 24:5-8 of 110), the
14 requested award represents approximately 21% of the Total Settlement Fund, which
15 is well below the Ninth Circuit's 25% benchmark standard.

16 Under the lodestar approach, courts routinely apply a multiplier recognizing the
17 contingent nature of plaintiffs' counsel's retention and the resulting risks associated
18 with the litigation and non-payment. Here, the fee request of \$9,518,406.12
19 represents a lodestar multiplier of 2.81, and the request for \$81,593.91 for
20 expenses represents the actual expenses and charges by Class Counsel in the case.
21 ShenoI Decl., ¶¶ 29-30.

22 Under either approach, Plaintiffs respectfully submit that the fee and expense
23 request is fair and reasonable in light of their Counsel's hard work, tenacity, and
24 ultimate success in achieving an outstanding result on behalf of the Settlement
25 Class. As the Court is aware, Class Counsel faced challenges in prosecuting this case
26 in the face of formidable defenses asserted by Unum's own highly skilled counsel.
27 Class Counsel persisted in their efforts on behalf of the class members and
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1 prevailed in this litigation in spite of the substantial risk of non-payment due to the
2 uncertain outcome and the contingent nature of the work.

3 Notably, the requested fee does not include any value for the substantial attorney
4 time associated with (i) non-monetary injunctive relief secured for Subclass VII
5 (Settlement Agreement, Dock. No., 188-1, p. 10:12-17 of 110), (ii) work Class
6 Counsel must still perform in the next four months before any judgment becomes
7 final, such as assisting in the claims administration process, communicating with
8 Settlement Class Members, and (iii) work Class Counsel may perform in
9 response to any appeal for the benefit of the Settlement Class that could potentially
10 last for years, and which will go uncompensated. Sheno Decl. ¶ 28.

11 Additionally, Unum has agreed to pay service awards of \$25,000 to Don,
12 \$20,000 to Pelham, and \$15,000 to Little for their time and effort in participating in
13 this case as Class Representatives. Settlement Agreement, Dock. No. 188-1, p.
14 23:21-25 of 110. As with the requested award for attorneys' fees and expenses, the
15 service awards are paid separately and will not affect the amount of relief available to
16 the Settlement Class. *Id.* The Class Representatives devoted over a thousand
17 hours and undertook substantial efforts on behalf of the Settlement Class (see
18 Sheno Decl., Exhs. K, L, M) and they should be justly recognized for their efforts.

19 **II. HISTORY OF THE LITIGATION AND SETTLEMENT**

20 The history of the litigation and a summary of the extensive settlement
21 negotiations spanning a two year period are set forth in Plaintiffs' Memorandum in
22 Support of Preliminary Approval, and incorporated herein.⁵ Dock. No. 187-1, p. 8 of
23

24
25 ⁵ Accordingly, Plaintiffs will not repeat these important background facts here, particularly
26 because the Court is familiar with the history of these hard-fought and protracted
27 proceedings, the intensity of the litigation, the novelty of the underlying issues, and the
28 quality of the legal work performed.

1 32, § II.

2 **III. THE SETTLEMENT CONFERS SUBSTANTIAL ECONOMIC**
3 **BENEFITS NATIONWIDE TO CLASS MEMBERS**

4 **A. Relief Provided to Settlement Class Members**

5 In summary, the Settlement provides a 100% *after* (i.e., net of) attorneys' fees
6 for Subclass I (about 16,099 insureds), about a 50% recovery *after* attorneys' fees
7 for Subclass IV (about 3-4,000 insureds⁶), and full relief for Subclass VII.

8 **i. Subclass I.** Subclass I's relief will be provided through a combination of
9 (a) monetary payments and (b) a future business practice change, anticipated to be
10 completed within two years of the Final Settlement Date, whereby Unum would
11 change its processes to calculate the Policy Anniversary based on the Policy Date
12 rather than the Effective Date ("Policy Anniversary Change"). For current Subclass I
13 class members (i.e., Subclass I class members who have already received benefits
14 under their policies), Unum will pay each class member the difference between what
15 they received in benefits and what they would have received in benefits if Unum had
16 calculated the Policy Anniversary based on the Policy Date. Before the date of the
17 Policy Anniversary Change, Unum will also pay future Subclass I class members (i.e.,
18 Subclass I class members who in the future receive benefits under their policies) the
19 difference between what they receive in benefits and what they would have received
20 in benefits if Unum had calculated the Policy Anniversary based on the Policy Date.
21 After the date of the Policy Anniversary Change, Unum will pay future Subclass I
22 members benefits with the Policy Anniversary calculated based on the Policy Date.
23 Plaintiffs estimate the relief to be provided to Subclass I is \$18,595,470, but
24 \$1,822,407.98 to 1,163 insureds⁷ that Unum's March 19, 2015 discovery responses
25 identified have been underpaid, is not included in the \$18,595,470 for Subclass I.
26

27 ⁶ See Shenoj Decl., Exh. O, p. 3:8-1- of 4.

28 ⁷ These amounts were discounted to present day value. Wilkin Decl., Dock. No. 189, p. 4:4

1 which is plaintiffs' estimate of payments for approximately 11,867 insureds. Unum
2 agrees not to challenge Plaintiffs' valuation.

3 In addition, Unum will not claim back Unum's overpayment, under Plaintiffs'
4 Subclass I theory, of \$1,774,583.20 to 3,069 insureds. See Preliminary Approval
5 Order, Dock. No. 199, p. 3:23 to p. 4:16 of 15. In effect, Subclass I members recover
6 100% of their principal damages net, without any reduction for attorneys' fees.

7 **ii. Subclass IV.** The Subclass IV relief will be provided as 1.5 months of
8 additional benefits, based on the Subclass IV class member's original monthly benefit
9 amount stated in the policy, payable to any Subclass IV class member who reaches
10 their Lifetime Maximum Benefit Amount. Unum and Plaintiffs value the relief to be
11 provided to Subclass IV is \$18,600,000.00. *Id.* p. 4:17-22 of 15. In effect, Subclass
12 IV is recovering about 70% of their gross principal damages (inclusive of attorneys'
13 fees), or about 50% after payment of fees, and "accrued" and "in claim" insureds
14 avoid a 3-4 year delay in payment if this Settlement becomes final, which is of
15 tremendous value to these insureds.

16 **iii. Subclass VII.** Unum represents and warrants that members of Subclass VII
17 have had--and will continue to have--their claims adjudicated based the language of
18 their original policies, notwithstanding those insureds' prior receipt from Unum of
19 versions of their policies that were not exact copies of their original policies. Upon
20 final approval of the Parties' settlement by the Court, Unum will, on a going forward
21 basis, provide exact copies of the original policies to policyholders requesting
22 duplicate polices. *Id.* at p. 4:23 to p. 5:2 of 15. This, too, is effectively 100% of the
23 relief requested for this Subclass. While the monetary value of this change in Unum's
24 institutional practice to Subclass VII is not easily quantifiable, Plaintiffs contend that
25 it has very substantial value. Unum does not oppose that contention. See Settlement
26

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28 to p. 11:5 of 11.

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1 Agreement, Dock. No. 188-1, p. 10:24-26 of 110.

2 **B. Adequate Notice of This Motion Was Provide To the Entire Class**

3 The deadline for class members to object to requested fees must be set after the
4 motion for the fees and documents supporting the motion have been filed. *In re*
5 *Mercury Interactive Corp. Sec. Litig.*, 618 F. 3d 988, 993-94 (9th Cir. 2010)
6 (“*Mercury*”). Here, the entire class will have an adequate opportunity to examine the
7 motion because it will be posted on the Settlement Administrator’s website within two
8 business days of mailing of the Class Notice.

9 **IV. THE COURT SHOULD AWARD THE FULL AMOUNT OF**
10 **ATTORNEYS’ FEES THAT DEFENDANTS AGREED TO PAY**

11 When a negotiated class action settlement includes an award of attorneys’ fees,
12 the fee award must be evaluated in the overall context of the settlement. *Knisley v.*
13 *Network Assocs.*, 312 F. 3d 1123, 1126 (9th Cir. 2002). For their hard work, skill and
14 diligence in securing valuable economic relief for the Settlement Class, Class
15 Counsel should be awarded the full amount of \$9,518,401.12 requested for
16 attorneys’ fees and \$81,593.91 for litigation expenses, Dock 188-1, p. 24:5-9 of 110,
17 as reasonable and fair under the percentage of recovery and the lodestar method.

18 **A. Applicable Legal Standards**

19 Rule 23(h) of the Federal Rules of Civil Procedure provides that “[i]n a certified
20 class action, the court may award reasonable attorney’s fees and nontaxable costs that
21 are authorized by law *or by the parties’ agreement.*” (emphasis added). The Ninth
22 Circuit has long accepted “two separate methods for determining attorneys’ fees,
23 depending on the case,” the lodestar and POR methods. *See Hanlon v. Chrysler*
24 *Corp.*, 150 F. 3d 1011, 1029 (9th Cir. 1998) (“*Hanlon*”). When the case involves a
25 common settlement fund with an easily quantifiable benefit to the class, the Court
26 should primarily determine attorneys’ fees using the benchmark method but will
27 incorporate a lodestar cross-check to ensure the reasonableness of the award. See
28

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1 *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir. 2002) (“*Vizcaino*”).
2 Because the Total Settlement Fund does not include the value of the injunctive and
3 nonmonetary relief afforded to Subclass VII, the law and the parties’ Agreement
4 weigh in favor of the benchmark method, with a lodestar cross check.

5 The United States Supreme “Court has recognized consistently that a litigant or a
6 lawyer who recovers a common fund for the benefit of other persons other than
7 himself or his client is entitled to a reasonable attorney’s fee from the fund as a
8 whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“*Van Gemert*”). The
9 purpose of the “common benefit” exception is to prevent unjust enrichment of those
10 who benefit from the litigant’s efforts. *Id.* at 478-79. It applies when the court can
11 accurately shift the litigant’s expenses to those who benefitted from them. *Stevens v.*
12 *Municipal Court*, 603 F. 2d 111, 112-13 (9th Cir. 1979). Specifically, the court must
13 be able to: (1) sufficiently identify the class of beneficiaries; (2) accurately trace the
14 benefits; and (3) shift the fee to those benefiting with some exactitude. *Van Gemert*,
15 444 U.S. at 478–79. “[T]he criteria are satisfied when each member of a certified class
16 has an undisputed and mathematically ascertainable claim to part of a lump-sum
17 judgment recovered on his behalf,” whereas they are not satisfied when “litigants
18 simply vindicate a general social grievance.” *Id.* at 479.

19 The benchmark method should be applied here because each member of Subclass
20 I, and each member of Subclass II who reach his or her lifetime maximum amount, is
21 entitled to an undisputed and mathematically ascertainable amount of the Total
22 Settlement Fund. Plaintiffs contend that the present day value of the common fund in
23 this case is \$45,988,014.22 (Wilkin Decl., Dock. No. 189, p. 11:1-5 of 11), and Unum
24 agrees not to contest that valuation. Settlement Agreement, Dock 188-1, p. 24:5-9 of
25 110. The Ninth Circuit has expressly stated that “since the proper amount of fees is
26 often open to dispute and the parties are compromising precisely to avoid litigation,
27 the [district] court need not inquire into the reasonableness of the fees at even the high
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1 end with precisely the same level of scrutiny as when the fee is disputed.” *Staton v.*
2 *Boeing Co.* 327 F. 3d 938, 941 (9th Cir. 2003) (“*Staton*”). Moreover, when (as now)
3 the defendant has agreed to pay attorneys’ fees separate and apart from any relief to
4 the Settlement Class, it is also appropriate to crosscheck the fee award using a
5 lodestar analysis. See *Hanlon*, 150 F.3d at 1029; *Fleury v. Richemont N. Am. Inc.*,
6 2008 U.S. Dist. LEXIS 112459, at *4 (N.D. Cal. Aug. 6, 2008).

7 Under the lodestar method, a reasonable attorneys’ fee is determined by
8 multiplying the number of hours reasonably expended by a reasonable hourly rate.
9 See *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The lodestar fee amount
10 calculated using counsels’ normal hourly rates, consistent with prevailing market
11 rates, is presumptively reasonable. *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S.
12 Dist. LEXIS 71598, at *4 (C.D. Cal. June 30, 2010) (“*Anderson*”) (citing *Gates v.*
13 *Deukmejian*, 987 F. 2d 1392, 1397 (9th Cir. 1992) (“*Gates*”). “The ‘lodestar’ is
14 calculated by multiplying the number of hours . . . reasonably expended on the
15 litigation by a reasonable hourly rate.” *Morales v. City of San Rafael*, 96 F. 3d 359,
16 363 (9th Cir. 1996); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F. 3d 1291,
17 1299-1300 (9th Cir. 1994) (“[C]ourts have routinely enhanced the lodestar to reflect
18 the risk of non-payment in common fund cases.”); *Fischel v. Equitable Life Assur.*
19 *Society*, 307 F. 3d 997, 1008 (9th Cir. 2002); *Vizcaino*, 290 F. 3d 1051; *In re*
20 *Bluetooth Headset Products: Liability Litigation*, 654 F. 3d 935 941-42 (9th Cir.
21 2011); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal.
22 2008) (“*Craft*”) (applying a 5.2 multiplier and collecting cases with cross-check
23 multipliers ranging from 4.5 to 19.6)

24 Lodestar multipliers are common and appropriate in large, complex
25 nationwide insurance class actions like this one, where courts have approved of
26 multipliers above three. See *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944,
27 at *31 (M.D. Tenn. Aug. 11, 1999) (“This case also involved complex actuarial,
28

1 accounting, financial and related issues requiring a level of experience and expertise
2 few other plaintiffs' counsel have achieved. Moreover, the Court understands that
3 additional time and effort will be required after approval to ensure that the Settlement
4 is properly implemented. Under these circumstances, plaintiffs' counsel's request for a
5 multiplier of 3.8 is fully warranted. This multiplier is well within the range of
6 multipliers for similar litigations, which have ranged from 1–4 and have reached as
7 high as 10") (bold added); *Willson v. New York Life Ins. Co.*, 1995 LEXIS 652, at *95
8 (N.Y. Sup. Ct. Nov. 8, 1995) (multiplier of 4.6); *Michels v. Phoenix Home Life*
9 *Mutual Ins. Co.*, 1997 LEXIS 171, at *95 (N.Y. Sup. Ct. Jan. 3, 1997) (multiplier of
10 3.3); *In re Prudential Ins. Co. of America Sales Practices Litig.*, 962 F. Supp. 450 (D.
11 N.J. 1997) (multiplier of 5.1); see also *Nichols v. SmithKline Beecham Corp.*, 2005
12 WL 950616, at *24 (E.D. Pa. Apr. 22, 2005) (multiplier of 3.15); Walker & Horwich,
13 *The Ethical Imperative of a Lodestar Cross-Check*, 18 Geo. J. Legal Ethics 1453,
14 1472 (2005) ("In our informal review [of opinions evaluating a lodestar cross-check],
15 the multipliers ranged from about 1.0 to over 5.0, **with a substantial number of**
16 **multipliers in the 3.0 to 4.0 range.**") (bold added).

17 **B. Plaintiffs' Fee Request Is in Line With the Ninth Circuit's**
18 **Benchmark POR**

19 Plaintiffs in the Ninth Circuit are normally entitled to an award for attorneys'
20 fees of a benchmark percentage of 25% of the common fund, but courts have found
21 fee awards of up to 30% to be reasonable. *Bluetooth*, 654 F. 3d at 947; *Staton*, 327
22 F. 3d at 952; *Hanlon*, 150 F. 3d at 1011; *Six (6) Mexican Workers v. Arizona Citrus*
23 *Growers*, 904 F. 2d 1301, 1311(9th Cir. 1990) ("*Six Mexican Workers*"); *Paul,*
24 *Johnson, Alston & Hunt v. Graulity*, 886 F. 2d 268, 272 (9th Cir. 1989); see *Torrise v.*
25 *Tucson Elec. Power*, 8 F. 3d 1370, 1376 (9th Cir. 1993) (reaffirming 25%
26 benchmark); *McPhail v. First Command Fin. Planning, Inc.*, 2009 U.S. Dist. LEXIS
27 26544, at *10 (S.D. Cal. 2009) (30% for first \$10 million and 25% for additional \$2
28 million settlement); *Craft*, 624 F. Supp. 2d at 1123 (25%); accord *Willging, et al.*

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1 *An Empirical Study of Class Actions in Four Federal District Courts*, at 69 (Federal
2 Judicial Center 1996) (“[m]edian rate[] range[] from 27% to 30%”).

3 Courts also look at the burdens placed on counsel in undertaking representation
4 of the class on a contingency basis and find that factors such as protracted litigation,
5 substantial outlay of expenses and missed opportunities for other work support
6 higher fee awards. See *Vizcaino*, 290 F. 3d at 1050 (28% fee award reasonable); *Six*
7 *Mexican Workers*, 904 F. 2d at 1311 (25% fee award appropriate). In similar cases,
8 where recovery was uncertain, an award of one-third of the common fund as
9 attorneys’ fees has been found to be appropriate. See *In re Mego Fin. Corp. Sec.*
10 *Litig.*, 213 F. 3d 454, 463 (9th Cir. 2000); *In re Heritage Bond Litig.*, 2005 WL
11 1594403, at *19, n. 14 (C.D. Cal. June 10, 2005) (“*Heritage*”) (discussing Ninth
12 Circuit cases awarded attorneys’ fees of one-third of the total recovery).

13 Plaintiffs’ requested award of \$9,518,406.12 represents 21% of the Total
14 Settlement Value without placing any value on the non-monetary relief secured by
15 the Settlement. Settlement Agreement, Dock. No. 188-1, p. 24:5-9 of 110. This is
16 well below the Ninth Circuit’s 25% benchmark range.

17 Furthermore, in determining the amount of the benefit conferred upon a class
18 under the POR approach, the Court may consider total recovery made available for
19 the class, not the amount actually realized by class members after-the-fact. *Van*
20 *Gernert*, 444 U.S. at 480-81; see also *Williams v. MGM-Pathe Commc'ns Co.*, 129
21 F. 3d 1026, 1027 (9th Cir. 1997) (holding district court abused its discretion in
22 basing fees on class members’ claims against fund rather than on a percentage of
23 entire fund); *Six Mexican Workers*, 904 F. 2d at 1311 (benchmark is 25% of entire
24 fund); see also *Waters v. Int’l Precious Metals Corp.*, 190 F. 3d 1291, 1297 (11th
25 Cir. 1999) (finding that fees should be based on entire settlement because class
26 counsel’s negotiation of \$40 million settlement was beneficial to entire class
27 regardless of fact that a reduced number of claims were made). Stronger than the
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1 facts of these cases, here members of Subclasses I and VII and members of Subclass
2 IV who reach his/her lifetime maximum benefit amounts will automatically benefit
3 from the Settlement so long as they do not request to be excluded.

4 **C. Plaintiffs' Fee Request Is Reasonable Under The Lodestar Method**

5 **1. Class Counsel's Hourly Rates Are Reasonable**

6 Under the lodestar method, reasonable hourly rates are determined by the
7 "prevailing market rates in the relevant community," which are the rates a lawyer of
8 comparable skill, experience and reputation could command in the relevant
9 community. *Anderson*, 2010 U.S. Dist. LEXIS 71598, at *6 (citing *Blum v. Stenson*,
10 465 U.S. 886, 895 (1984) ("*Blum*"). Although this is a nationwide class action
11 settlement, the relevant community is the Central District of California where this Court
12 sits. *Schwartz v. Sec'y of Health & Human Servs.*, 73 F. 3d 895, 906 (9th Cir.
13 1995); *Camacho v. Bridgeport Fin., Inc.*, 523 F. 3d 973, 979 (9th Cir. 2008).

14 "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing
15 fees in the community, and rate determinations in other cases, particularly those
16 setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing
17 market rate." *United Steelworkers v. Phelps Dodge Corp.*, 896 F. 2d 403, 407 (9th
18 Cir. 1990); see *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154, 1167 (N.D. Cal.
19 2012). "Courts also frequently use survey data in evaluating the reasonableness of
20 attorneys' fees." *B-KLighting, Inc. v. Vision Lighting*, 2009 U.S. Dist. LEXIS
21 111968, at*18 (C.D. Cal. Nov. 16, 2009) (citing *Mathis v. Spears*, 857 F. 2d 749,
22 755-56 (9th Cir. 1988). An attorney's actual billing rate is presumptively
23 appropriate to use as the lodestar market rate. See *People Who Care v. Rockford*
24 *Bd.*, 90 F. 3d 1307, 1310 (7th Cir. 1996).

25
26 Plaintiffs have submitted sworn declarations by Class Counsel, attesting to their
27 hourly rates and total hours devoted to the case, their experience, and describing their
28 efforts to prosecute this case. The hourly rates submitted by Class Counsel reflect

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1 their actual billing rates; thus, they are presumptively appropriate. Class Counsel
2 are highly-respected members of the bar with extensive experience in prosecuting
3 high-stakes complex litigation including class actions. ShenoI Decl., Exhs. A, B, C.
4 The table below sets forth the hourly rates, total hours worked and fee amounts for
5 each of the lawyers involved in the prosecution of this action. ShenoI Decl., ¶15.

Title	Loadstar Amount	% Total	Hours	% Total
Egbujiobi Nneka	\$88,520.50	2.61%	380.90	7.29%
Koes Dan	\$1,542,007.50	45.54%	2,171.20	41.57%
ShenoI Allan	\$1,386,586.25	40.95%	1,940.05	37.14%
Vader Chris	\$368,385.50	10.90%	730.90	14.00%
Grand Total	\$3,385,499.75	100%	5223.05	100%

13 Class Counsel’s rates are appropriate for complex litigation and reflect a high
14 level of experience and skill necessary for success in this action. Class Counsel’s
15 hourly rates are comparable to those approved in this District. See ShenoI Decl., Exhs.
16 A, B, C (Declarations of Stephen Bernardo, Michael Seplow and Douglas
17 Silverstein); *see, e.g., Housing Rights Ctr. v. Sterling*, 2005 U.S. Dist. LEXIS 31872,
18 at *10 (C.D. Cal. Nov. 1, 2005) (noting hourly rates may run up to \$1,000.00 per
19 hour in L.A., with \$125.00 to \$650.00 routine in California); *Aichele v. City of Los*
20 *Angeles*, 2015 WL 5286028 * 7 (C.D. Cal. Sept. 9, 2015) (“average (mean) billing
21 rate exceeds \$900 per hour” “for class counsel”); *POM Wonderful, LLC v. Purely*
22 *Juice, Inc.*, 2008 U.S. Dist. LEXIS 110460, at *12 (C.D. Cal. Sept. 22, 2008)
23 (approving partner rates of \$475.00 to \$750.00 and associate rates of \$275.00 to
24 \$425.00); *Kearney v. Hyundai Motor Am.*, 2013 WL 3287996, *8 (C.D. Cal.
25 June 28, 2013 (approving hourly rates between \$650 and \$800 for class counsel)

26 Survey data also supports the reasonableness of the rates sought. Each year,
27 the National Law Journal issues a survey of prevailing hourly rates. Courts rely on
28 this annual survey as evidence of prevailing hourly rates. *See, e.g., Yurman*

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1 *Designs, Inc. v. PAJ, Inc.*, 125 F. Supp. 2d 54, 58 (S.D. N.Y. 2000); *Yamonouchi*
2 *Pharm. Co. v. Danbury Pharmacal., Inc.*, 51 F. Supp. 2d 302, 305 (S.D. N.Y.
3 1999). Class Counsel's rates are comparable to the rates of Los Angeles, California
4 law firms in the National Law Journal's 2013 survey. *See* Shenoï Decl., Exh. D (in
5 2013, i.e., when the original complaint was filed, partners in firms located in Los
6 Angeles, California charged up to \$975.00 per hour).

7 Notably, Lead Class Counsel's customary rates have been previously
8 approved by courts in Los Angeles in a wage and hour class action; unlike that case,
9 this was no run-of-the-mill wage and hour class action. Shenoï Decl., ¶ 15; *Id.* at Exh.
10 H, ¶ 13 (approving Allan Shenoï's and Daniel Koes' rate at \$700 an hour for a case in
11 which most of the time was incurred in 2013 and 2014).⁸ Class Counsel's hourly rates,
12 which are on par with the prevailing market rates of attorneys in this District, are
13 reasonable, particularly given Class Counsel's demonstrated skill, experience and
14 reputation in the area of complex class action litigation. Shenoï Decl., Exhs. A, B, C.

15 **2. Class Counsel's Hours Devoted to This Litigation Are Reasonable**

16 Class Counsel devoted an enormous amount of time vigorously prosecuting this
17 litigation on behalf of approximately 129,000 Settlement Class Members. Shenoï
18 Decl. ¶ 22. Since its inception, Class Counsel collectively spent a total of 5,223.05
19 hours of attorney time as of April 2, 2016 on this litigation over the last three years. *Id.*

20 Given the motion practice, hearings, contested discovery, motions to compel,
21 and mediations over the course of this protracted litigation, this litigation involved
22 complex legal and factual issues requiring the expenditure of this substantial time and
23

24 _____
25 ⁸ During the final approval hearing in that case, Judge Highberger stated that Class Counsel
26 "obviously did your own follow-up effort, which is commendable," "I am very happy to
27 approve the fee request. I don't have any need to see the records in camera," "and you have
28 done a very commendable job, both before and after the deadline, in trying to maximize
class member submission of claims, whether they were timely or not. And that's very much
to your credit, Mr. Shenoï." Shenoï Decl., ¶ 6; *Id.* at Exh. N, pp. 4-6 of 7.

1 effort. Shenoil Decl. ¶ 25; *Id.* at Exh. I (UTBMS Summary of Fees as to both Activity
2 and Litigation Codes). Pursuant to the Stipulation For Settlement, Unum does not
3 oppose an award of attorneys' fees to class counsel of up to \$9,518,406.12, and does
4 not oppose an award of Class Counsel's attorneys' costs and litigation expenses of up
5 to \$81,593.91. Shenoil Decl., ¶¶ 22, 30.

6 Considering the complexity of the nationwide claims asserted, the expansive
7 scope, duration and intensity of the litigation, the magnitude of the proposed
8 nationwide classes, the total number of hours worked by Class Counsel was both
9 necessary and reasonable. *See Jordan v. Multnomah Cnty.*, 815 F. 2d 1258, 1263
10 (9th Cir. 1987) (lodestar calculation requires court to determine that time spent by
11 counsel was reasonably necessary). The extensive effort of Class Counsel to
12 successfully prosecute and bring this litigation to a favorable resolution is described at
13 length in Lead Class Counsel's declaration. *See* Shenoil Decl., ¶¶ 22-33. Class
14 Counsel conducted an extensive investigation of the legal and factual issues involved
15 in this case, responded to Unum's extensive discovery, reviewed over 18,888 pages of
16 Unum documents, analyzed extensive complex actuarial data, took the depositions in
17 Portland, Maine of Unum officers and employees, defended the depositions of Class
18 Representatives in Quincy and Los Angeles, California, reviewed and attacked
19 Unum's declarations including those of six independent agents, retained and
20 continually consulted with an actuary expert concerning the merits of Plaintiffs'
21 claims, Unum's defenses and valuation issues raised by Unum, and Plaintiffs
22 produced 6,513 pages of documents, and propounded exhaustive discovery on Unum,
23 including: (1) Don propounded 138 Requests for Production; 68 Requests for
24 Admission, and 14 Interrogatories and responded to 11 Requests for Production; 123
25 Requests for Admission, and 34 Interrogatories; (2) Pelham propounded 58 Requests
26 for Production; 77 Requests for Admission, and 22 Interrogatories and responded to
27 39 Requests for Production; 96 Requests for Admission, and 2 Interrogatories; and (3)
28

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1 Little propounded 22 Requests for Production, and responded to 31 Requests for
2 Production; 84 Requests for Admission, and 17 Interrogatories, and Plaintiffs
3 prevailed on two hard-fought discovery motions to compel. ShenoI Decl. ¶ 25.

4 The parties' Agreement is the product of intense arm's-length negotiations that
5 spanned from October 2013 to December 2015. In addition to direct settlement
6 negotiations, the parties agreed to mediate the matter before Robert J. Kaplan, of
7 Judicate West, to assist them in resolving difficult issues concerning the potential
8 settlement benefits to the Class. Mr. Kaplan was well suited to help the parties resolve
9 this action, as he successfully mediated the *Iorio v. Allianz Life Ins. Co.*, No. 05-cv-
10 0633 and *Negrete v. Allianz*, No. 05-cv-6838 insurance class action matters. Under
11 Mr. Kaplan's guidance, the parties worked many hours over two years and three full
12 day mediation sessions to reach the terms embodied in the Settlement Agreement.

13 Lead Class Counsel, who performed the vast majority of work in this litigation,
14 carefully supervised and managed the efforts of other Class Counsel, assigned
15 discrete tasks to other various counsel and kept Plaintiffs and counsel abreast of
16 significant developments in the litigation and settlement negotiations. ShenoI Decl. ¶
17 26. Lead Class Counsel endeavored throughout the litigation to delegate and
18 coordinate the efforts of other Class Counsel so as to maximize the impact of their
19 collective resources, while minimizing duplication of efforts and streamlining the
20 prosecution of the case. *Id.* In sum, the hours that Class Counsel devoted to this case
21 were reasonable and necessary.

22 **3. The Lodestar Calculation**

23 Multiplying the hours spent by Class Counsel on the litigation by their
24 respective hourly rates yields a lodestar calculation of \$3,385,499.75 as of April 2,
25 2016. *See* ShenoI Decl. ¶ 29. The requested fee award of \$9,518,406.12, which
26 Unum does not oppose, is in line with this lodestar amount, which, again, is "strongly
27 presumed" to be reasonable. *Gates*, 987 F. 2d at 1397. The resulting multiplier
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1 sought by Plaintiffs is 2.81, which is the midrange of multipliers frequently approved
2 by and within the Ninth Circuit. *Vizcaino*, 290 F. 3d at 1051 (upholding multiplier of
3 “3.65”); *Mercury*, 2011 WL 826797 at *2 (multiplier of 3.08 “is within the
4 acceptable range”); *Vizcaino*, 290 F.3d at 1051 (upholding multiplier of “3.65”). The
5 reasonableness of Plaintiffs’ fee request is confirmed when cross-checked under the
6 POR method. *Anderson*, 2010 U.S. Dist. LEXIS 71598, at *4, as the requested award
7 represents approximately 21% of the \$45,988,014.22 Total Settlement Fund, without
8 any value being attributed to the substantial non-monetary relief secured for Subclass
9 VII. See Shenoil Decl., ¶ 28; Wilkin Decl. ¶ 13; Dock. No. 189, p. 11:1-5 of 11; see,
10 *supra*, pp. 9-10 (cases identifying multipliers in nationwide insurance class actions).

11 Based on the length, novelty, complexity and special skill and expertise of
12 Class Counsel and work performed and results obtained by Class Counsel in this
13 litigation to successfully prosecute this matter, the factors set forth by the Supreme
14 Court in *Blum*, 465 U.S. at 898-900, and the Ninth Circuit in *Kerr*, 526 F.2d at 67
15 (“*Kerr*”), indicate that Class Counsel should be awarded the full amount requested,
16 which Unum does not oppose.

17 **4. Class Counsel’s Fees Are Reasonable Considering the Time and**
18 **Labor Required, the Novelty and Complexity Of the Litigation,**
19 **Counsel’s Skill and Experience, Results Obtained, and Awards**
20 **in Similar Cases**

21 In considering the reasonableness of attorneys’ fees, the Ninth Circuit has
22 directed courts to consider the time and labor required, the novelty and complexity of
23 the litigation, skill and experience of counsel, the results obtained, and awards in
24 similar cases. *Blum*, 465 U.S. at 898-900; *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d
25 67, 70 (9th Cir. 1975) (“*Kerr*”). All of these factors weigh heavily in favor of
26 granting the full award of \$9,518,406.12 in fees sought.

1 **a. Class Counsel Invested an Enormous Amount of Time and**
2 **Resources in This Case**

3 Unum expressly acknowledged in the Settlement Agreement that Class
4 Counsel's fees may be higher than Sidley Austin's defense fees because in part, all
5 parties acknowledge Plaintiffs did not have the benefit of substantial assistance and
6 investigation performed by Unum, a client with a large in-house legal staff. See
7 Settlement Agreement, Dock. 188-1, p. 24:16-20 of 110.

8 As of April 2, 2016, Class Counsel and their litigation support staff expended
9 5,223.05 hours, totaling a \$3,385,499.75 lodestar, and have \$81,593.91 in expenses
10 prosecuting this litigation for the benefit of the Settlement Class. Shenoï Decl. ¶¶
11 29-30. As discussed earlier, Class Counsel vigorously litigated the case for nearly
12 three years and were challenged by aggressive, skilled and well-funded defense
13 counsel every step of the way. To effectively prosecute this complex class action,
14 Class Counsel had to commit an enormous amount of time, personnel and expenses
15 to this litigation on a contingency basis with absolutely no guarantee of being
16 compensated in the end. Shenoï Decl., ¶ 21. Despite the significant risks and
17 uncertainty, Class Counsel obtained a superb result on behalf of Unum LTC
18 insureds nationwide. Shenoï Decl., ¶ 31.

19 **b. There Were Novel & Complex Legal & Factual Issues**

20 Many of the core issues that Plaintiffs faced in this litigation were novel and
21 complex, including, for example, interpretation of the word "remaining" in the
22 Benefit Provision of Unum's LTC policy containing a Lifetime Maximum Benefit
23 Amount, the appropriate method and trigger date under Unum's contractual language
24 for calculating damages after an insured made a covered claim, the availability of
25 injunctive relief or rescissionary damages, Unum's reformation affirmative
26 defense, Unum's offset claims, the requirements of causation and damages,
27 Unum's claims that extrinsic evidence was required to ascertain every insured's intent
28 or understanding or that every insured had to prove he/she read the policy, and

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1 Unum's claims that variations in contract law of various states barred certification in
2 this nationwide class action.

3 Class Counsel pursued a novel theory. Unum's Vice President testified Plaintiffs
4 were the only insureds to interpret contract in Plaintiffs' manner. Dock. No. 138, p.
5 11:6 of 35 ("Plaintiffs are the only ones who interpret the Policy this way, out of
6 180,000"). This constitutes a special circumstance. See *Teitelbaum v. Sorenson*, 648
7 F. 2d 1248, 1250 (9th Circ. 1981) ("Actions based on novel legal theories generally
8 require greater attorney effort than actions based on familiar legal theories."). As the
9 extensive record attests, the parties and the Court grappled with and addressed
10 numerous cutting-edge issues arising under Unum's policies. Shenoi Decl. ¶ 32.

11
12 There were also novel issues pertaining to absent class member discovery, and
13 the adequacy of a conservator and/or Executor and Special Administrator to serve as a
14 class representative. *Id.* Even the Settlement Agreement expressly confirms Class
15 Counsel pursued novel theories and that the portion of the action based on novel legal
16 theories required greater attorney effort than an action based on familiar legal theories.
17 See Settlement Agreement, Dock. No. 188, p. 24:21-23 of 110.

18 **c. Class Counsel Are Highly Skilled and Experienced in**
19 **Large, Complex Class Action Litigation**

20 The Court also considers the experience, skill and reputation of Class
21 Counsel. See *Kerr*, 526 F.2d at 70; *Heritage*, 2005 U.S. Dist. LEXIS 13627, at *38;
22 *Crommie v. Pub. Utils. Comm'n*, 840 F. Supp. 719, 725 (N.D. Cal. 1994). This case
23 took a great deal of skill and experience to achieve the proposed settlement for the
24 benefit of the Settlement Class. Lead Class Counsel are well-respected leaders in
25 class action litigation. Shenoi Decl., Exhs. A, B, C. From the outset, Lead Class
26 Counsel deployed their expertise and skill to prosecute this litigation from its
27 inception, through discovery and motion practice ultimately obtaining millions of
28 dollars in benefits (100% net of attorneys' fees for Subclasses I and VII and about 50%

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1 net of attorneys' fees for Subclass IV) for the Settlement Class. Class Counsel
2 conducted a thorough examination of the relevant facts through discovery and
3 informal investigation and consulted and retained experts to assist in the evaluation
4 of Unum's policies and valuation issues.

5 Had this Settlement not been achieved, complex legal questions would have
6 continued to be litigated for another 3-4 years, through appeal, and class members
7 would have been exposed to the risk, and uncertainty of further trial court
8 proceedings, a trial, a protracted appeal, and at least another three years of delay
9 before recovering any benefits obtained by this Settlement. This does not factor any
10 risk of loss on the merits, which was substantial in this case for all Subclasses,
11 especially Subclass IV since at no time has Unum conceded liability, the
12 appropriateness of class certification (except for the Settlement Class), plaintiffs'
13 interpretation of the contract, or the existence of causation or damages. Given the very
14 real and significant risks and massive uncertainty associated with this complex class
15 action, it is a testament to Class Counsel's skill, creativity and determination that
16 they were able to negotiate an excellent settlement providing substantial relief
17 (sooner rather than possibly later) to all settling Class Members.

18 **d. Opposing Counsel Are Experts in Class Action Defense**

19 The quality of opposing counsel should also be considered. *See, e.g., In re*
20 *Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Here,
21 counsel for Unum is Sidley Austin--a nationally recognized law firm experienced in
22 the defense of class actions. *See* www.sidley.com. Unum's counsel hotly contested
23 every point at every stage in this litigation. Shenoj Decl., ¶ 31.

24 **e. Class Counsel Obtained an Outstanding Nationwide**
25 **Settlement**

26 In light of the risks and uncertain outcome of the litigation, the results obtained
27 for the Settlement Class are outstanding. "[A] recovery of 100% of the amount
28 claimed is extraordinary and far exceeds the normal range of recoveries in class

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1 actions.” *Newberg on Class Actions*, Appendix IX-A (4th ed. 2002) (footnote
2 omitted). Yet, Subclass I has in effect obtained more than that, because their recovery
3 is 100% *after* attorneys’ fees. The Settlement provides eligible Class Members with
4 multiple forms of economic and noneconomic benefits directly addressing the alleged
5 wrongs and injuries alleged in the underlying litigation. Settlement Agreement, Dock
6 No. 188-1, p. 9:16 to p. 10:26 of 110. This relief is not only valuable--providing
7 benefits to thousands among the 129,000 insureds--it is also tailored to address the
8 immediate and future needs of the Settlement Class Members. Shenoil Decl., ¶ 33.

9 **f. The Fees & Expenses Sought Are Well Within the Range of**
10 **Those Awarded in Similar Actions**

11 As explained earlier, Plaintiffs’ fee request is reasonable in light of fees awarded
12 in other large, complex nationwide insurance class actions involving insurance
13 products. See, *supra*, pp. 8-9. Moreover, Subclass I will have a 100% recovery net of
14 attorneys’ fees, Subclass IV will have about a 50% recovery net of attorneys’ fees, and
15 the value of the non-economic relief to Subclass VII is not included in the Total
16 Settlement Fund. Every eligible insured is included, without having to opt-in.

17 A settlement amounting to 15% of maximum provable damages is within the
18 range of settlement agreements approved by other courts. See *In re Corel Corp. Sec.*
19 *Litig.*, 293 F. Supp. 2d 484, 489–90 (E.D. Pa. 2003) (citing cases); *Nichols v.*
20 *SmithKline Beecham Corp.*, 2005 WL 950616, at *16 (E.D. Pa. Apr. 22, 2005)
21 (upholding a settlement in the range of 9.3–13.9 percent of damages and finding that
22 percentage range to be “consistent with those approved in other complex class action
23 cases”), citing *In re Warfarin Sodium Antitrust Litig.*, 212 F. R. D. 231, 257 (D. Del.
24 2002); see also *In re Cendant Corp. Litig.*, 264 F. 3d 201, 241 (3d Cir. 2001)
25 (upholding a settlement in the 36–37 percent range, noting that it “far exceed[ed]”
26
27
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1 recovery rates of any case cited by the parties.”).⁹

2 In sum, Class Counsel achieved a monumental settlement on behalf of Unum
3 LTC insureds nationwide, and their fee request amounts to a multiplier of 2.81,
4 which is in line with awards granted in similar insurance class action cases.

5 **g. Reaction Of The Class**

6 “The existence or absence of objectors to the requested attorneys’ fee is a factor
7 in determining the appropriate fee award.” *In re Heritage Bond Litig.*, 2005 WL
8 1594403, at *21 (citation omitted). To date, Class Counsel is unaware of any
9 objections. Sheno Decl. ¶ 40.

10 **5. Plaintiffs’ Fee Request Is Reasonable in Light of the
11 Contingent Nature of the Fee and Ongoing Work**

12 Finally, Plaintiffs’ fee request is reasonable in light of the contingent nature of
13 Class Counsel’s engagement and the substantial future work and expenses that will be
14 incurred by Class Counsel under the Settlement Agreement. Courts find above-
15 market-value fee awards appropriate in the contingency fee context given the need to
16 encourage counsel to take on contingency fee cases for plaintiffs who otherwise could
17 not afford to pay hourly fees. *See, e.g., In re WPPSS Sec. Litig.*, 19 F. 3d 1291, 1299
18 (9th Cir. 1994). This is especially true where, as here, Class Counsel has significant
19 experience in the particular type of litigation at issue; in such a context, courts award
20 even more than the 25 percent benchmark percentage of the common fund. *See, e.g.,*
21 *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19 (awarding attorneys’ fees in the
22 amount of 33 percent of the common fund).

23 In addition, Class Counsel will continue to expend many more hours (and
24 additional expense) on behalf of the Settlement Class that is not included in their
25

26 _____
27 ⁹ Somewhat relevant to this analysis, “the typical recovery in class actions involving between \$1
28 billion and \$5 billion of investor losses is 1–2%.” *In re Am. Int’l Grp., Inc. Sec. Litig.*, 2012 WL
345509, at *5 (S.D. N.Y. Feb. 2, 2012).

1 lodestar and which will not entitle them to additional compensation under the
2 Settlement Agreement. This includes all post-approval work such as assisting with
3 claims administration, communicating with Class Members, and addressing any
4 claims dispute, appeal, or other issues that may arise under the Agreement. Sheno
5 Decl., ¶ 29. As explained in *Hanlon*, “the fee award included all future services that
6 class counsel must provide They must remain available to enforce the contract
7 elements of the settlement agreement and represent any class members who encounter
8 difficulties.” *Hanlon*, 150 F. 3d at 1029.

9 Importantly, any award of fees and expenses will not in any way affect the
10 form or amount of the settlement relief and economic benefits provided to Class
11 Members under the Agreement. See Settlement Agreement, Dock. No. 188-1, p.
12 22:27 to 25:12 of 110.

13 **V. CLASS COUNSEL’S EXPENSES ARE REASONABLE & WERE**
14 **NECESSARY TO ACHIEVE THE BENEFITS OBTAINED ON**
15 **BEHALF OF THE CLASS**

16 Class Counsel seek reimbursement of their actual expenses that amount to
17 \$81,593.91, Sheno Decl. ¶ 30, which Unum does not oppose, as set forth in the
18 Settlement Agreement. Settlement Agreement, Dock. No. 188-1, p. 24:1-2 of
19 110. The Ninth Circuit allows the recovery of pre-settlement litigation costs in
20 the context of class action settlements. *See Staton*, 327 F. 3d at 974. All expenses
21 that are typically billed by attorneys to paying clients in the marketplace are
22 compensable. *Harris v. Marhoefer*, 24 F. 3d 16, 19 (9th Cir. 1994).

23 Class Counsel submitted declarations attesting to the accuracy of their
24 expenses. Vader Decl., ¶ 15; Sheno Decl., ¶¶ 20, 30; *Id.* at Exh. J. This evidence
25 documents expenses in the amount of \$81,593.91 over the three years spent
26 prosecuting this litigation. Sheno Decl., ¶ 30; *Id.* at Exh. J. Class Counsel had to
27 travel in connection with this litigation and thus incurred related costs of coach class
28 airfare, meals, lodging and transportation. Many of the witnesses were located in

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1 Portland, Maine, the site of Unum's primary business operations. Significant
2 components of Class Counsel's expenses were the cost of an actuarial
3 consultant/expert and the mediator; both were necessary given the novel, difficult
4 and complex financial and actuarial issues presented in this action. *Id.* All of these
5 expenses such as (without any mark-up) the cost of experts, discovery, consultants,
6 travel, motion practice, photocopies, postage, filing fees, and transcripts were both
7 necessary and reasonable in bringing this case to a successful resolution. *Id.*

8 **VI. THE COURT SHOULD APPROVE THE SERVICE AWARDS FOR**
9 **EACH CLASS REPRESENTATIVE**

10 The Class Representatives dedicated an enormous amount of time and effort in
11 this litigation. Sheno Decl., Exh. K, p. 4:25-26 of 5 (Don estimates he spent over 525
12 hours); Exh. L, p. 4:5-7 of 4 (Pelham estimates she spent over 319 hours); Exh. M, p.
13 3:21-23 of 4 (Little estimates she spent over 162 hours).

14 Subject to Court approval, in recognition of their service as Class
15 Representatives, Unum has agreed not to oppose and to pay the following
16 incentive awards: Don \$25,000, Pelham \$20,000, and Little \$15,000. The
17 incentive awards to Plaintiffs total \$60,000 of the \$45,988,014.52 Total Settlement
18 Fund. See Settlement Agreement, Dock. 188-1, p.23:21-25 of 110. Unum has
19 agreed to pay these amounts in addition to any benefits these Plaintiffs are entitled
20 to receive as Settlement Class Members. *Id.*

21 "Incentive awards are fairly typical in class action cases." *Rodriguez v. West*
22 *Publishing Corp.*, 563 F. 3d 948, 958 (9th Cir. 2009). In the Ninth Circuit, service
23 awards "compensate class representatives for work done on behalf of the class, to
24 make up for financial or reputational risk undertaken in bringing the action, and,
25 sometimes, to recognize their willingness to act as a private attorney general." *Id.* at
26 958-59. Higher awards are given in cases involving larger settlement amounts. *See*
27 *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *5 (N.D. Cal. 2011)
28

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1 (collecting cases); *see, e.g., Glass v. UBS Fin. Servs.*, 2007 WL 221862, at *16–17
2 (N.D. Cal. Jan. 26, 2007) (approving a \$25,000 incentive award to four plaintiff
3 representatives in a \$45 million settlement); *Van Vranken v. Atlantic Richfield Co.*,
4 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000 incentive award in
5 \$76,723,213.26 settlement).

6 Here, as established by their declarations, the Class Representatives collectively
7 spent over a thousand hours, among other things: (i) assisting Class Counsel in
8 gathering facts so that Class Counsel could develop potential legal claims against
9 Unum; (ii) preparing and testifying at depositions, (iii) responding to exhaustive
10 discovery; (iv) two attending the last full day mediation session, (v) reviewing,
11 editing, or commenting on numerous drafts of the class certification motion, and (vi)
12 reviewing drafts of other motions, the Settlement Agreement, and other important
13 documents. Shenoï Decl. ¶¶ 34, 35; Exhs. K, L, M. The amount requested per Class
14 Representative is comparable to the amount awarded in other cases. *In re Domestic*
15 *Air Transp.*, 148 F. R. D. 297, 357-58 (N.D. Ga. 1993) (awarding \$142,500 to class
16 representatives out of \$50 million fund); *In re Dun & Bradstreet Credit Servs.*
17 *Customer Litig.*, 130 F. R. D. 366, 373-74 (S.D. Ohio 1990) (awarding \$215,000 to
18 several class representatives out of an \$18 million fund).

19 Each Class Representative regularly and consistently communicated with Class
20 Counsel during this litigation, reviewed relevant pleadings and documents, provided
21 their input, repeatedly responded to discovery requests, and otherwise kept apprised of
22 litigation related events and developments, provided their respective ideas and input to
23 Class Counsel in the rounds of negotiations and exchanges that preceded and followed
24 the first two mediations, including discussions leading up to the third mediation and
25 the many discussions that followed, and each was deposed. Shenoï Decl., ¶¶ 34-35.
26 Because the Class Representatives expended substantial efforts on the litigation and
27 were intimately involved in the proceedings, this factor weighs in favor of making
28

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1 incentive awards to them. *See Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL
2 1687832, *17 (N.D. Cal. Apr. 22, 2010) (approving a \$20,000 award where plaintiff
3 “made herself available for deposition on two separate occasions, wherein she was
4 subjected to questioning regarding her personal financial affairs and other sensitive
5 subjects; met with Class Counsel on six separate occasions; attended the full-day
6 Court-ordered appraisal hearing; spoke with Class Counsel and their staff on many
7 occasions; reviewed all major pleadings; and repeatedly responded to interrogatories
8 and document requests”); *Heritage*, 2005 WL 1594403 *14 (activities such as
9 “responding to discovery, preparing for, traveling to and attending their depositions
10 and maintaining contact with Plaintiffs’ counsel to monitor the litigation” gave rise to
11 an inference that class representatives were “actively involved in every aspect of . . .
12 litigation”). Plaintiffs respectfully request that the Court approve the service awards.

13 **VII. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court award
15 Class Counsel \$9,518,406.12 in attorneys’ fees and \$81,593.91 in expenses, and
16 award Don \$25,000, Pelham \$20,000, and Little \$15,000 (cumulatively \$60,000 of the
17 \$45,988,014.52 Total Settlement Fund) for their time and effort as Class
18 Representatives in this successful action. A proposed Order is submitted herewith.

19 Dated: April 8, 2016

20 By: _____/S/_____

21 Allan A. Shenoi
22 Attorney for Plaintiffs

Responses, Replies and Other Motion Related Documents

2:13-cv-04502-DSF-VBK Michael Don v. Unum Life Insurance Company of America et al

(VBKx),DISCOVERY,MANADR,PROTORD

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

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Case Name: Michael Don v. Unum Life Insurance Company of America et al
Case Number: 2:13-cv-04502-DSF-VBK
Filer: Michael Don
Document Number: 207

Docket Text:

MEMORANDUM in Support of NOTICE OF MOTION AND MOTION for Attorney Fees , Costs & Service Awards[206] filed by Plaintiff Michael Don. (Sheno, Allan)

2:13-cv-04502-DSF-VBK Notice has been electronically mailed to:

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