

1 Tina Wolfson, CA Bar No. 174806
twolfson@ahdootwolfson.com
2 Robert R. Ahdoot, CA Bar No. 172098
rahdoot@ahdootwolfson.com
3 Theodore Maya, CA Bar No. 223242
tmaya@ahdootwolfson.com
4 Bradley K. King, CA Bar No. 274399
bking@ahdootwolfson.com
5 AHDOOT & WOLFSON, PC
2600 West Olive Avenue, Suite 500
6 Burbank, California 91505
Tel: (310) 474-9111; Fax: (310) 474-8585

7 [Additional Counsel on Signature Pages]

8 *Class Counsel*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DIVISION**

12 PHILIP ALVAREZ, RANDALL
13 BETTISON, MARC KELLEHER, and
14 DARLENE VAUGH, individually and
on behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 SIRIUS XM RADIO INC.,

18 Defendant.

Case No. 2:18-cv-08605-JVS-SS

**DECLARATION OF RICHARD M.
PEARL IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES AND
EXPENSES AND FOR SERVICE
PAYMENTS**

Hon. James V. Selna, presiding

Date: February 8, 2021
Time: 1:30 P.M.
Location: Courtroom 10C
411 West 4th Street,
Santa Ana, CA 92701

See, *lifetimesiriusxmsettlement.com*
for attendance details and information
for video conference

(Filed with Decl. of C. Tregillis)

1 I, Richard M. Pearl, declare:

2 1. I am a member in good standing of the California State Bar. I am in
3 private practice as the principal of my own law firm, the Law Offices of Richard
4 M. Pearl, in Berkeley, California. I specialize in issues related to court-awarded
5 attorneys' fees, including the representation of parties in fee litigation and
6 appeals, serving as an expert witness, and serving as a mediator and arbitrator in
7 disputes concerning attorneys' fees and related issues. In this case, I have been
8 asked by Plaintiffs' attorneys, Ahdoot & Wolfson, PC, to render my opinion on
9 the reasonableness of the lodestar multiplier they are requesting in this matter.¹ I
10 make this declaration in support of Plaintiff Motion for Attorneys' Fees and
11 Expenses and for Service Payments. The facts set forth herein are true of my own
12 personal knowledge, and if called upon to testify thereto, I could and would
13 competently do so under oath.

14 2. Specifically, Plaintiffs' attorneys have asked me to express my
15 opinion regarding the following issue addressed in the Court's TENTATIVE
16 Order Regarding Motion for Final Approval of Class Action Settlement and
17 Motion for Attorneys' Fees ("Tentative Ruling"): does Plaintiffs' request for a
18 lodestar enhancement based on the incentive it would provide to competent
19 attorneys to litigate this and similar cases comport with the private legal
20 marketplace and therefore constitute a reasonable component of their requested
21 fee? To form my opinion, I have reviewed Plaintiffs' Notice of Motion and
22 Motion for Attorneys' Fees and Expenses and for Service Payments;
23 Memorandum of Points and Authorities In Support Thereof (Doc. 83), the
24 declaration of Robert Ahdoot in support of Plaintiffs' motion, this Court's

25 _____
26 ¹ I have not been asked to express an opinion regarding the number of hours and
27 the tasks performed that are a component of Plaintiffs' fee request because
28 Plaintiffs' counsel do not believe expert opinion on that issue is necessary. I agree,
and the absence of any testimony from me on the reasonableness of the number of
hours spent or the tasks performed does not in any way reflect a negative view of
their reasonableness.

1 Tentative Ruling, and Plaintiff's draft Supplemental Brief in Support of Motion
2 for Attorneys' Fees and Expenses and Service Payments, and have discussed this
3 issue with Plaintiffs' counsel Robert Ahdoot, Tina Wolfson, Theodore Maya, and
4 Bradley K. King.

5 **My Background and Experience**

6 3. Briefly summarized, my background is as follows: I am a 1969
7 graduate of Boalt Hall (now Berkeley) School of Law, University of California,
8 Berkeley, California. I took the California Bar Examination in August 1969 and
9 learned that I had passed it in November of that year, but because I was working
10 as an attorney in Atlanta, Georgia for the Legal Aid Society of Atlanta (LASA), I
11 was not admitted to the California Bar until January 1970. I worked for LASA
12 until the summer of 1971, when I went to work in California's Central Valley for
13 California Rural Legal Assistance, Inc. (CRLA), a statewide legal services
14 program. From 1977 to 1982, I was CRLA's Director of Litigation, supervising
15 more than fifty attorneys. In 1982, I went into private practice, first in a small
16 law firm, then as a sole practitioner. Martindale Hubbell rates my law firm "AV."
17 I also have been selected as a Northern California "Super Lawyer" in Appellate
18 Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016,
19 2017, 2018, 2019, and 2020. A true and correct copy of my Resume is attached
20 as Exhibit A.

21 4. Since 1982, the focus of my legal work has been in general civil
22 litigation and appellate practice, with an emphasis on cases and appeals involving
23 court-awarded attorneys' fees. I have lectured and written extensively on court-
24 awarded attorneys' fees. I have been a member of the California State Bar's
25 Attorneys' Fees Task Force and have testified before the State Bar Board of
26 Governors and the California Legislature on attorneys' fee issues. I am the author
27 of *California Attorney Fee Awards* (3d ed. Cal. CEB 2010) and its cumulative
28 annual Supplements between 2011 and March, 2020. I also was the author of

1 California Attorney Fee Awards, 2d Ed. (Calif Cont. Ed. of Bar 1994), and its
2 1995 through 2008 annual Supplements. Several courts have referred to this
3 treatise as “[t]he leading California attorney fee treatise.” *Calvo Fisher & Jacob*
4 *LLP v. Lujan*, 234 Cal. App. 4th 608, 621 (2015); *see also, e.g., Int’l Billing*
5 *Servs., Inc. v. Emigh*, 84 Cal. App. 4th 1175, 1193 (2000) (“the leading
6 treatise”); *Orozco v. WPV San Jose, LLC*, 36 Cal. App. 5th 375, 409 (2019) (“a
7 leading treatise on California attorney’s fees”). It also has been cited by the
8 California Supreme Court and Court of Appeal on many occasions. *See, e.g.,*
9 *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 576, 584 (2004); *Lolley v.*
10 *Campbell*, 28 Cal. 4th 367, 373 (2002); *In re Conservatorship of Whitley*, 50 Cal.
11 4th 1206, 1214–15, 1217 (2010)); *Yost v. Forestiere*, 51 Cal. App. 5th 509, 530
12 n. 8 (2020); *Doe v. Regents of Univ. of California*, 51 Cal. App. 5th 531, 547
13 (2020); *Highland Springs Conference & Training Ctr. v. City of Banning*, 42
14 Cal. App. 5th 416, 428 n. 11 (2019); *Orozco v. WPV San Jose, LLC*, 36 Cal.
15 App. 5th 375, 409 (2019); *Sweetwater Union High Sch. Dist. v. Julian Union*
16 *Elementary Sch. Dist.*, 36 Cal. App. 5th 970, 988 (2019); *Hardie v. Nationstar*
17 *Mortg. LLC*, 32 Cal. App. 5th 714, 720 (2019); *Stratton v. Beck*, 30 Cal. App. 5th
18 901, 911 (2018); *Syers Props III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 698, 700
19 (2014). California Superior Courts also cite the treatise with approval. *See,*
20 *e.g., Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL
21 7286170, at *4 (Orange Cty. Super. Ct. Aug. 31, 2018); *Hartshorne v. Metlife,*
22 *Inc.*, No. BC576608, 2017 WL 1836635, at *10 (Los Angeles Super. Ct. May 02,
23 2017). Federal courts also have cited it. *See In re Hurtado*, Case No. 09-16160-
24 A-13, 2015 WL 6941127 (E.D. Cal. Nov. 6, 2015); *TruGreen Companies LLC*
25 *v. Mower Brothers, Inc.*, 953 F. Supp. 2d 1223, 1236 nn.50, 51 (D. Utah
26 2013). I also authored the 1984 through 1993 annual Supplements to the
27 predecessor treatise, *CEB’s California Attorney’s Fees Award Practice*. In
28 addition, I authored a federal manual on attorneys’ fees entitled “Attorneys’

1 Fees: A Legal Services Practice Manual,” published by the Legal Services
2 Corporation. I also co-authored the chapter on “Attorney Fees” in Volume 2
3 of CEB's Wrongful Employment Termination Practice, 2d Ed. (1997).

4 5. More than 95% of my practice is devoted to issues involving court-
5 awarded attorney’s fees. I have appeared as counsel in over 200 attorneys’ fee
6 applications in state and federal courts, primarily representing other attorneys. I
7 also have briefed and argued more than 40 appeals, at least 30 of which have
8 involved attorneys’ fees issues. I have successfully handled five cases in the
9 California Supreme Court involving court-awarded attorneys’ fees: (1) *Maria P.*
10 *v. Riles*, 43 Cal. 3d 1281 (1987), which upheld a C.C.P. section 1021.5 fee award
11 based on a preliminary injunction obtained against the State Superintendent of
12 Education, despite the fact that the case ultimately was dismissed under C.C.P.
13 section 583; (2) *Delaney v. Baker*, 20 Cal. 4th 23 (1999), which held that
14 heightened remedies, including attorneys’ fees, are available in suits against
15 nursing homes under California’s Elder Abuse Act; (3) *Ketchum v. Moses*, 24
16 Cal. 4th 1122 (2001), which reaffirmed that contingent risk multipliers are an
17 essential consideration under California attorney fee law (note that in *Ketchum*, I
18 was primary appellate counsel in the Court of Appeal and “second chair” in the
19 California Supreme Court); (4) *Flannery v. Prentice*, 26 Cal. 4th 572 (2001),
20 which held that under California law, in the absence of an agreement to the
21 contrary, statutory attorneys’ fees belong to the attorney whose services they are
22 based upon; and (5) *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004),
23 which held, *inter alia*, that the “catalyst” theory of fee recovery remained viable
24 under California law and that lodestar multipliers could be applied to fee motion
25 work. In that case, I represented trial counsel in both the Court of Appeal (twice)
26 and California Supreme Court, as well as on remand in the trial court. I also
27 represented and argued on behalf of *amicus curiae* in *Conservatorship of*
28 *McQueen*, 59 Cal. 4th 602 (2014), which held that attorneys’ fees incurred for

1 appellate work were not “enforcement fees” subject to California’s Enforcement
2 of Judgments law; I presented the argument relied upon by the Court. Along with
3 Richard Rothschild of the Western Center on Law and Poverty, I also prepared
4 and filed an *amicus curiae* brief in *Vasquez v. State of California*, 45 Cal. 4th
5 243 (2009). I also have handled numerous other appeals involving attorneys’ fee
6 issues, including: *Davis v. City & County of San Francisco*, 976 F.2d 1536 (9th
7 Cir. 1992); *Mangold v. CPUC*, 67 F.3d 1470 (9th Cir. 1995); *Velez v. Wynne*,
8 2007 U.S. App. LEXIS 2194 (9th Cir. 2007); *Camacho v. Bridgeport Financial,*
9 *Inc.*, 523 F.3d 973 (9th Cir. 2008); *Orr v. Brame*, 793 F. Appx. 485(9th Cir.
10 2019); *Center for Biological Diversity v. County of San Bernardino*, 185
11 Cal.App.4th 866 (2010); *Environmental Protection Information Center v.*
12 *California Dept. of Forestry & Fire Protection et al*, 190 Cal.App.4th 217
13 (2010); *Heron Bay Home Owners Association v. City of San Leandro*, 19 Cal.
14 App. 5th 376 (2018); and *Robles v. Emp. Dev. Dept.*, 38 Cal.App.5th 191 (2019).
15 An expanded list of reported decisions in cases I have handled is set out in
16 Exhibit A at pages 4-8.

17 6. I have been retained by various governmental entities, including the
18 California Attorney General’s office, at my then current rates to consult with
19 them and serve as their expert regarding their affirmative attorney fee claims.
20 *See, e.g., In re Tobacco Cases I*, 216 Cal. App. 4th 570, 584 (2013); *Dep. of Fair*
21 *Employ. and Hous. v. Law Sch. Admission Council, Inc.*, 2018 WL 5791869
22 (N.D. Cal. No. 12-cv-08130, filed Nov. 5, 2018).

23 7. I am frequently called upon to opine about the reasonableness of
24 attorneys’ fees, including in several ERISA cases, and numerous federal and
25 state courts have relied on my testimony on those issues. The following reported
26 federal decisions have referenced my testimony favorably:

- 27 • *Antoninetti v. Chipotle Mexican Grill, Inc.*, No. 08-55867 (9th Cir.
28 2012), Order filed Dec. 26, 2012, at 6;

- 1 • *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir.
2 2010) (the expert declaration referred to is mine);
- 3 • *Independent Living Center of S. Cal. v. Kent*, 2020 U.S. Dist. LEXIS
4 13019 (C.D. Cal. 2020);
- 5 • *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal.
6 2017), *aff'd* 269 F.3d 1066 (9th Cir. 2020);
- 7 • *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214 (S.D. Cal.
8 2017);
- 9 • *Notter v. City of Pleasant Hill*, 2017 U.S. Dist. LEXIS 197404, 2017
10 WL 5972698 (N.D. Cal. 2017);
- 11 • *Villalpondo v. Exel Direct, Inc.*, 2016 WL 1598663 (N.D. Cal.
12 2016);
- 13 • *State Compensation Insurance Fund v. Khan et al*, Case No. SACV
14 12-01072- CJC(JCGx) (C.D. Cal.), Order Granting in Part and
15 Denying in Part the Zaks Defendants' Motion for Attorneys' Fees,
16 filed July 6, 2016 (Dkt. No. 408);
- 17 • *In re Cathode Ray Tube Antitrust Litig.*, Master File No. 3:07-cv-
18 5944 JST, MDL No. 1917 (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS
19 24951 (Report And Recommendation Of Special Master Re
20 Motions (1) To Approve Indirect Purchaser Plaintiffs' Settlements
21 With the Phillips, Panasonic, Hitachi, Toshiba, Samsung SDI,
22 Technicolor, And Technologies Displays Americas Defendants, and
23 (2) For Award Of Attorneys' Fees, Reimbursement Of Litigation
24 Expenses, And Incentive Awards To Class Representative), Dkt.
25 4351, dated January 28, 2016, *adopted in relevant part*, 2016 U.S.
26 Dist. LEXIS 88665;
- 27 • *Gutierrez v. Wells Fargo Bank*, 2015 U.S. Dist. LEXIS 67298 (N.D.
28 Cal. 2015);

- 1 • *Holman v. Experian Information Solutions, Inc.*, 2014 U.S. Dist.
2 LEXIS 173698 (N.D. Cal. 2014);
- 3 • *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI,
4 MDL No. 1827 (N.D. Cal.), Report and Recommendation of Special
5 Master Re Motions for Attorneys' Fees And Other Amounts By
6 Indirect-Purchaser Class Plaintiffs And State Attorneys General,
7 Dkt. 7127, filed Nov. 9, 2012, adopted in relevant part, 2013 U.S.
8 Dist. LEXIS 49885 (N.D. Cal. 2013) ("*TFT-LCD (Flat Panel)*
9 *Report & Recommendation*");
- 10 • *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319 (N.D.
11 Cal. 2013);
- 12 • *A.D. v. California Highway Patrol*, 2009 U.S. Dist. LEXIS 110743,
13 at *4 (N.D. Cal. 2009), rev'd on other grounds, 712 F.3d 446 (9th
14 Cir. 2013), reaffirmed and additional fees awarded on remand, 2013
15 U.S. Dist. LEXIS 169275 (N.D. Cal. 2013);
- 16 • *Hajro v. United States Citizenship & Immigration Service*, 900 F.
17 Supp. 2d 1034, 1054 (N.D. Cal 2012);
- 18 • *Rosenfeld v. United States Dep't of Justice*, 904 F. Supp. 2d 988,
19 1002 (N.D. Cal. 2012);
- 20 • *Stonebrae, L.P. v. Toll Bros., Inc.*, 2011 U.S. Dist. LEXIS 39832, at
21 *9 (N.D. Cal. 2011) (thorough discussion), aff'd 2013 U.S. App.
22 LEXIS 6369 (9th Cir. 2013);
- 23 • *Armstrong v. Brown*, 2011 U.S. Dist. LEXIS 87428 (N.D. Cal.
24 2011);
- 25 • *Lira v. Cate*, 2010 WL 727979 (N.D. Cal. 2010);
- 26 • *Californians for Disability Rights, Inc. v. California Dep't of*
27 *Transportation*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010);
- 28

- 1 • *Nat'l Federation of the Blind v. Target Corp.*, 2009 U.S. Dist.
2 LEXIS 67139 (N.D. Cal. 2009);
- 3 • *Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095 (N.D.
4 Cal. 2008) (an earlier motion);
- 5 • *Bancroft v. Trizechahn Corp.*, No. CV 02-2373 SVW (FMOx),
6 Order Granting Plaintiffs Reasonable Attorneys' Fees and Costs In
7 the Amount of \$168,886.76, Dkt. 278 (C.D. Cal. Aug. 14, 2006);
- 8 • *Willoughby v. DT Credit Corp.*, No. CV 05-05907 MMM (CWx),
9 Order Awarding Attorneys' Fees After Remand, Dkt. 65 (C.D. Cal.
10 July 17, 2006);
- 11 • *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D.
12 Cal. 2002), aff'd 2003 U.S. App. LEXIS 11371 (9th Cir. 2003);

13 8. The following California appellate and reported trial court cases
14 also have referenced my testimony favorably:

- 15 • *Kerkeles v. City of San Jose*, 243 Cal.App.4th 88 (2015);
- 16 • *Habitat and Watershed Caretakers v. City of Santa Cruz*, 2015 Cal.
17 App. Unpub. LEXIS 7156 (2015);
- 18 • *Laffitte v. Robert Half Int'l Inc.*, 231 Cal.App.4th 860 (2014), aff'd
19 (2016) 1 Cal.5th 480;
- 20 • *In re Tobacco Cases I*, 216 Cal.App.4th 570 (2013);
- 21 • *Heritage Pacific Financial, LLC v. Monroy*, 215 Cal.App.4th 972
22 (2013);
- 23 • *Wilkinson v. South City Ford*, 2010 Cal. App. Unpub. LEXIS 8680
24 (2010);
- 25 • *Children's Hospital & Medical Center v. Bonta*, 97 Cal.App.4th 740
26 (2002);
- 27 • *Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628 (1996);

28

- 1 • *Kaku v. City of Santa Clara*, No. 17CV319862, 2019 WL 331053, at
- 2 *3 (Santa Clara Cty. Super. Ct. Jan. 22, 2019);
- 3 • *Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL
- 4 7286170, at *4 (Orange Cty. Super. Ct. Aug. 31, 2018);
- 5 • *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL 1836635, at
- 6 *10 (Los Angeles Super. Ct. May 2, 2017).²

7 9. In sum, based on my extensive experience with and expertise in
8 court-awarded attorneys’ fees and the legal marketplace they reflect, it is my
9 opinion that Plaintiffs’ request for a lodestar enhancement based on the incentive
10 it would provide to competent attorneys to litigate this and similar cases
11 comports with the private legal marketplace and therefore constitutes a
12 reasonable component of their requested fee under either federal or state law. I
13 base that opinion on the following.

14 10. Under federal law, lodestar multipliers are appropriate where they
15 are necessary to provide “fair and reasonable compensation” and where “the
16 lodestar fee would not have been ‘adequate to attract competent counsel.’”
17 *Perdue v. Kenny A.*, 559 U.S 542, 554 (2010) (quoting *Blum v. Stenson*, 465 U.S.
18 897, 901 (1984). Likewise, as discussed in ¶¶ 15-16, *infra*, the requested
19 multiplier also is appropriate under California law, which provides that factors
20 such as contingent risk must be considered and may be awarded in determining
21 the reasonable attorneys’ fees recoverable in contract cases. *See PLCM v.*
22 *Drexler Group*, 22 Cal.4th 1084, 1097 (2000); *Sternwest Corp. v Ash*, 183
23 Cal.App.3d 74 (1986).

24
25
26 _____
27 ² Many other trial courts also have relied on my testimony in unreported fee
28 awards.

1 **A 2.1 Multiplier Is Appropriate Under Federal Law**

2 11. In my view, a multiplier is appropriate and reasonable in light of the
3 need to attract competent counsel willing and able to take on massive consumer
4 protection actions challenging unfair or otherwise invalid consumer practices
5 propagated by large corporations. This is especially true with respect to actions
6 like this one that do not primarily seek or result in large damages funds from
7 which fully compensatory fees can be paid, but instead seek forward-looking
8 relief such as the relief obtained here. *See* Fitzpatrick, THE CONSERVATIVE CASE
9 FOR CLASS ACTIONS (Univ. of Chicago Press 2019) (“Fitzpatrick”). As
10 Professor Fitzpatrick explains, and as my experience confirms, private lawyers
11 perform a critical law enforcement role in this country: government regulators
12 have neither the budgets nor the will to address all wrongs in, for example, the
13 consumer protection field. Instead, private lawyers are needed to fill the
14 enforcement gap and remedy injuries that would otherwise go unaddressed and
15 to deter other wrongdoing. *See Fitzpatrick, supra*, at 29-47.

16 12. Private lawyers, in turn, will only fulfill this enforcement role by
17 bringing lawsuits and investing sufficiently in them if they can expect to be
18 compensated fully if they are successful: the individual fee awards in class
19 actions like this one thus tell other lawyers what they can expect to receive if
20 they agree to take on such cases and prevail. As a result, regardless of whether
21 there will be a large fund from which to take a fully compensatory fee, this
22 Court’s award will serve to incentivize attorneys to bring as many meritorious
23 cases as possible, and to litigate the cases in a way that optimizes relief for the
24 class and the deterrence of future wrongdoing by the defendant and others. *See,*
25 *e.g., Guam Soc’y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 697
26 (9th Cir 1996) (2.0 multiplier appropriate when “necessary” to attract competent
27 counsel); *Chabner v United of Omaha Life Ins. Co.* 1999 US Dist Lexis 16552,
28 *19 (N.D. Cal., Oct. 12, 1999, No. C-95–0447 MHP) (success measured by

1 deterrent effect on other insurance companies), *aff'd* (9th Cir. 2000) 225 F.3d
2 1042, 1053 n. 11.

3 13. As Professor Fitzpatrick makes clear, a multiplier is particularly
4 appropriate in cases like this one that seek primarily prospective relief, with no
5 common fund from which to receive a fully compensatory fee. Like Professor
6 Fitzpatrick, it is my strong belief and experience that no matter how important
7 the case may be, class actions seeking primarily injunctive relief provide
8 significantly less incentive to highly-skilled attorneys than damages cases. The
9 latter, unlike the former, provide a large pool from which to recover a fee that
10 reflects the full panoply of relevant factors, including contingent risk, preclusion
11 of other employment, and the like. As a result, the financial incentives to take
12 injunctive relief actions like this one are significantly diminished, to the
13 detriment of our nation's consumer protection policies. *See* Maureen Carroll,
14 *Fee-Shifting Statute and Compensation for Risk*, 95 Ind. L. J. 1021, 1046 (2020)
15 (“When profit-motivated representation occurs, it often results not from the
16 potential for a fee-shifting award, but from the expectation of a contingency
17 percentage fee. [T]hat business model [does not] provide for claimant who seek
18 only injunctive relief.”) As a result, victims of wrongdoing that primarily
19 requires injunctive relief, like the Plaintiffs here, have lesser access to competent
20 and skilled attorneys. Given that injunctive relief cases can sometimes be more
21 important than cases seeking primarily monetary damages, this disparity in the
22 number of lawyers willing to enforce the law is something that can be
23 significantly reduced by recognizing the incentive purposes of the law in
24 rendering a fee award here.

25 14. This disincentive is particularly true in cases in which only federal
26 fee-shifting law applies because the great disparity in federal and state law on
27 multipliers ensures that full compensation is less likely in cases enforcing federal
28 laws than those enforcing state laws. *See, e.g., Ketchum v. Moses*, 24 Cal.4th

1 1122, 1136-37 (2001). The modest multiplier sought here would serve to restore
2 some of that incentive.

3 **A 2.1 Multiplier Also Is Appropriate Under California Law**

4 15. California law also recognizes the incentive purposes served by
5 lodestar multipliers: “A lawyer who both bears the risk of not being paid and
6 provides legal services is not receiving the fair market value of his work if he is
7 paid only for the second of these functions. If he is paid no more, competent
8 counsel will be reluctant to accept fee award cases.” *Ketchum*, 24 Cal.4th at 1133
9 (internal quotation and citation omitted). This purpose underlies the more
10 specific factors addressed under California’s lodestar-multiplier approach: the
11 requirement that courts consider contingent risk, exceptional novelty and
12 complexity, the preclusion of other employment and other recognized lodestar
13 enhancement factors is based on the recognition that in the legal marketplace,
14 these factors determine whether attorneys will be able to recover “fully
15 compensatory” fees should they succeed, and that the inability to recover “fully
16 compensatory” fees will significantly diminish the incentive to take difficult but
17 important public interest cases.

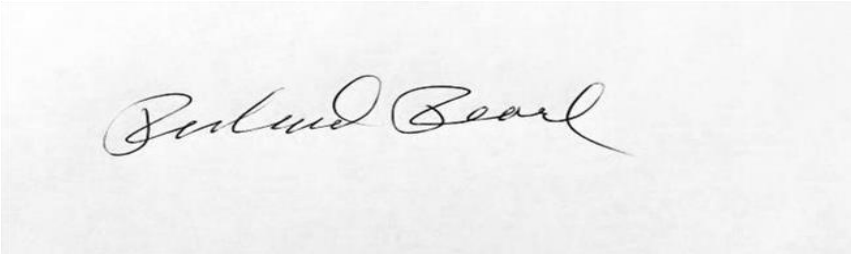
18 16. In this case, in my opinion, the factors that underlie fees awarded
19 under California law, including contract-based fees, fully warrant the 2.1 lodestar
20 multiplier requested by Plaintiffs and fully serve the incentive purposes of the
21 law. *See* Dkt. 83, Plaintiffs’ Motion for Attorneys’ Fees and Expenses and for
22 Service Payments, p. 21-22 & n.4; Dkt. 83-1 Declaration of Robert Ahtood, ¶¶
23 49-60. Indeed, contingent risk alone would justify an even larger multiplier. *See*
24 *Wershba v Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001) (“Multipliers
25 can range from 2 to 4 or even higher”), disapproved on other grounds in
26 *Hernandez v Restoration Hardware, Inc.*, 4 Cal.5th 260, 269 (2018); *Chabner v*
27 *United of Omaha Life Ins. Co.*, *supra*, (affirming 2.0 multiplier under California
28 law in challenge to insurance practices); *Sutter Health Uninsured Pricing Cases*,

1 171 Cal.App.4th 495, 512 (2009) (affirming 2.52 multiplier in class action
2 settlement concerning defendants' practice of charging uninsured patients more
3 than insured patients).

4 I declare under penalty of perjury under the laws of the United States that
5 the foregoing facts are true and correct.

6 Executed on February 1, 2021 at Berkeley, California.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A rectangular area containing a handwritten signature in cursive script, which appears to read "Richard M. Pearl".

RICHARD M. PEARL