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16 *Class Counsel*

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **SOUTHERN DIVISION**

20 PHILIP ALVAREZ, RANDALL
21 BETTISON, MARC KELLEHER,
and DARLENE VAUGH, individually
22 and on behalf of all others similarly
situated,

23
24 Plaintiffs,

25 v.

26 SIRIUS XM RADIO INC.,

27 Defendant.
28

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

**DECLARATION OF KEITH S.
DUBANEVICH IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND
EXPENSES AND FOR SERVICE
PAYMENTS**

Hon. James V. Selna, presiding

Date: January 25, 2021
Time: 1:30 PM
Location: Courtroom 10C
411 West 4th Street,
Santa Ana, CA 92701

DECLARATION OF KEITH S. DUBANEVICH

I, Keith S. Dubanevich, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 and based on my own personal knowledge and, where indicated as based on information and belief, that the following statements are true:

1. I am a partner of Stoll Stoll Berne Lokting & Shlachter, P.C. (“Stoll Berne”), and a member in good standing of the bar of the State of Oregon. I respectfully submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Expenses and for Service Payments.¹

2. I have been the principal attorney working on this matter at Stoll Berne.

3. Also working with Stoll Berne are attorneys and staff at co-Class Counsel’s law firms, Ahdoot & Wolfson (“AW”) and Abington Cole + Ellery.

4. Stoll Berne, along with our co-Class Counsel have vigorously and zealously represented the interests of the proposed Class from the inception of this hard-fought litigation until the present.

5. Throughout this action, Stoll Berne has sought to reach consensus with co-Class Counsel to manage the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls, working to avoid duplication of efforts or unnecessary work undertaken by any of the counsel for the Class in this case, and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way.

6. I have reviewed the contents of the concurrently filed Declaration of

¹ Unless otherwise defined herein, capitalized words and phrases shall have the same meaning as in the Definitions section (Section II) of the Settlement Agreement (“Settlement Agreement,” “Settlement,” or “SA”) filed in this Action. (ECF No. 68.)

1 Robert Ahdoot and affirm that his summary of the case and settlement are true and
2 accurate to the best of my knowledge.

3 CLASS COUNSEL'S HOURS AND LODESTAR

4 7. Class Counsel, in Plaintiffs' Motion for Attorneys' Fees and
5 Expenses, and for Service Payments, filed concurrently herewith, have applied for
6 attorneys' fees and expenses not to exceed \$3,500,000 (3.6% of the estimated
7 Settlement value).

8 8. This amount was not discussed between the Parties until after they
9 agreed on the material terms of the Settlement.

10 9. **Class Counsel's Combined Lodestar**. Using the information
11 provided in my co-Class Counsel's concurrently filed Declarations and my own
12 personal knowledge of my firm's lodestar, the following chart summarizes the
13 lodestar by each firm:

14 Class Counsel's Combined Lodestar		
15 Firm	Hours	Lodestar
16 Ahdoot & Wolfson, PC	1,601.00	\$1,231,220.00
17 Abington Cole + Ellery	512.90	\$384,675.00
18 Stoll Stoll Berne Lokting & Shlachter P.C.	47.05	\$30,930.25
19 Totals	2,160.95	\$1,646,825.25

20
21 10. Class Counsel and their staffs have devoted a total of 2,160.95 hours
22 to this litigation and have a total combined lodestar of \$1,646,825.25 through
23 November 15, 2020.

24 11. **Stoll Berne's Hours and Lodestar**. Stoll Berne expended 47.05
25 hours in this litigation through November 15, 2020, for a lodestar of \$30,930.25.

26 12. Stoll Berne's representation of the Class was on a wholly contingent
27 basis. The Firm devoted substantial resources to this matter, and we have
28 received no payment for any of the 47.05 hours of services performed or the out-

1 of-pocket costs and expenses that AW committed to the litigation of this case. We
2 did this, with no guarantee of repayment, to represent our clients and because of
3 the public interest and social importance of this case. Moreover, Stoll Berne was
4 required to forego other financial opportunities to litigate this case. Stoll Berne
5 thus took this case with the expectation that the firm would receive a risk
6 enhancement in the event we prevailed.

7 13. All attorneys and legal staff who worked on this case maintained
8 contemporaneous time records reflecting the time spent on all billable matters. In
9 all instances, the timekeeper indicated the date and amount of time spent on a task
10 to one-tenth of an hour, described the work that was performed during the
11 indicated time period, and identified the case to which the time should be charged.
12 Stoll Berne's contemporaneous time records shall be made available to the Court
13 for *in camera* review upon request.

14 14. Stoll Berne made every effort to litigate this matter efficiently by
15 coordinating the work of Stoll Berne's attorneys and paralegals, as well as co-
16 Class Counsel, minimizing duplication, and assigning tasks in a time and cost-
17 efficient manner, based on the time keepers' experience levels and talents.

18 15. The detailed time records for the hours spent by my firm and billed to
19 this case through November 15, 2020 are available to the Court upon request. I
20 certify to the Court that Stoll Berne's fee records accurately reflect work actually,
21 reasonably, and necessarily performed in connection with the litigation of this
22 matter. I believe that the hours spent reflect time spent reasonably litigating this
23 case, which I have sought to manage and staff efficiently as described above.

24 16. A summary of rates and hours expended by Stoll Berne's
25 professionals, as of November 15, 2020, is set forth as follows:
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Professional	Title	Billable Rate	Billable Hours	Billable Fees
Keith Dubanevich	Shareholder	\$675	44.55	\$30,071.25
Keil Mueller	Shareholder	\$450	.60	\$270.00
Angel Falconer	Paralegal	\$310	.20	\$62.00
Wesley Mueller	Paralegal	\$310	1.70	\$527.00
TOTALS:				\$30,930.25

17. I expect Stoll Berne to maintain a high level of oversight and involvement in this case, and will continue to incur significant amounts of time given the future work still needed for completion of the Settlement, including: preparing and filing final approval papers, attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections and filing any replies in support of final approval, addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Class. Therefore, I anticipate incurring significant additional lodestar in the future.

CLASS COUNSEL'S REASONABLE EXPENSES

18. As set forth in the concurrently filed Declarations of Class Counsel, the Plaintiff firms have incurred a total of \$29,015.37 in unreimbursed expenses that were necessarily incurred in connection with the investigation, prosecution, and settlement of this litigation, as follows:

Firm	Total Expenses
Ahdoot & Wolfson, PC	\$27,019.10
Stoll Stoll Berne Lokting & Shlachter P.C.	\$1,996.27
Totals	\$29,015.37

1 19. Class Counsel also anticipate incurring additional expenses to see
 2 this case to completion, for which Class Counsel will not seek additional
 3 reimbursement.

4 **STOLL BERNE’S EXPENSES**

5 20. To date, Stoll Berne has incurred \$1,996.27 of these expenses, as
 6 follows:

Description	Amount
Filing & Attorney Service Fees	\$496.25
Meals	\$357.97
Travel/Lodging	\$1,142.05
Total	\$1,996.27

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 14 21. These costs are the common types of costs regularly billed to paying
 15 clients and recoverable in cases where statutory cost-shifting provisions are
 16 available, as they are here. These costs and expenses are fully documented, in my
 17 opinion necessary, and reasonable.

18 **STOLL BERNE FIRM EXPERIENCE**

19 22. At all times, Stoll Berne had the experience and expertise to
 20 effectively litigate any all issues related to this litigation.

21 23. Stoll Berne was established over forty years ago and is dedicated to
 22 creative litigation and business solutions, professionalism towards all, and a
 23 steadfast commitment to the community. We are commonly recognized as the
 24 preeminent class action law firm in Oregon. We have litigated securities fraud
 25 class actions on behalf of investors; we have represented employees in class
 26 actions involving wage and hour claims; we have represented consumers in
 27 consumer protection class actions and in antitrust cases; we have represented
 28 injured people and businesses in environmental class actions, and; we have

1 represented health care providers seeking to recover proper reimbursement in
2 class actions against insurance companies. Stoll Berne has been consistently
3 named in the U.S. News & World Report Best Lawyers and Best Law Firms
4 rankings. Ten of our seventeen attorneys are listed in the 2021 edition of
5 Benchmark Litigation, which is a definitive source for America's leading
6 litigation firms and attorneys.

7 24. I attended Tulane University School of Law and graduated cum laude
8 in 1983. While in law school I received the Louisiana Trial Lawyers Award for
9 Outstanding Advocacy and received the Orde of the Barristers. I began my legal
10 career with Fulbright & Jaworski (now Norton Rose Fulbright) in Houston Texas
11 and became a partner in 1992. I did personal injury defense litigation including
12 products liability and medical malpractices cases. In 1998 I moved to Portland,
13 Oregon and became a shareholder in the firm now known as Foster Garvey where
14 I did complex civil litigation, both on the plaintiff and defense sides. In 2009 I
15 joined the Oregon Department of Justice as Special Counsel to the Attorney
16 General. I left the Department in 2012 at which time I held the titles: Special
17 Counsel, Chief of Staff and Associate Attorney General.

18 25. In October 2012 I joined Stoll Berne as a shareholder and have
19 focused my practice on complex civil litigation including prosecution of class
20 action cases. I have been co-lead counsel in multiple class action securities cases
21 including In re CenturyLink Sales Practices and Securities litigation, In re Bank of
22 New York Mellon Securities Class Action (\$150 million settlement), and In re
23 JPMorgan Chase & Co. Securities Litigation (\$180 million settlement). I was lead
24 counsel in a consumer class case, A.F. et. al. v Providence Health Plan (permanent
25 injunction ordered requiring coverage for autism), co-counsel in a Telephone
26 Consumer Protection Act class action case against Omaha Steaks (\$4.5 million
27 settlement), and was liaison counsel in In re Premera Blue Cross Data Breach (\$74
28

1 million value settlement). I was recently selected as liaison counsel in In re
2 Portland General Electric Securities Litigation.

3 26. Thus, Stoll Berne has decades of experience in the prosecution of
4 class actions and, in particular, class actions on behalf of consumers, and can more
5 than adequately represent the Settlement Class.

6 **STOLL BERNE’S REASONABLE HOURLY RATES**

7 27. I believe that my firm’s rates are fully commensurate with the hourly
8 rates of other nationally prominent firms performing similar work for both
9 plaintiffs and defendants. After considering all of these data points, I have
10 determined that the rates are reasonable for each of the Stoll Berne professional
11 who worked on this matter.

12 28. Because of the importance of recovery of attorney fee awards in
13 contingency cases to a plaintiffs’ class action practice firm such as Stoll Berne, we
14 keep current on federal and state law developments on the subject of attorneys’
15 fees. Accordingly, Stoll Berne is familiar with the prevailing market rates for
16 leading attorneys in Oregon and in California for trial court, complex and class
17 action litigation of important issues. Historically, rates in Oregon are far below
18 the prevailing rates in California.

19 29. Stoll Berne periodically establishes hourly rates for the firm’s billing
20 personnel. Stoll Berne establishes the rates based on prevailing market rates for
21 attorneys and law firms in the Portland, Oregon area that have attorneys and staff
22 of comparable skill, experience, and qualifications.

23 30. The bulk of Stoll Berne’s practice is contingent, and many of my
24 firm’s cases have been large and substantial in settlements or verdicts. In
25 contingent risk cases, my firm and other firms doing this type of work frequently
26 advance expenses and costs and defer all payment of our fees for several years,
27 with no guarantee that any of the fees we incurred or costs we advanced would
28 ever be recovered.

1 31. The rates charged by Stoll Berne are reasonable and well within the
2 range of rates charged by comparably qualifying attorneys for comparably
3 complex work. Comparable hourly rates have been found reasonable in numerous
4 cases. The Settlement achieved in this litigation is the product of the initiative,
5 investigations, and hard work of skilled counsel.

6 32. Based on my experience and my knowledge regarding the factual and
7 legal issues in this matter, and given the substantial benefits provided by the
8 Settlement, it is my opinion that the proposed Settlement in this matter is fair,
9 reasonable, and adequate, and is in the best interests of the Settlement Class
10 Members.

11 I declare under penalty of perjury pursuant to the laws of the United States
12 of America that the foregoing is true and correct. Executed this 16th day of
13 November 2020 in Portland, Oregon.

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18 Keith S. Dubanevich
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