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21 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
22 COUNTY OF LOS ANGELES

23 ELMA SANCHEZ, et al.,
24
25 Plaintiffs,

26 vs.

27 CALIFORNIA PUBLIC EMPLOYEES’
28 RETIREMENT SYSTEM, et al.,
29
30 Defendants.

**LEAD CASE NO. BC 517444
JCCP CASE NO. 4936**

[Hon. William F. Highberger]

**DECLARATION OF GRETCHEN M.
NELSON IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
PRELIMINARY APPROVAL OF
SECOND CLASS ACTION
SETTLEMENT**

Date: MARCH 10, 2023

Time: 1:30 p.m.

**Place: Spring Street Court, Dept. 10
[Filed concurrently with Notice of Motion
and Motion for Preliminary Approval,
Stipulation/Proposed Order to Shorten
Time]**

1 I, Gretchen M. Nelson, do hereby declare as follows:

2 1. I am an attorney at law licensed to practice before the Courts of the State of
3 California and through my firm I am one of the attorneys for Plaintiffs in this action. This
4 declaration is submitted in support of Plaintiffs’ motion for preliminary approval of a second
5 class action settlement that has been achieved between Plaintiffs Holly Wedding, Richard M.
6 Lodyga, and Eileen Lodyga (“Plaintiffs”), individually and on behalf of the Settlement Class (the
7 “Settlement Class”), and Defendant California Public Employees’ Retirement System
8 (“CalPERS”)¹ (the “Second Settlement”).

9 2. Plaintiffs and the Class have been represented by Shernoff Bidart Echeverria LLP,
10 Kershaw Talley Barlow PC, Nelson & Fraenkel LLP, and Bentley & More LLP (collectively,
11 “Class Counsel”) during the pendency of this case. Defendant CalPERS is represented by
12 Morrison & Foerster.

13 3. I have personal knowledge of the facts set forth in this declaration or I have been
14 informed as to various facts and believe them to be true.

15 4. In this declaration, I set forth a description of both the procedural and factual
16 history of this case, a description of the terms of the proposed Second Settlement, a description
17 of the proposed plan for notice to the Settlement Class and other matters that are relevant to the
18 Court’s consideration as to whether to grant preliminary approval of the Second Settlement. The
19 format of this declaration seeks to track the items identified in the Court’s Check List for
20 Preliminary Approval of Class Action Settlement, except as to items in that Check List that relate
21 to employment or wage and hour cases which are not relevant to this case.

22

23

24

25 ¹ In this declaration, Plaintiffs and CalPERS are collectively referred to as the “Parties.” Other
26 terms used in this declaration are consistent with the defined terms in the Second Settlement
27 Agreement as much as possible. The Second Settlement Agreement (and exhibits) is attached
28 hereto as Exhibit 1. The definitions appear at pages 2 through 13 of the Second Settlement
Agreement. In addition, in documents that will be sent to the Settlement Class, the Second
Settlement is also referred to as the “New Settlement.”

1 **SUMMARY OVERVIEW OF THE SECOND SETTLEMENT**

2 5. A more detailed description of the Second Settlement is set forth below in
3 paragraphs 109-110 and 117-121. In summary, Plaintiff’s actuarial experts have estimated that
4 the Second Settlement will provide approximately \$820 million in monetary benefits for
5 Settlement Class Members. The total Settlement Amount includes refunds of 80% of all
6 premiums paid from inception by those Settlement Class Members who are current policyholders
7 and not on claim and who elect a premium refund, a cash payment of \$1,000 to current
8 policyholders who are not on claim and who elect to retain their CalPERS LTC policy, other
9 payments or benefits to Settlement Class Members who do not have active policies either
10 because they allowed their policy to Lapse following the announcement of the 85% rate increase
11 in 2013, or through death, or because they are currently on claim. Those Settlement Class
12 Members who are on claim (Categories B and C) are also entitled to decide whether they want (i)
13 a premium refund in exchange for surrendering their CalPERS LTC policy or (ii) a cash payment
14 of \$1,000 that allows them to retain their policies. (Obviously for those on claim the decision
15 will likely be to retain their policies.) The total Settlement Amount also includes \$80 million that
16 will be paid for Settlement Administration expenses (estimated to be approximately \$5 million);
17 Class Counsel’s litigation expenses of no more than \$2.5 million; attorneys’ fees and Service
18 Awards for the Plaintiffs. The total Settlement Amount will be paid from the Long Term Care
19 Fund (the “LTC Fund”).

20 6. CalPERS does not necessarily agree with Plaintiffs’ experts estimate as to the
21 value of the Second Settlement because CalPERS’ actuarial experts believe Settlement Class
22 Members may make different decisions than the decisions that Plaintiffs’ actuaries have
23 modeled.

24 7. The amount that a Settlement Class Member will be entitled to recover is
25 dependent on the Final Settlement Category that any particular Settlement Class Member is in on
26 the Final Settlement Date.

27 8. The estimated total Settlement Amount is an “approximation” because, among
28 other reasons, it is based on the premiums that have been paid by Settlement Class Members

1 through June 30, 2022, the date of the Settlement Class data that our experts used to calculate the
2 estimated total. Settlement Class Members have likely made additional payments since June 30,
3 2022, and are required to continue to make premium payments to CalPERS until the Final
4 Settlement Date to ensure, among other things, that they do not lose their CalPERS Long Term
5 Care (“LTC”) benefits should the Second Settlement not become effective for any reason. Thus,
6 the amount of the premium refunds will increase over time. In addition, in the event that there
7 are opt-outs the total Settlement Amount will be reduced by any premiums associated with any
8 opt-outs.

9 9. The Second Settlement also provides CalPERS with the opportunity to terminate
10 the Second Settlement if more than 1% of Settlement Class Members (by policy count) opt-out.

11 **THE SETTLEMENT CLASS**

12 10. Although a Class was previously certified by the Court by its Order dated January
13 28, 2016, and notice was given to the Class, the Second Settlement requires the certification of a
14 Settlement Class for settlement purposes only. There are two primary reasons for the Settlement
15 Class. First, the Settlement Class does not include those Class members whose claims were
16 effectively eliminated as a result of the Court’s July 27, 2020, Statement of Decision following
17 the Phase 1 and 2 Trial because they only had lifetime benefits and did not purchase inflation
18 protection benefits. Those policyholders retain their right to appeal the Court’s Statement of
19 Decision upon entry of a final judgment should the Second Settlement become final and
20 effective. Second, the terms of the Second Settlement provide that for those Participating
21 Settlement Class Members who elect a premium refund, they must surrender their CalPERS LTC
22 Policy. Given the impact of that integral term of the Second Settlement, coupled with the
23 difference in the membership it was decided that certification of a Settlement Class with opt-out
24 rights was necessary.

25 11. The Settlement Class is comprised of more than 79,500 policyholders who were
26 California citizens in February 2013, and who purchased LTC1 and LTC2 policies that included
27 the automatic inflation protection benefit and were subjected to the 85% rate increase announced
28 in 2013 (the “Challenged Increase”). The Settlement Class does not include policyholders who

1 converted their policies to LTC3 policies prior to the implementation of the Challenged Increase,
2 even if the conversion occurred after the Challenged Increase was approved in October 2012.
3 The Settlement Class also does not include those individuals who opted out of the Class certified
4 by the Court on January 28, 2016 and who are identified on Exhibit D to the Second Settlement
5 Agreement. And as noted above, the Settlement Class does not include those LTC1 and LTC2
6 policyholders who purchased lifetime benefits only and did not purchase inflation protection
7 benefits, whose claims were effectively eliminated by the Court's Statement of Decision.

8 12. We describe further at paragraphs 89 through 98, the Settlement Class and the
9 facts supporting certification of that class.

10 **FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION**

11 **1. The Underlying Facts**

12 13. This class action lawsuit arose from a long-term-care ("LTC") insurance program
13 that CalPERS sold to State and local government employees and their families from the period of
14 1995 through 2004. LTC insurance is used to cover the cost of nursing home care and other
15 needs that can be related to a long-term disability or assisted living required following an
16 accident or as a person grows older and experiences illnesses including dementia or other
17 disabling illness requiring assisted living.

18 14. In 1995, the California legislature enacted the Public Employee's Long-Term
19 Care Act (the "Act") (Gov. Code, §§ 21660 et seq.), which allowed CalPERS to establish the
20 LTC Program.

21 15. From 1995 to 2002, CalPERS marketed and sold the LTC1 policy, and then it
22 marketed and sold the LTC2 policy from 2003 through 2004. There were three different types of
23 LTC1 and LTC2 policies available: (1) PERS Comprehensive; (2) PERS Nursing Home/Assisted
24 Living Facility; and (3) PERS Partnership. The PERS Partnership coverage is not at issue in this
25 lawsuit.

26 16. Within each type of policy, enrollees could select certain benefits, such as
27 "lifetime benefits" with no cap on the number of years that benefits would be paid, or they could
28 select a set term for benefits to be paid such as 3 years or 6 years. Enrollees could also select

1 “inflation protection” benefits, which automatically increased benefits by 5% compounded each
2 year that the policy was in force. Enrollees who selected the lifetime and inflation protection
3 benefits paid a higher premium for their policies than those who did not elect those benefits.

4 17. The policy (or contract) between CalPERS and the policyholders is the Evidence
5 of Coverage (the “EOC”). The EOC for both the LTC1 and LTC2 policies states: “Your
6 premiums will never increase due solely to a change in Your age or health. PERS can, however,
7 change Your premiums, but only if We change the premium schedule on an issue age basis for
8 all similar coverage issued in Your state on the same form as this coverage.” In addition, in the
9 inflation protection benefit section of the EOC it states: “Your Premium Will Not Increase: Your
10 premium rate will not increase as a result of these annual [inflation protection] benefit
11 increases.”

12 18. CalPERS implemented rate increases in 2003, 2007, 2009, and 2010. And, in
13 2012, the CalPERS Board voted to increase premiums by 85%. That increase only affected
14 those LTC1 and LTC2 policyholders who had purchased inflation protection and/or lifetime
15 benefits. Policyholders who did not have inflation protection and/or lifetime benefits were not
16 subjected to the rate increase. The increase was first announced to policyholders in a letter dated
17 February 11, 2013.

18 19. This lawsuit was filed in August 2013 by plaintiffs Elma Sanchez and Holly
19 Wedding asserting breach of contract and other claims against CalPERS based on its imposition
20 of the 85% increase. Plaintiffs alleged, among other things, that the increase was due to
21 policyholders’ inflation protection benefits, and thus was a breach of CalPERS’ contractual
22 promise to not raise premiums as a result of the inflation protection benefit increases.

23 20. On December 18, 2013, Plaintiffs Elma Sanchez, Holly Wedding, and Eileen and
24 Richard Lodyga filed their First Amended Complaint in which they named certain individual
25 members of the CalPERS Board and also asserted claims against defendants Towers Watson &
26 Co., Towers Perrin, and Tillinghast-Towers Perrin (the “Towers Watson Defendants”), the
27 actuarial consultant to CalPERS relating to the LTC Program from as early as 1992 until
28 approximately March 2004.

1 21. After a challenge to the pleadings, CalPERS and the other defendants filed their
2 answers to the complaint. The Parties then commenced extensive discovery on all issues
3 including class certification and merits.

4 **2. The Discovery Process**

5 22. Discovery in this matter—including that necessary to brief and oppose dispositive
6 motions, to prepare for trial, to complete expert discovery/reports, and the attendant motions to
7 compel that have accompanied particularly disputed discovery—has been extensive. The Parties
8 have conducted more than 43 sessions of depositions, including multiple expert depositions,
9 collectively responded to hundreds of special interrogatories, requests for production, and
10 requests for admission, and have produced, and reviewed, tens of thousands of pages of
11 productions. CalPERS alone has produced more than 38,000 pages of documents, with additional
12 productions from Plaintiffs, Towers Watson Defendants, third-party witnesses and others, that
13 have amounted to a case file easily exceeding 100,000 pages of documents. The following details
14 the discovery conducted:

15 (a) Plaintiffs propounded extensive written discovery and CalPERS
16 responded to: Eight Separate Sets of Request for Production of Documents; Six Separate
17 Sets of Special Interrogatories; One Set of Judicial Council Form Interrogatories; and
18 One Set of Requests for Admission.

19 (b) CalPERS propounded written discovery on Plaintiffs, including document
20 requests, and interrogatories and requests for admission and Plaintiffs responded.

21 (c) The Parties made multiple productions of documents resulting in nearly
22 40,000 pages of documents being produced by the Parties. Additional document
23 productions from CalPERS and third parties have resulted in nearly 100,000 pages of
24 documents that have been produced and reviewed in this litigation.

25 (d) The Parties reviewed and analyzed the significant discovery responses and
26 document production to both prepare for discovery, including depositions, as well as in
27 preparation for the various dispositive motions and trial phases of this cases.

28

1 (e) Plaintiffs were deposed on multiple occasions and Plaintiffs took the
2 depositions of four representatives of Towers Watson, including three former actuarial
3 consultants who worked with CalPERS on the LTC Program; five Person(s) Most
4 Knowledgeable at CalPERS regarding the LTC Program; four Person(s) Most
5 Knowledgeable at LTCG regarding the LTC Program; 10 experts retained by the Parties
6 in this matter; and additional third party witnesses including putative Class members. In
7 all, there were more than 43 days of depositions.

8 23. Efforts to obtain discovery necessary to prepare for trial and to certify the Class
9 resulted in motions to compel and ultimately the appointment of the Honorable John W.
10 Kennedy Jr. (Ret.) as a Special Master. The Parties submitted multiple rounds of briefing and
11 participated in a lengthy hearing before Justice Kennedy.

12 24. The Parties have also engaged in lengthy and repeated rounds of expert disclosure
13 and discovery, as the claims (and potential damages at issue) have been clarified. And further
14 expert depositions will occur if the case were to proceed to trial.

15 3. The Class Certification Process

16 25. On September 15, 2015, Plaintiffs filed a motion seeking to certify a class against
17 the defendants. On January 28, 2016, the Court [Hon. Jane Johnson (Ret.)] certified a class on
18 the contract claim and breach of fiduciary claim as against CalPERS and the professional
19 negligence claim against the Towers Watson Defendants.

20 26. The Class certified by the Court's January 28, 2016 Order is comprised of all
21 California citizens who purchased long-term care policies from CalPERS between 1995 and
22 2004, who were subject to the 85% premium increase announced to policyholders in or around
23 February 2013, and implemented beginning in 2015. The certified Class included more than
24 122,000 policyholders.

25 27. The Court found that the Class was sufficiently numerous, ascertainable, and
26 shared a community of interest, and that class treatment was a superior means for resolution of
27 the dispute. The Court further found Plaintiffs' claims were typical of the Class and that
28

1 Plaintiffs and Class Counsel were adequate. The Court appointed Plaintiffs' Counsel as Class
2 Counsel and Plaintiffs Holly Wedding, Eileen and Richard Lodyga as the Class Representatives.²

3 28. Thereafter, notice was sent to all policyholders identified by CalPERS as being
4 within the Class, and each Class member was provided an opportunity to opt out of the Class. In
5 response to the Class notice, 169 persons opted out of the Class. The individuals who have opted
6 out are identified on Exhibit D to the Settlement Agreement.

7 29. In 2018, CalPERS moved to decertify the Class. That motion was denied on May
8 15, 2018. CalPERS sought review of the order denying decertification. CalPERS's writ to the
9 Court of Appeal was denied on December 12, 2018.

10 **4. The Multitude of Pre-Trial Dispositive Motions**

11 30. This case has been extensively litigated by all parties. The record contains more
12 than 1,000 pleadings filed. More than 100 Orders were issued and dozens of court appearances
13 have been required. There have been dozens of motions heard over the life of this matter
14 including various dispositive motions described further below.

15 31. On May 29, 2014, the Court [Hon. Jane L. Johnson (Ret.)] overruled the
16 demurrers of CalPERS and Towers Watson.

17 32. On November 15, 2016, the Towers Watson Defendants filed a motion for
18 summary judgment on the sole negligence cause of action pleaded against them. Plaintiffs fully
19 briefed their opposition, but the hearing was then continued to permit settlement discussions to
20 proceed. A settlement was reached between Plaintiffs and Towers Watson and the motion for
21 summary judgment was mooted.

22 33. On June 15, 2017, after reviewing the thousands of pages of exhibits and
23 extensive briefing by Plaintiffs and CalPERS, the Court [Hon. Ann I. Jones] ruled on the motion
24 for summary judgment/adjudication brought by CalPERS and the individual defendants
25 (CalPERS Board of Administration Members). The Court denied the motion for summary
26 judgment, granted the motion for summary adjudication as to the causes of action for breach of
27

28 _____
² Elma Sanchez withdrew as a proposed Class Representative in 2015 for health reasons.

1 fiduciary duty (primarily based on sovereign immunity) and rescission (based on both sovereign
2 immunity and that the purported claim was a remedy only, not a cause of action), and denied the
3 motion for summary adjudication as to the causes of action for breach of contract, breach of the
4 implied covenant of good faith and fair dealing, and declaratory/injunctive relief. As a result of
5 that order, the individual CalPERS defendants were dismissed from the case.

6 **5. The Towers Watson Settlement**

7 34. In 2017, while their motion for summary judgment was pending, Plaintiffs
8 reached a settlement with the Towers Watson Defendants which provided for the payment of
9 \$9,750,000 for the benefit of the Class. On January 26, 2018, the Court granted final approval to
10 that settlement. That settlement fully, finally, and forever released Plaintiffs' claims against the
11 Towers Watson Defendants, leaving CalPERS as the sole remaining Defendant.

12 35. Plaintiffs' counsel did not seek any attorneys' fees from the Towers Watson
13 settlement but did recover costs incurred to date at the time of the settlement in the amount of
14 \$654,133.73. In addition, a portion of the settlement was set aside for future expenses in the
15 case. Plaintiffs' counsel made three applications for payment of costs from the future cost fund
16 and ultimately received \$947,514.71 from that set-aside fund which has been depleted.

17 36. The balance of the Towers Watson settlement (other than Settlement
18 Administration expenses) was distributed proportionately to the Class, which as described above
19 was comprised of more than 122,000 policyholders. Each Class member received approximately
20 \$64.00.

21 37. Following the distribution of the Towers Watson settlement checks, there
22 remained approximately \$500,000 in that settlement fund which this Court approved for payment
23 to the Settlement Administrator for the Prior Settlement.

24 **6. The Phase 1 Trial Conducted Before the Court, Including the Court's** 25 **Adjudication of CalPERS's Statute of Limitations Affirmative Defense** 26 **(Phase 2)**

27 38. On April 4, 2019, the matter was transferred to the Hon. William F. Highberger
28 for trial. Following the dispositive rulings and settlement with Towers Watson, the only
remaining claim certified for class treatment was the breach of contract claim against CalPERS.

1 39. CalPERS filed a motion to essentially trifurcate the matter as follows: (1) a bench
2 trial pertaining to contract interpretation as a matter of law (“Phase 1”); (2) a jury trial on
3 CalPERS’s affirmative defense of the statute of limitations (“Phase 2”); and (3) if appropriate,
4 then a jury trial on the merits to determine if CalPERS breached the EOC and the damages to be
5 awarded to Plaintiffs and the Class (“Phase 3”).

6 40. The Court granted CalPERS’s motion on May 24, 2019, trifurcating trial into
7 three phases (with Phase 1 to begin on June 10, 2019).

8 41. In addition, on the eve of trial CalPERS filed a motion for leave to file a
9 declaratory relief cross-complaint, which the Court granted. The legal issue raised in the cross
10 complaint was to seek a ruling as to the circumstances under CalPERS is permitted to raise
11 premiums.

12 42. In preparation for the trial of Phases 1 and 2, the Parties exchanged more than two
13 dozen motions in limine, lengthy witness and exhibit lists, deposition designations, jury
14 instructions, and trial briefs.

15 43. Trial commenced on June 10, 2019, before this Court, sitting without a jury. The
16 court trial proceeded over two days. Following the submission of evidence, Plaintiffs served a
17 [Proposed] Statement of Decision on June 19, 2019, and CalPERS responded on June 25, 2019.
18 The Court conferred with counsel on July 1, 2019, and issued a draft [Proposed] Statement of
19 Decision the same day, noting it was a “Draft subject to revision.”

20 **7. Initial Settlement Discussions**

21 44. In or around September 2019, the Parties paused trial proceedings in order to
22 engage in settlement discussions. The settlement discussions proceeded before the Hon. Layn
23 Phillips (Ret.). Judge Phillips, in addition to his experience as both a former United States
24 Attorney and a former United States District Judge, has spent the last decade mediating and
25 resolving some of the largest class action settlements in the country, and was stipulated to by the
26 Parties to serve as a Settlement Master in this matter. The settlement discussions were extensive
27 and involved in person meetings and multiple telephonic conferences with the Judge Phillips and
28 others.

1 45. By late January/early February 2020, it was clear that the discussions were not
2 going to prove fruitful, and the matter was placed back on the Court’s calendar for resolution of
3 objections to the Statement of Decision and ultimately for trial.

4 **8. The Court’s Statement of Decision**

5 46. An updated [Proposed] Statement of Decision was served on the Parties by the
6 Court on February 19, 2020, with further briefing filed by both sides on March 6, June 12, June
7 24, July 10, July 13, and July 20, 2020. The Court held a final hearing on the objections on July
8 23, 2020, and issued a final, 45-page Statement of Decision on July 27, 2020.

9 47. In the Statement of Decision, the Court decided three related questions of contract
10 interpretation as a question of law: (1) does the EOC’s ‘Guaranteed Renewable clause’ allow for
11 benefit-specific premium rate increases or must CalPERS implement any rate increase uniformly
12 across all enrollees in either LTC1 or LTC2; (2) does the EOC’s ‘Inflation Protection clause’
13 allow for the imposition of premium rate increases as needed to cover the cost of providing
14 annually compounded benefits provided by that clause; and (3) “Do the terms of the Guaranteed
15 Renewable clause in the EOC trump the terms of the Inflation Protection clause or vice versa?”
16 (7/27/2020 Statement of Decision, p. 14:11-20.)

17 48. As to the first question, regarding the “Guaranteed Renewable clause,” the Court
18 found that “Plaintiffs’ theory of contract breach based on an alternative interpretation is rejected,
19 and there is no actionable claim available under this theory to be presented to the jury in Phase 3
20 when damages are tried.” The Court held that CalPERS could implement benefit-specific
21 premium rate increases, such as to the lifetime benefit only Class Members. (7/27/2020
22 Statement of Decision, p. 31:23-28.) As to the second question, regarding the “Inflation
23 Protection clause,” the Court found that the evidence was “consistent with an interpretation
24 under the plain meaning of the Inflation Protection clause that the EOC does not permit rate
25 increases that are as a result of increasing benefits owed to policyholders who purchased
26 Inflation Protection,” and determined that whether the rate increases at issue violated this
27 contractual limitation was to be decided in a further trial to a jury. (7/27/2020 Statement of
28

1 Decision, p. 35:2-7.) Finally, the Court found that the Inflation Protection clause in the EOC
2 controls over the general provision of the Guaranteed Renewable clause. (*Id.*, p. 36:17-20.)

3 49. In sum, the Court found that “CalPERS cannot increase premiums specifically ‘as
4 a result’ of the increasing liabilities from the Inflation Protection benefit’s annual increase in the
5 daily/monthly maximum allowable benefit.” The Court also found that CalPERS “can
6 implement across-the-board increases which include Inflation Protection insureds as long as the
7 reason for the increase is some matter of general applicability to all insureds; e.g. lower-than-
8 anticipated lapse rates of all insureds, longer than expected longevity of all insureds, longer
9 duration on claim by all categories of insureds, and/or a further change in the discount rate.”
10 (7/27/2020 Statement of Decision, p. 38:15-25.)

11 50. The Court struck CalPERS’s First Affirmative Defense based on statute of
12 limitations, finding as a matter of law in favor of Plaintiffs. (*Id.*, pp. 39:23-40:21, 45:2-5.)

13 51. On August 11, 2020, the Parties submitted a Stipulation for approval in which
14 they preserved all objections to the Final Statement of Decision, preserved all appellate rights,
15 and provided the Parties the right to further challenge the Statement of Decision on appeal.

16 52. As a result of the Court’s Statement of Decision, the only Class members with
17 viable claims for the Phase 3 jury trial are those individuals who purchased the LTC1 and LTC2
18 policies with Inflation Protection benefits. Class members who purchased LTC1 and LTC2
19 policies and lifetime benefits only were subject to the Court’s ruling on the Guaranteed
20 Renewable clause (i.e., that CalPERS was permitted to increase premiums on a benefit-specific
21 basis, such as for lifetime benefits only policies).

22 **9. Phase 3 of the Trial**

23 53. In the Phase 3 trial, a jury will resolve whether CalPERS breached the contract
24 (by increasing premiums due to the increasing liabilities from the Inflation Protection benefit’s
25 annual increase), and if so, the amount of damages attendant to that breach.

26 54. During the period from August to November 2020, the Parties engaged in
27 significant additional expert disclosure, prepared renewed expert reports, and began preparation
28 for trial. During this period the trial date and pre-trial dates were continued due to issues arising

1 from the COVID-19 pandemic. Subsequent continuances resulted in the trial set to commence
2 on May 23, 2023.

3 **10. Renewed Settlement Discussions Before Judge Phillips**

4 55. In or around November 2020, the Parties renewed settlement discussions and re-
5 engaged with Judge Phillips who assisted in the coordination of exchange of information
6 relevant to the discussions. On March 27, 2021, the Parties reached a settlement in principle (the
7 “Prior Settlement”) – based on extensive discussions with Judge Phillips and multiple proposals
8 exchanged between Plaintiffs and CalPERS prior to March 27, 2021, and on that date. The
9 Parties documented the Prior Settlement and it was submitted to the Court for preliminary
10 approval in July 2021. There are significant differences between the Prior Settlement and this
11 new Second Settlement. Under the Prior Settlement, Class Members generally had to choose
12 between: (1) giving up their CalPERS Long Term Care Insurance policies (“LTC policies”) in
13 exchange for a refund of their premiums; or (2) opting out of the Class, keeping their LTC
14 policies, and receiving nothing from the Prior Settlement.

15 56. Ultimately, after an extensive notice process, more than 30% of the Settlement
16 Class elected to opt out of the Prior Settlement because they wanted to retain their CalPERS LTC
17 policies. And as a result, in early 2022, the Prior Settlement was terminated by mutual
18 agreement.

19 57. Following the termination of the Prior Settlement, Judge Phillips again engaged in
20 mediation efforts, including multiple telephonic and video conferences with Class Counsel and
21 CalPERS’ Counsel, and ultimately assisted the parties in achieving the Second Settlement.

22 58. The Parties reached a settlement in principle in January 2023 following extensive
23 discussions with Judge Phillips and multiple proposals exchanged between Plaintiffs and
24 CalPERS from the period of March 2022 to January 2023. Throughout the negotiations, the
25 Parties were assisted by their actuarial and damages experts and at times the experts
26 communicated among themselves (with counsel participating) regarding various issues relating
27 to the damages and status of policyholders. The Second Settlement was finalized between
28 Plaintiffs and CalPERS and was ultimately reduced to writing in February 2023.

1 depositions of four representatives of Towers Watson, including three former actuarial
2 consultants who worked with CalPERS on the LTC Program; five Person(s) Most
3 Knowledgeable at CalPERS regarding the LTC Program; four Person(s) Most Knowledgeable at
4 LTCG regarding the LTC Program; ten experts retained by the Parties in this matter; and
5 additional third-party witnesses including putative Class members. In all, more than 43 days of
6 depositions were conducted.

7 e. Plaintiffs researched and analyzed the applicable law as to Plaintiffs'
8 claims, including extensively researching and briefing issues of contract interpretation, insurance
9 matters, the LTC industry, and Plaintiffs' damage issues as well as the potential defenses
10 asserted by CalPERS.

11 f. The Parties analyzed, prepared, reviewed, or filed more than 1,000
12 separate pleadings in this action, including dispositive motions, discovery motions, motions in
13 limine, trial briefs, objections and responses to the Statement of Decision, and other law and
14 motion work that has spanned the over eight-year history of this case.

15 g. The Parties retained experts on actuarial, damages and other issues and the
16 experts were first deposed between December 2018 and February 2019. The Parties filed
17 motions in limine regarding expert testimony in 2019. Thereafter, following the completion of
18 Phases 1 and 2 of the trial, the Court granted CalPERS's request to reopen expert discovery on
19 October 22, 2019. And, in September 2020, the Court ordered the sequencing of the production
20 of the reports ordering the Parties to produce "federal-style" expert reports. The Parties
21 exchanged expert reports and were on the cusp of scheduling expert depositions when renewed
22 settlement negotiations commenced for the Prior Settlement.

23 62. As noted above, Phase 1 and Phase 2 of the trial were completed, resulting in the
24 lengthy 7/27/2020 Statement of Decision that clarified the claims and causes of action that were
25 viable for Phase 3 of the trial before a jury to determine the sole remaining breach of contract
26 cause of action, and the damages attendant to said breach, if any.

27 63. Following the termination of the Prior Settlement, the Parties began to prepare for
28 trial and the Court set the matter for trial in May 2023. The Parties' experts again produced

1 detailed and lengthy “federal style” reports and all seven of the Parties experts were deposed in
2 December 2022.

3 **1. The Settlement Negotiations Were Conducted Before an Experienced Class**
4 **Action Mediator**

5 64. Following the completion of Phase 1 and 2 of the trial and in or around August
6 2019, the Parties agreed to conduct settlement negotiations before Judge Phillips of Phillips ADR
7 Enterprises. The Court was informed of Judge Phillips’ retention to mediate the case and
8 following initial mediation sessions in the fall of 2019, the Court issued an Order on the Parties’
9 stipulation appointing Judge Phillips as a Settlement Master in December 2019.

10 65. Judge Phillips is a highly capable and experienced mediator. In addition to his
11 experience as both a former United States Attorney and a former United States District Judge, he
12 has spent the last decade mediating and resolving some of the largest class action settlements in
13 the country including the *NFL Concussion Litigation*, the *Petrobras U.S. Securities Litigation*,
14 the *Bonneville Power Administration Residential Exchange Litigation*, the *DOE Rockwell Rocky*
15 *Flats Nuclear Plant Litigation*, the *Michigan State University Sexual Abuse Cases*, the *Merck*
16 *Vioxx Securities Litigation*, the *Bank of America Merrill Lynch Acquisition Litigation*, the *High*
17 *Tech Employees Antitrust Litigation*, the *Activision Blizzard Stockholder Litigation*, the *Anthem*
18 *Data Breach Litigation*, the *Walmart Consolidated Wage and Hour Litigation*, and the *Wells*
19 *Fargo Financial Accounts Securities Litigation*. (See, e.g., <http://www.phillipsadr.com/team/>.)

20 66. In or around November 2020, the Parties re-engaged in negotiations with Judge
21 Phillips and ultimately after numerous telephonic conferences there was an all-day mediation
22 session held virtually on March 27, 2021. Plaintiffs, Class Counsel, CalPERS’ Counsel, and
23 representatives of CalPERS participated in the mediation and the Parties’ actuaries were
24 available and assisted throughout the mediation.

25 67. The Parties engaged in *multiple* day-long mediation sessions with Judge Phillips
26 prior to the mediation session on March 27, 2021, that led to the Prior Settlement. Following the
27 termination of the Prior Settlement, the Parties reengaged with Judge Phillips and during the
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1 period from approximately March 2022 through January 2023, had multiple ongoing
2 conferences, discussions and evaluations with Judge Phillips.

3 68. The Plaintiffs have made themselves available day and night throughout this
4 matter in person, telephonically and through a virtual platform, and were apprised of the
5 negotiations on an ongoing basis.

6 69. In January 2023 the Parties agreed in principle to the basic terms of the Second
7 Settlement, based on extensive discussions with Judge Phillips and multiple proposals exchanged
8 between Plaintiffs and CalPERS. Throughout the negotiations, the Parties were assisted by their
9 actuarial and damages experts and at times the experts communicated among themselves [with
10 counsel participating] regarding various issues relating to the damages and status of
11 policyholders. Thereafter, Parties spent countless hours documenting the Second Settlement and
12 resolving a multitude of issues as to various terms.

13 70. The settlement in principle was finalized between Plaintiffs and CalPERS and
14 ultimately reduced to writing and signed on February 27, 2023.

15 **2. Class Counsel Have Extensive Class Action Experience**

16 71. The attorneys who have been representing Plaintiffs and the Class in this long
17 running lawsuit have represented plaintiffs in class actions involving insurance, securities,
18 antitrust, telecommunications, employment, and consumer claims for decades. For more than
19 forty years, the lawyers at Shernoff Bidart Echeverria LLP have been representing policyholders
20 in claims involving insurance policies and have been instrumental in creating and developing the
21 law of insurance bad faith. The firm has handled both individual and class actions against
22 insurance companies and further has prosecuted many claims against governmental entities. A
23 copy of the resume and CV of Shernoff Bidart Echeverria LLP and the lawyers at the firm who
24 have worked on the case is attached as Exhibit 2, includes summaries of the representative cases
25 that the firm has worked on as Lead or Co-Lead counsel.

26 72. Kershaw Talley Barlow PC has prosecuted numerous cases including class
27 actions and mass tort actions. The firm has successfully pursued a variety of legal claims
28 including wage and hour claims, product liability and consumer claims including suits against

1 automobile manufacturers, nationwide delivery companies and pharmaceutical companies and
2 has been certified to represent classes in courts around the country. A copy of the resume and
3 CV of Kershaw Talley Barlow PC and the lawyers at the firm who have worked on the case is
4 attached as Exhibit 3, and includes summaries of the representative cases that the firm has
5 worked on as Lead or Co-Lead counsel.

6 73. Since 1988 attorneys from Nelson & Fraenkel LLP have been involved in more
7 than 150 different class action cases and the lawyers with the firm have been certified to act as
8 class counsel in California, and federal district courts in California and other jurisdictions
9 throughout the country. A copy of the resume of Nelson & Fraenkel and the lawyers at the firm
10 who have worked on this case is attached as Exhibit 4, includes summaries of the representative
11 cases that the firm has worked on as Lead or Co-Lead counsel.

12 74. The lawyers at Bentley & More LLP have pursued individual claims, multi-party
13 claims, and class claims in a wide array of legal areas including public entity liability litigation
14 and insurance bad faith involving homeowners, the disabled, and other areas. The lawyers at
15 Bentley & More LLP were with the Shernoff Bidart Echeverria law firm until 2016 when they
16 formed a separate firm. At both firms, the lawyers have been actively involved in the
17 prosecution of the case. A copy of the resume of Bentley & More and the lawyers at the firm
18 who have worked on this case is attached as Exhibit 5, includes summaries of the representative
19 cases that the firm has worked on as Lead or Co-Lead counsel.

20 75. The foregoing counsel were previously approved by the Court as counsel for the
21 broader class certified in this matter. Further, they were confirmed as Class Counsel in the
22 Towers Watson settlement where in granting preliminary approval the Court noted their
23 qualifications: “Class Counsel has represented plaintiffs in class actions in insurance, securities,
24 antitrust, telecommunications, employment, and consumer claims for decades.” (October 25,
25 2017, Order on Motion for Preliminary Approval of Class Action Settlement, at 4.)

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1 **3. Summary of the Case Including the Legal and Factual Basis for Each Claim**

2 A detailed description of the legal and factual claims in the case has been set forth above.
3 As a result of rulings made during the course of the litigation, the sole class claim remaining for
4 trial is a breach of contract claim that is based on the Challenged Increase.

5 **4. Summary of the Risks, Expenses, Complexity and Duration of Further**
6 **Litigation if the Settlement is Not Approved.**

7 76. Although we firmly believe that the Plaintiffs will prevail should the case proceed
8 to trial and appeal, it cannot be disputed that CalPERS has contested liability and damages,
9 raising arguments that, if accepted, could undermine Plaintiffs' ability to obtain a judgment for
10 the Class. CalPERS repeatedly challenged the certification of the Class and argued that
11 certification was not warranted. Over opposition, the Court certified the Class, denied CalPERS'
12 decertification motion, which CalPERS sought review of and which writ was denied. But
13 CalPERS retained the right to challenge that ruling through a renewed motion to decertify or on
14 appeal.

15 77. CalPERS has argued that the one avenue of breach left open by the Court—that
16 the 85% increase was due to the increasing liabilities from the Inflation Protection benefit—is
17 either flawed, was not the true reason for the 85% increase, or that the damages (even assuming
18 Plaintiffs are correct) amount to only a small fraction of what Plaintiffs have claimed. These and
19 other defenses asserted by CalPERS, including the possibility of a lengthy appeal even in the
20 event of a favorable trial result, not only raise the specter of potential adverse rulings, but also
21 could result in further delays in the outcome.

22 78. Given the increasing age of the Settlement Class—approximately 2,100 members
23 die annually—we recognize that a resolution of the case earlier than the anticipated time for
24 determination if the case were to be tried and then subject to appeal is especially important in
25 this case.

26 79. To date, Class Counsel have incurred nearly \$4 million in out-of-pocket expenses.
27 The vast majority of the costs incurred have related to experts. In the event that the case were to
28 proceed to trial and appeal, the expenses will increase further and no doubt exceed \$5 million.
 Moreover, the Phase 3 trial will be lengthy, lasting likely three weeks or more and will involve

1 complex actuarial testimony on the claims and the damages. It cannot be disputed that the
2 complicated nature of such testimony will be difficult for any person and in particular a jury.

3 80. The Second Settlement was reached after extensive arm's length negotiations, and
4 was negotiated in light of these facts, circumstances, and the risks associated with further
5 litigation. Ultimately, the parties spent more than 18 months working to achieve the Prior
6 Settlement, and then spent another 12 months reaching this Second Settlement—and the
7 magnitude, terms, and availability of this Second Settlement to the Settlement Class we believe
8 demonstrate that it is fair and in the best interests of the Settlement Class.

9 **5. The Risks of Maintaining Class Action Status**

10 81. As described above, CalPERS has twice attempted to defeat certification. It
11 sought review of the Court's order denying its motion to decertify the Class in July 2018, and
12 after filing a preliminary opposition, the Court of Appeal ultimately denied the writ petition in
13 December 2018. CalPERS has signaled its intention to further attack certification in the future.
14 Although we firmly believe that certification of the case was legally and factually sound, there
15 always remains a risk that future proceedings, including appellate review, could jeopardize the
16 Court's class certification decisions.

17 **6. The Second Settlement's Benefits Are Reasonable**

18 82. Based on an extensive analysis by the experts we retained in this case, Settlement
19 Class Members with Inflation Protection benefits—and with whom CalPERS is entering this
20 Settlement—amount to more than 79,500 policyholders.

21 83. Although the outcome of any litigation is difficult to predict, Plaintiffs' claims
22 against CalPERS were subject to defenses which if accepted by the trier of fact could result in
23 Plaintiffs recovering nothing, or significantly less than the proposed Settlement. Plaintiffs'
24 claims are dependent on a finding that the Challenged Increase was specifically "as a result" of
25 the increasing liabilities from the Inflation Protection benefit's annual increase in the
26 daily/monthly maximum allowable benefit. Expert actuarial and other testimony will be utilized
27 to show that the Challenged Increase was "as a result" the inflation protection benefits.
28 Plaintiffs' claims are also dependent on complex expert modeling and analysis as to the amount

1 and type of damages that might be recoverable. It can be assumed that CalPERS will challenge
2 the type, amount, and even Plaintiffs' ability to claim damages at trial.

3 84. Even assuming those obstacles could be overcome, our experts have calculated
4 the amount of damages (i.e., in new money to pay for both the lost policy value inherent in the
5 85% increase, the reduction or elimination of benefits, as well as the excess premiums paid as a
6 result of the increase, added to simple 10% per annum interest) to be nearly \$3,000,000,000 (\$3
7 billion).

8 85. Although an award of the entirety of the claimed damages would allow Settlement
9 Class Members to retain their CalPERS LTC policies, CalPERS has repeatedly claimed that such
10 a damage award would leave the Long Term Care Fund (the "LTC Fund") actuarially insolvent.
11 And as became quite clear during the process for seeking to approve the Prior Settlement, many
12 thousands of Settlement Class Members want to retain their CalPERS LTC policies and the risk
13 of insolvency posed a grave threat to those Settlement Class Members. That fact stands in stark
14 contrast to the proposed Second Settlement, which, if all potential Settlement Class Members
15 participate, amounts to the payment of approximately \$820 million, including the refund of
16 premiums for a significant number of policyholders, in exchange for many to surrender their
17 CalPERS' LTC policy (see *infra*, at paragraph 110 for the categories of Settlement Class
18 Members and how each Settlement Class Member is expected to be compensated from this
19 Settlement if they do not opt out), including the sum of \$80 million to cover the costs of
20 Settlement Administration, Class Counsel's fees and expenses, and Service Awards to Plaintiffs.

21 86. The Court has recognized many of the difficulties associated with Plaintiffs'
22 proceeding to a resolution of the case at trial, including noting that "there is some wiggle room
23 for CalPERS to increase premiums paid by this group if it was for some other reason," and
24 finding a triable issue of fact as to CalPERS's reasons for imposing the premium increase on
25 Inflation-Protection insureds, while acknowledging that a jury may find that CalPERS's reasons
26 "were entirely acceptable, entirely unacceptable, or a blend of the bad with the good."
27 (7/27/2020 Statement of Decision, p. 32:21-27.) Further, the Phase 1 Court trial did not give
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1 “this Court an opportunity to pass on the correctness of some or all of Plaintiffs’ theories of
2 compensable damage.” (*Id.*, p. 7:18-23.)

3 87. It is certainly possible that certain damages claimed by Plaintiffs could be further
4 limited or potentially eliminated even prior to the Phase 3 trial. The risks of continued litigation,
5 and the vagaries of a trial in a complex, multi-year case, are hard to predict, and subject Plaintiffs
6 and the Settlement Class to risk.

7 88. Even if Plaintiffs were to achieve a considerable outcome at trial, proving not
8 only the vast majority of their damage theories but also that the Challenged Increase breached
9 the EOC as interpreted by the Court, this litigation could still face the potential for a years-long
10 appellate process, including, based on the nature, scope, and extent of this litigation, the potential
11 for review by the California Supreme Court—let alone the time and risk posed should a retrial be
12 ordered. The proposed Second Settlement, although not providing everything the Settlement
13 Class Members might like, provides a certain, considerable, and definite benefit.

14 **CERTIFICATION OF THE SETTLEMENT CLASS**

15 **A. The Class Definition**

16 89. The Settlement requires that the Court certify a Class for settlement purposes
17 defined as:

18 Any individual who was a California citizen in February 2013, and who purchased
19 LTC1 and LTC2 policies that included the automatic inflation protection benefit and
20 were subjected to the Challenged Increase (i.e., the 85% increase announced in
February 2013 and implemented in 2015).

21 90. Policyholders who converted their policies to LTC3 policies prior to the
22 implementation of the Challenged Increase are not included in the Settlement Class, even if the
23 conversion occurred after the Challenged Increase was approved in October 2012. The
24 Settlement Class also does not include those individuals who opted out of the Class certified by
25 the Court on January 28, 2016. And the Settlement Class does not include those LTC1 and
26 LTC2 policyholders who although affected by the Challenged Increase purchased lifetime only
27 benefits and not inflation protection benefits.

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1 **B. The Settlement Class is Sufficiently Numerous**

2 91. The Settlement Class is comprised of more than 79,500 individuals. The number
3 of Settlement Class members has been confirmed through extensive data provided by CalPERS
4 to Class Counsel and their experts.

5 **C. The Settlement Class is Ascertainable**

6 92. CalPERS maintains extensive records of all individuals who were California
7 citizens in February 2013, and who purchased LTC1 and LTC2 policies that included the
8 automatic Inflation Protection benefit and were subjected to the Challenged Increase.

9 93. CalPERS also maintains records detailing the actions taken by the Settlement
10 Class Members regarding their policies since purchase. This includes whether a Settlement
11 Class Member went on claim and utilized policy benefits, let their policy lapse and when,
12 reduced their benefits, or some other issue that would affect the category in which each
13 Settlement Class Member will fall. The records also identify the total premiums paid by each
14 Settlement Class Member from inception to present. For purpose of the Second Settlement,
15 because the amount of premiums is an ongoing changing number, CalPERS will be providing on
16 March 7, 2023, the Settlement Administrator with the premium amounts up to December 30,
17 2022. And, following final approval, CalPERS will provided updated data to the Settlement
18 Administrator including the amount of additional premiums paid after December 30, 2022.

19 **D. Common Questions of Law and Fact Predominate.**

20 94. The legal theories underlying Plaintiffs' claim raise common issues of law and
21 fact which predominate over individual issues. The breach of contract claim is resolved through
22 the Court's prior interpretation of the EOC, and the reasoning behind the Challenged Increase.
23 These are fact and legal questions that are identical to all Settlement Class Members.

24 **E. Plaintiffs' Claims are Typical of the Claims of the Settlement Class**

25 95. Plaintiffs' claims arise from the same factual and legal questions as Settlement
26 Class Members. Plaintiffs were California citizens in February 2013 and each purchased an LTC
27 policy from CalPERS during the relevant period, with automatic inflation protection benefits.
28 The insurance contracts (the EOC) for the Settlement Class Members are substantially identical

1 to those purchased by the Plaintiffs. And, Plaintiffs' and all Settlement Class Members'
2 premiums were subjected to the Challenged Increase and they either paid the rate increase,
3 reduced their benefits or terminated their policies.

4 **F. Class Counsel and the Class Representatives are Adequate**

5 96. Plaintiffs have prosecuted this case faithfully for nearly 10 years and have
6 responded to extensive discovery, been deposed on numerous occasions, and have provided
7 assistance to Plaintiffs' counsel on many issues relating to the claims as well as the Prior
8 Settlement and this Second Settlement.

9 97. Further, Plaintiffs have selected counsel with extensive experience in class action
10 litigation, including matters that include contract and insurance disputes. As described above, the
11 attorneys who have been prosecuting this case are experienced in class action and complex
12 litigation.

13 **G. Class Treatment is the Superior Means for Resolution of the Case**

14 98. We firmly believe that certification of this case for settlement purposes presents a
15 superior means for resolution. The Settlement Class is comprised of more than 79,500
16 individuals, and a resolution on a class-wide basis is clearly far superior to hundreds of
17 individual claims. Moreover, given the extensive expert and other costs associated with
18 prosecuting a case of this nature, it would be difficult for any individual Settlement Class
19 Member to seek redress for their losses absent class treatment.

20 **CLAIM REQUIREMENT**

21 99. Settlement Class Members who fall into Category A (i.e. those who are current
22 policyholders and who are not on claim) and Categories B and C (those who are on claim), will
23 need to submit an election through an online portal as to their choice of settlement benefits.
24 They will elect whether they wish to receive the 80% premium refund in exchange for
25 surrendering their CalPERS LTC policy, or retain their CalPERS LTC policy and receive a cash
26 payment of \$1,000 and the benefit of a temporary premium moratorium up to November 2024.

27 100. Although Settlement Class Members are not required to submit their election
28 form, this Second Settlement differs from the Prior Settlement in that those who fail to submit an

1 election form will be deemed to have elected to retain their CalPERS LTC policy and receive the
2 \$1,000 cash payment and benefit of the temporary premium moratorium.

3 101. In addition, Settlement Class Members who allowed their CalPERS LTC policy to
4 Lapse (Categories D and E) will be required to return a form confirming that the lapse was as a
5 result of the Challenged Increase.

6 102. After the Final Settlement Date, Settlement Class Members will be issued checks
7 without further action required on their part.

8 MISCELLANEOUS

9 **A. There are No Terms Outside the Scope of the Complaint**

10 103. The Second Settlement does not include terms that are outside the scope of the
11 operative complaint.

12 **B. The Class Notice Will Only be In English**

13 104. The Settlement Class is comprised of current and former California government
14 employees and their families. Both of the prior notices in this case, the litigation notice and the
15 Towers Watson Settlement notice, were given in English only. We had no indication that
16 Settlement Class Members had difficulty reading and understanding the prior notices.

17 **C. Affirmative Obligations of Settlement Class Members**

18 105. The sole affirmative obligation required of Settlement Class Members involves
19 those who fall into Categories A, B, C and I (those who go on claim after December 31, 2022
20 and before the Final Settlement Date) who are asked to submit their election form online and
21 those who fall into Categories D and E who allowed their policies to Lapse and who are asked to
22 return a form confirming that the Challenged Increase was a factor in their decision to allow their
23 policies to Lapse. If a Category D or E Settlement Class Member fails to return the Lapse Form
24 but returned the form for the Prior Settlement, the Settlement Administrator may use the prior
25 form.

26 **D. A Fee Splitting Agreement Exists between Class Counsel Approved by Plaintiffs**

27 106. Class Counsel have agreed to the following division of attorneys' fees which has
28 been approved in writing by Plaintiffs: Shernoff Bidart Echeverria LLP to receive 23.000%;

1 Nelson & Fraenkel LLP to receive 33.333%; Kershaw Cook & Talley PC to receive 33.333%;
2 and Bentley & More LLP to receive 10.333%.

3 107. Each of the foregoing firms has been heavily involved in the prosecution of the
4 action over the nearly 10 years the matter has been pending and costs have been incurred by the
5 firms in the same proportionate split as the fees.

6 **E. No Injunctive Relief Exists Against any of the Class Representatives**

7 108. No provision in the Second Settlement provides for injunctive relief against any
8 Class Representative Plaintiff.

9 **GENERAL TERMS OF THE SETTLEMENT**

10 109. Subject to Court approval, the Parties have agreed to settle this case on the terms
11 and conditions set forth in the Second Settlement Agreement.

12 **A. The Basics**

13 110. The Second Settlement provides that for those Settlement Class Members who are
14 in Categories A, B, C, or I, they may elect to receive a refund of 80% of all premiums paid by
15 Settlement Class Members in exchange for the Surrender of the CalPERS LTC Policy, or they
16 may retain their LTC Policy and receive \$1,000 and the benefit of the temporary premium
17 moratorium. Those in the remaining categories will receive refunds of a portion of the
18 premiums. The following table describes the categories and the benefits of the Second
19 Settlement.

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FINAL SETTLEMENT CATEGORY	PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS
CATEGORY A. Participating Settlement Class Members who are Current Policyholders and who are not On Claim on the Final Settlement Date.	Participating Settlement Class Members who, on the Final Settlement Date, are Current Policyholders and who are not On Claim shall have the following options: Option 1: Receive a refund equivalent to 80% of all premiums paid to

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	<p>CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY B. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date, and who paid the Challenged Increase.</p>	<p>Participating Settlement Class Members who paid any part of the Challenged Increase and are On Claim both on the Notice Date and on the Final Settlement Date, shall have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to</p>

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	<p>CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY C. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>Participating Settlement Class Members who are On Claim on both the Notice Date and the Final Settlement Date, but reduced their benefits as a result of the Challenged Increase before going On Claim, shall receive have the following options:</p>

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	<p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY D. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014, and who submit a Lapse Claim Form stating under penalty of perjury that they let their policy lapse</p>

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	<p>as a result of the Challenged Increase, shall receive a refund equivalent to 40% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of their CalPERS LTC Policy through the date their CalPERS LTC Policy Lapsed, less any amounts paid in benefits under their CalPERS LTC Policy.</p>
<p>CATEGORY E. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date, and who submit a Lapse Claim Form stating under penalty of perjury that they let their CalPERS LTC Policy lapse as a result of the Challenged Increase, will receive 80% of all Additional Premiums paid, or \$2,000, whichever is greater.</p>
<p>CATEGORY F. Participating Settlement Class Members who passed away after February 1, 2013, and before the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, and (3) reduced their benefits as a result of the Challenged Increase, shall receive 80% of all Additional Premiums paid or, \$2,000, whichever is greater.</p>

<p>1 CATEGORY G. Participating 2 Settlement Class Members who passed 3 away after February 1, 2013, and before 4 the Final Settlement Date, who paid the 5 Challenged Increase, and who never 6 reduced benefits as a result of the 7 Challenge Increase. 8 9</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, (3) paid the Challenged Increase, and (4) never reduced their benefits as a result of the Challenged Increase, shall receive 80% of all Additional Premiums paid.</p>
<p>10 CATEGORY H. Participating 11 Settlement Class Members who paid the 12 Challenged Increase, went On Claim, and 13 exhausted their benefits before the Final 14 Settlement Date. 15</p>	<p>Participating Settlement Class Members who paid the Challenged Increase, who went On Claim at any time before the Final Settlement Date, and exhausted their benefits before the Final Settlement Date, shall receive a refund of 80% of all Additional Premiums paid.</p>
<p>16 CATEGORY I. Participating Settlement 17 Class Members who are Current 18 Policyholders, who were not On Claim as 19 of the Notice Date, but are On Claim as of 20 the Final Settlement Date. 21 22 23 24 25 26 27 28</p>	<p>Participating Settlement Class Members who are Current Policyholders, who were not On Claim as of the Notice Date, but are On Claim as of the Final Settlement Date, shall receive a Late Election Form giving them the following options:</p> <p style="padding-left: 40px;">Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC</p>

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	<p>Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a cash payment of \$1,000 and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Members who does not return an Late Election Form shall be deemed to have selected Option 2.</p>
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1. The Class Definition

111. The Second Settlement provides for the certification of a Settlement Class defined in paragraph 89 above.

2. The Class and Release Period

112. The Class and Release periods do not extend beyond preliminary approval as we understand this issue. The Settlement Class is defined as individuals who, in the past, purchased LTC1 and LTC2 policies and were subjected to the Challenged Increase. There are no policyholders who will be added in the future nor will the claims of any policyholders in the future be released. The settlement category that any Settlement Class Member may be in on the Final Settlement Date may differ from the policyholder’s Initial Settlement Category. The purpose of this provision is to insure that any Settlement Class Member who goes on Claim

1 between Preliminary Approval and the Final Settlement Date will still be able to receive the
2 benefits afforded by the CalPERS LTC Policy and not have to Surrender their policy.

3 **B. Release of Claims**

4 **1. The Scope of the Release**

5 113. The scope of the release for Participating Settlement Class Members is set forth in
6 Paragraph 1 (for the definition of “Claims” and “Released Claims”) and Paragraph 8 (“Releases
7 and Waivers of Rights”) of the Second Settlement Agreement. In summary, the release only
8 releases claims relating to or arising out of any and all claims which were or could have been
9 pled as part of this action based on the facts alleged therein and which arise out of the
10 Challenged Increase.

11 **2. The Civil Code Section 1542 Waiver Applies only to the Class Representative
12 Plaintiffs**

13 114. The Second Settlement requires a Civil Code section 1542 release only from the
14 Plaintiffs and it does not require such a release from the Participating Settlement Class Members.

15 **3. The Release Effective Date**

16 115. The Release will become effective upon the issuance of settlement checks.

17 **4. The Class Data Does Not Involve Any Confidentiality Provisions**

18 116. Although the Settlement Class Data is deemed confidential because it contains
19 personal identification information and private policy identification information, there are no
20 confidentiality provisions that bar Class Counsel from accessing the data or impede counsel’s
21 ability to discharge their fiduciary duties to the Settlement Class.

22 **C. The Monetary Terms of the Second Settlement**

23 **1. The Settlement Amount**

24 117. Although the precise amount that CalPERS will pay for the benefit of
25 Participating Settlement Class Members is not known,³ our actuarial experts have estimated that
26 if Participating Settlement Class Members make the same decision that they made as to the Prior
27 Settlement, CalPERS will pay no less than \$820 million, including the \$80 million to be paid for

28 _____
³ Participating Settlement Class Members are Settlement Class Members who do not opt-out.

1 Settlement Administration expenses, attorneys' fees and costs and Plaintiffs' Service Awards.
2 This does not include any money due to those who choose a premium refund for the additional
3 premiums they have paid since June 30, 2022 (the date of the data that our experts utilized to
4 calculate the estimated Settlement Amount).

5 118. The settlement categories account for differences in the relative strength and
6 weaknesses of the claims of the various members. For example, Category A is comprised of
7 current policyholders who are *not on claim* and who paid the Challenged Increase or reduced
8 their benefits. Participating Settlement Class Members who fall into Category A on the Final
9 Settlement Date will either receive a return of 80% of all premiums paid (less any benefits
10 received) with an \$8,000 mandatory minimum in exchange for surrendering their policies, or
11 they will \$1,000 in cash and retain their CalPERS LTC policies.

12 119. Those in Categories B and C are afforded the same options as Category A. We
13 recognized that for those Settlement Class Members who fall into Categories B or C,
14 surrendering their policies in exchange for a premium refund is likely not in their best interests.
15 For this reason, in the letter that will be sent to Settlement Class Members in Categories B and C,
16 they are advised to contact Class Counsel before making the decision to surrender their policies.

17 120. Participating Settlement Class Members who allowed their CalPERS LTC Policy
18 to lapse (Categories D and E) will receive either a return of 40% of all premiums paid or 80% of
19 all Additional Premiums paid or \$2000 as a mandatory minimum depending on the date of lapse.
20 And, the estates of Settlement Class Members who have died are also entitled to receive benefits
21 from the Second Settlement as outlined above.

22 121. Participating Settlement Class Members will be issued checks by the Settlement
23 Administrator within 105-days of the Final Settlement Date which, if no appeal is filed, will be
24 60 days after the Court issues its Order granting final approval).

25 2. Subclasses

26 122. The benefits available to Participating Settlement Class Members are dependent
27 on the category a policyholder falls in on the Final Settlement Date. The Second Settlement
28 categories provide for different benefits dependent on whether the Settlement Class Member is a

1 current policyholder who is not on claim, is on claim, died, or allowed their CalPERS LTC
2 Policy to lapse. These categories and the benefits take into account the relative strengths of the
3 claims of the Settlement Class Members and further recognize that Settlement Class Members
4 who are on claim should be entitled to continue to receive the benefits of the CalPERS LTC
5 Policy without having to surrender that policy to receive any Second Settlement benefits.

6 123. Richard and Eileen Lodyga are current policyholders who are not on claim and
7 Ms. Wedding only recently went on claim. Ms. Wedding paid the Challenged Increase and Mr.
8 and Mrs. Lodyga reduced their benefits.

9 124. There are no class representatives for the categories of policyholders who died or
10 who allowed their policies to lapse.

11 **3. The Services Provided by the Plaintiffs have Been Extraordinary**

12 125. Plaintiffs seek approval of a total service award of \$85,000 to be paid from the
13 \$80 million fund to be paid by CalPERS over and above the settlement benefits to be paid to
14 Participating Settlement Class Members. From that amount \$35,000 will be paid to Mrs.
15 Wedding and \$25,000 each to Mr. and Mrs. Lodyga.

16 126. Each of these Plaintiffs has provided extraordinary help throughout this litigation,
17 including producing hundreds of pages of documents from their files and the files of other Class
18 members, responding to formal discovery requests including interrogatories, being deposed
19 multiple times, attending many days of mediations, meeting with Class Counsel to assist in
20 analyzing the claims and providing information not only as to Plaintiffs' claims but also factual
21 information regarding other Class members, reviewing and commenting on multiple documents
22 and attending the Phase 1 portion of the trial and attending hearings in this case including
23 hearings on summary judgment and final settlement approval as to the Towers Watson
24 settlement.

25 127. Ms. Wedding lives in Bakersfield, California and made numerous trips to Los
26 Angeles and to Newport Beach for hearings and mediations.

27 128. Mr. and Mrs. Lodyga also traveled on numerous occasions from their home in
28 Orange County to Los Angeles as well as Newport Beach for hearings and mediation.

1 129. Plaintiffs have each provided many hundreds of hours of assistance in the
2 prosecution of this case. Plaintiffs have responded day and night to inquiries, they have
3 reviewed and commented on many of the documents filed, including the settlement documents
4 both for the Prior Settlement and this Second Settlement. They have remained committed
5 throughout and have always understood and accepted their responsibility to act in the best
6 interests of the Class.

7 130. The difference in the payment amounts to the Plaintiffs is in part a recognition of
8 Ms. Wedding's longer service as a Plaintiff – she filed suit in August 2013 and the Lodygas in
9 December 2013, as well as the impact of the longer travel for depositions, hearings and
10 mediation for Ms. Wedding.

11 **4. Attorneys' Fees will Be Calculated Either Using the Lodestar Method with a**
12 **Percentage Cross-Check or the Percentage Method with a Lodestar Cross-**
13 **Check of the Total Settlement Award**

14 131. Class Counsel will request, and CalPERS agrees not to oppose, that the Court
15 award an amount of no more than \$73 million out of the \$80 million that will be paid by
16 CalPERS for attorneys' fees and expenses, Service Awards and Settlement Administration
17 expenses. Class Counsel will submit their motion prior to the hearing on Final Approval. The
18 amount awarded in attorneys' fees will be subject to the amount remaining after payment of
19 Settlement Administration expenses, litigation costs and Service Awards. The Settlement
20 Administration expenses that will be paid include approximately \$3.4 million in remaining
21 expenses due from the Prior Settlement as well as Settlement Administration expenses associated
22 with the Second Settlement which are estimated to be \$1.5 million.

23 132. Class Counsel will seek to recover their out-of-pocket costs incurred to date, and
24 unreimbursed from the prior class settlement with Towers Watson, in an amount of no more than
25 \$2.5 million.

26 133. Class Counsel will either utilize the percentage method for calculating the fees but
27 anticipate providing the Court with their lodestar as a cross check or they will use the lodestar
28 method. Based on the current estimated amount of the Second Settlement, if Class Counsel
utilize the percentage method the total to be paid in attorneys' fees will be approximately 9% of

1 the Settlement Amount. Class Counsel have been litigating this case since 2013, including
2 conducting and completing discovery, expert disclosure and discovery, filing and opposing
3 substantive motions for class certification, decertification, summary judgment and summary
4 adjudication, and trying the first two phases of the case and dealing with all issues related to both
5 the Prior Settlement and this Second Settlement. Class Counsel spent thousands of hours of time
6 prosecuting this case.

7 134. Further, Class Counsel achieved an earlier settlement with the Towers Watson
8 Defendants that provided for \$9,750,000 in settlement benefits. Class Counsel did not seek
9 attorneys' fees from that settlement, although a portion of that settlement was utilized for costs of
10 litigation. If the benefits from the Towers Watson settlement are added to the Second Settlement
11 the total settlement benefits will be approximately \$830 million.

12 **5. Reversions to the Defendant**

13 135. There will be no reversion of any portion of the Second Settlement to CalPERS.

14 **6. Payment Formula**

15 136. Participating Settlement Class Members will be entitled to receive benefits based
16 on their Final Settlement Category. The amount to be paid will be dependent on the choice made
17 by the Participating Settlement Class Member and whether they have elected a premium refund
18 or to retain their CalPERS LTC Policy. For those who elect a premium refund, the premiums
19 will be paid less benefits received. Benefits to be paid are based on whether the policyholder is
20 current and not on claim, or died, or allowed the policy to lapse. It is estimated that Category A
21 Settlement Class Members who elect a premium refund will receive on average \$40,000 – this
22 amount could be more or less depending on the premiums paid since inception of the policy and
23 the amount of any benefits paid.

24 137. Settlement checks will be issued no later than 105 days after the Final Settlement
25 Date.

26 **7. Tax Allocation of Settlement Payments**

27 138. Settlement payments, in whole or in part, may be taxable depending on the
28 manner in which the policyholder accounted for the premium payments during the policy period.

1 Settlement Class Members are being informed in the Class Notice that they should communicate
2 with their accountants or tax advisors to determine whether there will be any tax consequence to
3 them from the Settlement.

4 **8. Injunctive Relief**

5 139. There is no injunctive relief provided for in the Second Settlement.

6 **D. Notice Administration**

7 **1. The Settlement Administrator and its Qualifications**

8 140. Plaintiffs seek approval of the appointment of Epiq Global to act as Settlement
9 Administrator. The experience of Epiq is outlined in the accompanying declaration of Cameron
10 Azari which was filed on July 17, 2021 in conjunction with the Prior Settlement.

11 141. Prior to proposing Epiq for the Prior Settlement, Class Counsel contacted five
12 separate and experienced class action administrators and obtained bids from each after
13 explaining the case, the proposed Settlement and the need for a robust and extensive notice
14 process given the age of the Settlement Class and some of the unique aspects of the Prior
15 Settlement.

16 142. I and my colleagues held a number of telephonic conferences with those
17 administrators who we felt were best capable of administering this complex settlement. As a
18 result of those conferences and further follow up with the various proposed administrators, it was
19 determined by Class Counsel that Epiq was uniquely qualified to administer the Prior Settlement.

20 143. Epiq performed its services as to the Prior Settlement with great skill. As a result
21 of the extensive work performed by Epiq on the Prior Settlement, they are uniquely qualified to
22 administer this Second Settlement. Epiq has maintained extensive records on Settlement Class
23 Members, including updated addresses and contact information as well as records regarding
24 communications with the Settlement Class Members. Epiq handled the issuance of unique
25 category letters for each Settlement Class Member for the Prior Settlement extremely well and
26 we are confident they will do the same for this Second Settlement.

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1 **2. CalPERS Has Previously Provided the Settlement Class List to the**
2 **Settlement Administrator and Is Providing Updated Data for the Settlement**
3 **Class Members**

4 144. The Settlement Administrator was previously provided with the list of Settlement
5 Class Members and further will be provided with updated data by March 8, 2023, necessary for
6 the Settlement Administrator to prepare and send the Individual Settlement Award letters,
7 identifying the benefits that each Settlement Class Member will receive.

8 145. The data maintained by Epiq, and data from CalPERS also includes email
9 addresses for certain of the Settlement Class Members.

10 **3. The Deadline for Notice and the Notice Plan**

11 146. The proposed Notice process will be as follows:

12 **U.S. Mail and E-mail Notice:** By April 7, 2023, the Settlement Administrator shall send
13 the long form Notice packet to Settlement Class Members by U.S. Mail and email to those
14 Settlement Class Members for whom the Settlement Administrator has email addresses.

15 **Telephonic Call Center:** The Settlement Administrator will set up a contact center and
16 also a unique email for Settlement Class Members to contact the Settlement Administrator or
17 Class Counsel with any inquiries on the Second Settlement.

18 **4. The Class Notice Complies with CRC Rule 3.766(d)**

19 147. The Class Notice form, the cover letter from Plaintiffs and Class Counsel, and the
20 various Individual Award Letters are attached as Exhibits A-1 through 10 to the Proposed
21 Preliminary Approval Order and comply with Rule 3.766(d) in that the documents inform the
22 Settlement Class of the following:

- 23 (1) A brief explanation of the case, including the basic contentions or denials of the parties;
24 (2) A statement that the court will exclude the member from the class if the member so
25 requests by a specified date;
26 (3) A procedure for the member to follow in requesting exclusion from the class;
27 (4) A statement that the judgment, whether favorable or not, will bind all members who
28 do not request exclusion; and
 (5) A statement that any member who does not request exclusion may, if the member so

1 desires, enter an appearance through counsel.

2 148. The Class Notice includes an Individual Settlement Award letter, which will
3 inform Settlement Class Members of their Initial Settlement Category. The form shall provide
4 each Settlement Class Member with the following: (1) the amount they may receive under the
5 Settlement if their Initial Settlement Category does not change prior to the Final Settlement Date
6 and how that amount was calculated; (2) the Settlement Class Member’s current address and
7 point of contact; (3) advise that if the Settlement Class Member is in Categories A, B or C, that
8 they will retain their CalPERS LTC Policy and receive a \$1,000 cash payment if they do not
9 submit an online election form (or mail such form to the Settlement Administrator); and (4)
10 advise Settlement Class Members who are Current Policyholders who are not on Claim that they
11 must continue to pay premiums to CalPERS at the level set by CalPERS until the Final
12 Settlement Date in order to retain the benefits of the Second Settlement.

13 149. Because Settlement Class Members in Category A must continue to pay
14 premiums to CalPERS until the Final Settlement Date, the Class Notice advises the Settlement
15 Class Members that the amount of their premium refunds will increase.

16 150. For Category A, B and C Settlement Class Members, the Class Notice will require
17 the Settlement Class Member to select their option of a reimbursement of 80% of all premiums
18 in exchange for surrendering their CalPERS LTC policy, or a \$1,000 cash payment that will
19 allow them to retain their CalPERS Policy, within 60 days of the mailing of Notice. However, if
20 a Settlement Class Member fails to make the election, then the member will be deemed to have
21 accepted the \$1,000 cash payment and retain their CalPERS LTC policy.

22 151. All Settlement Class Members will also receive a letter from Class Counsel and
23 the Plaintiffs explaining the reasons for the Second Settlement. This letter was reviewed by
24 Plaintiffs and certain other Settlement Class members to obtain their input as to the information
25 set forth in the letter and whether the letter provided that information in a clear and concise
26 manner.

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1 152. In addition to the Class Notice, the Settlement Administrator will send out letters
2 individual to each Category that outline key details of the Settlement. Copies of these letters are
3 also attached to the proposed Preliminary Approval Order at Exhibits A-3 through 10.

4 153. For Settlement Class Members in Categories D and E, who let their policies lapse
5 as a result of the challenged increase, they must complete and submit a claim form no later than
6 60 days after the Notice Date stating under penalty of perjury that they permitted their policies to
7 lapse as a result of the challenged increase (i.e., the increase announced in February 2013 and
8 implemented in 2015)—the “Lapse Claim Form.” However, if a Settlement Class Member fails
9 to return the Lapse Claim Form for the Second Settlement, but returned such form for the Prior
10 Settlement, the prior form will be accepted.

11 **5. The Notice Informs Settlement Class Members of the Court’s Social**
12 **Distancing Procedures**

13 154. The Class Notice informs the Settlement Class Members of the Court’s current
14 social distancing protocols and further advises that Settlement Class Members who wish to
15 attend the Final Approval Hearing check the Court’s website for any further updates at that time.

16 **6. The Manner in Which Payments Will Be Processed**

17 155. The Class Notice further informs Settlement Class Members that Settlement
18 checks will be mailed out by the Settlement Administrator following the Final Settlement Date
19 without the need for any further action by most Participating Settlement Class Members. For
20 those who may have gone on claim between December 30, 2022 and the Final Settlement Date, a
21 late election form will be mailed to these members so that they can decide whether to retain their
22 CalPERS LTC policy or not.

23 **7. Notices Returned as Undeliverable**

24 156. The Settlement Administrator will remail any Class Notice returned as
25 undeliverable to any updated addresses available through the U.S. Postal Service forwarding
26 information database and in addition will conduct skip trace searches on for any Class Notice
27 returned undeliverable without forwarding information.
28

1 **8. The Manner in Which Remailed Notices Will be Handled**

2 157. Given that Settlement Class Members are afforded 60 days to respond to the Class
3 Notice, extending the deadline for those whose Class Notice is remailed is not believed to be
4 necessary.

5 **9. Notice of a Change in the Hearing Date or Location**

6 158. The Class Notice advises Settlement Class Members that the hearing date or time
7 may be changed without further notice. Any such change will be posted on the Second
8 Settlement website.

9 **10. The Settlement Website**

10 159. The Settlement Administrator shall also establish a website at
11 www.calpersltcclassaction.com. The Second Settlement Agreement, the Long Form Notice, and
12 the Preliminary Approval Order and such other documents regarding the Second Settlement as
13 the Parties agree are necessary shall all be posted on the website. The website shall be
14 maintained throughout the settlement process and after the Order and Final Judgment are issued.
15 Settlement Class Members will also be provided with an individual pin number to enter an
16 electronic portal maintained by the Settlement Administrator that will provide information
17 individual to each Settlement Class Member.

18 **11. Publication Notice**

19 160. Prior notices have all been given only by U.S. Mail. The Settlement Class is
20 comprised of citizens of California. For these reasons, it was determined that published notice is
21 not necessary and would be an unnecessary cost for little additional benefit.

22 **12. Notice of Final Judgment**

23 161. Upon the granting of final approval of the Second Settlement, notice of the Order
24 and Final Judgment as against CalPERS will be posted on the website described above.

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1 **E. Responses To Notice**

2 **1. Description of the Procedures for Submitting Written Objections, Requests**
3 **for Exclusion and Award Acknowledgement Forms and Disputes as to**
4 **Estimated Payments or Categories**

5 162. The Parties are proposing a schedule for dissemination of Class Notice, that
6 includes deadlines for objecting to the Second Settlement, opting out of the Second Settlement,
7 and submission of the election forms along with a hearing on final approval and other relevant
8 dates. The proposed Schedule is set forth in the proposed Preliminary Approval Order. The
9 procedures for submitting objections, requests for exclusions, submitting election for Lapse
10 Forms and any disputes as to estimated payments are outlined below. The procedures and timing
11 for submitting objections and requests for exclusions are the same.

12 **2. The Manner in Which Class Members May Object to the Second Settlement**

13 163. Settlement Class Members, other than those who have submitted a Request for
14 Exclusion, who wish to object to the Second Settlement may submit a written objection to the
15 Settlement Administrator within 60 days of the mailing of the Class Notice. Written objections
16 must be signed and include (1) the Settlement Class Member's name, address, telephone number,
17 as well as the name and contact information for their attorney if the Class member is separately
18 represented, (2) the case name and number, (3) the factual or legal grounds or reasons for the
19 objection, including all relevant documents that pertain to the objection, and (4) a statement of
20 whether the Class member (or his/her counsel) intends to appear at the final approval hearing.

21 164. Settlement Class Members who elect to appear at the Final Approval Hearing and
22 voice their objection may do so without having submitted a prior written objection and the Class
23 Notice informs them of this right.

24 **3. Requests for Exclusion and Late Opt-Outs**

25 165. Each Settlement Class Member wishing to opt out of the Second Settlement must
26 submit a written and signed request to be excluded from the Second Settlement to the Settlement
27 Administrator. The Class Notice provides instructions to Settlement Class Members on how to
28 submit a Request for Exclusion. The request must be signed and postmarked no later than 60
 calendar days from the date of mailing of the Class Notice (the "Response Deadline"). The date

1 of the postmark on the return mailing envelope shall be the exclusive means to determine
2 whether an exclusion request was timely submitted.

3 166. We have retained the right to communicate with those who opt-out to determine
4 whether they individual fully understood their request and Settlement Class Members will be
5 permitted to retract the exclusion request if it is determined that they did not understand their
6 actions. However, this process will be done carefully and with every intention to make certain
7 that the action taken by the Settlement Class Member is the member's intended action.

8 **4. Award Acknowledgement Forms**

9 167. The election form does not have to be submitted for a Category A, B or C
10 Settlement Class Member to participate in the Second Settlement. However, any Settlement
11 Class Member in those categories who does not submit the election form will be treated as
12 having decided to retain their CalPERS LTC policy in exchange for the cash benefit of \$1,000
13 and the temporary premium moratorium.

14 **5. Disputes as to Final Category or Amount of an Award**

15 168. Any Participating Settlement Class Member who disputes either his/her Final
16 Category or the amount of the premiums or benefits to be received, may do so by sending a
17 written dispute to the Settlement Administrator within 30 days of the mailing of settlement
18 checks. The Settlement Administrator will resolve the dispute within 30 days and inform the
19 Settlement Class Member of the outcome of the dispute. And CalPERS shall fund any additional
20 monies owed as a result of the dispute with 14 days and the Settlement Administrator will then
21 issue a check to the disputing Participating Settlement Class Member within 15 days.

22 **6. CalPERS' Option to Terminate the Second Settlement**

23 169. CalPERS shall have the option to terminate the Second Settlement within 10 days
24 (but no later than 60 days) after the Settlement Administrator provides CalPERS with a list of
25 opt-outs (to be provided within 14 days after the Response Date) if more than 1% of the
26 Settlement Class (by policy count) timely and validly request to be excluded from the Second
27 Settlement.

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7. Cy Pres Distribution

170. Settlement checks will remain valid for 90 days (3 months) after issuance. In the even that there remain any uncashed Settlement checks, the funds and information sufficient to identify the beneficiary will be sent to the California State Controller’s Unclaimed Money Fund. Participating Settlement Class Members (or their beneficiaries) who fail to cash their Settlement check within the period for which the check is valid will be entitled to recover their funds from the State Controller at any time in the future. The only potential cy pres distribution will be as to any funds remaining in the Settlement Account that may be financially unfeasible to distribute proportionately to Participating Settlement Class Members. The Parties will propose at the time of Final Approval an appropriate cy pres recipient and will ultimately comply with Code of Civil Procedure section 384.

CONCLUSION

171. The Second Settlement submitted for preliminary approval was negotiated at arms-length through the good and able services of an excellent Mediator following months of negotiations after the termination of the Prior Settlement. The result is a Second Settlement that provides significant benefits for Settlement Class Members in light of all or the risks of continued litigation. We respectfully request that the Court grant preliminary approval.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of February, 2023

By Gretchen M. Nelson
Gretchen M. Nelson

EXHIBIT 1

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11 Attorneys for Defendant
CALIFORNIA PUBLIC EMPLOYEES'
12 RETIREMENT SYSTEM

13 *(Additional counsel continued on following page)*

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16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF LOS ANGELES

19 HOLLY WEDDING, et al.,

20 Plaintiffs,

21 v.

22 CALIFORNIA PUBLIC EMPLOYEES'
23 RETIREMENT SYSTEM, et al.,

24 Defendants.

Judicial Council Coordination Proceeding No. 4936

Case No. BC517444

CLASS ACTION

Assigned for all purposes to the Honorable William
F. Highberger—Dept. SS10

[Filing Fees exempt pursuant to Gov't Code §
6103]

**SECOND CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

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1 This SECOND CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE (“Second
2 Settlement Agreement”) is entered into by and between Plaintiffs Holly Wedding, Richard M. Lodyga,
3 and Eileen Lodyga, individually and on behalf of the Settlement Class (as defined below), and Defendant
4 California Public Employees’ Retirement System (“CalPERS”). This Second Settlement Agreement
5 supersedes the Class Action Settlement Agreement and Release dated on or about July 12, 2021, which
6 agreement was terminated and is no longer valid. This Second Settlement Agreement is conditioned
7 upon and subject to approval of the Court as required by Rule 3.769 of the California Rules of Court.
8 Class Counsel (as defined below) and the Parties hereby stipulate and agree that all causes of action and
9 matters raised by Plaintiffs, individually and on behalf of the Settlement Class, and related to this lawsuit,
10 captioned *Holly Wedding, et al. v. California Public Employees’ Retirement System, an agency of the*
11 *State of California, et al.*, Case No. BC517444, in the Superior Court for the State of California for the
12 County of Los Angeles, are hereby settled and compromised on the terms and conditions set forth in this
13 Second Settlement Agreement and the releases set forth herein.

14 **1. DEFINITIONS**

15 Capitalized Terms in this Agreement are defined herein as follows:

16 **1.1** “Action” means the lawsuit, currently captioned *Holly Wedding, et al. v. California Public*
17 *Employees’ Retirement System, an agency of the State of California, et al.*, Case No.
18 BC517444, currently pending in the Superior Court for the State of California for the
19 County of Los Angeles.

20 **1.2** “Additional Premiums” means the additional premiums paid by a Settlement Class
21 Member for their CalPERS LTC Policy as a result of the Challenged Increase, i.e., the
22 difference between the premiums that a Settlement Class Member actually paid and the
23 premiums that the Settlement Class Member would have paid absent the Challenged
24 Increase and includes any additional amount paid proportionately as a result of premium
25 increases implemented after the Challenged Increase for those who paid the Challenged
26 Increase. For the avoidance of doubt, additional premiums paid as a result of a rate
27 increase other than the Challenged Increase, including but not limited to any rate increases
28 imposed after the Challenged Increase, shall not be considered “Additional Premiums” as

1 that term is used in this Agreement except as to any percentage portion of a premium
2 increase that was a result of the Challenged Increase. Notwithstanding anything in this
3 Section 1.2, in no event shall any portion of any increase that may be implemented after
4 October 31, 2024 constitute “Additional Premiums.”

5 **1.3** “CalPERS LTC Policy” or “CalPERS LTC Policies” means: CalPERS LTC1 and LTC2
6 policies held by Settlement Class Members, including policies that were terminated (i.e.,
7 through Lapse or death) after the approval of the Challenged Increase, but not including
8 policies that were converted to LTC3 policies prior to the implementation of the
9 Challenged Increase. CalPERS LTC Policies shall include all applications, schedules,
10 riders, or other forms specifically made a part of the policies at the time of their issue, plus
11 all riders and amendments issued thereafter.

12 **1.4** “Challenged Increase” means the 85% rate increase for certain LTC1 and LTC2 CalPERS
13 policyholders that was adopted by CalPERS in October 2012, announced in February
14 2013, and implemented beginning in 2015.

15 **1.5** “Claims” means all suits, claims, cross-claims, counter-claims, controversies, liabilities,
16 demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or
17 causes of action (however denominated), including Unknown Claims, of every nature,
18 character, and description, whether in law, contract, statute or in equity, direct or indirect,
19 whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, or
20 present or contingent, for any injury, damage, obligation, or loss whatsoever, including
21 but not limited to compensatory damages, statutory liquidated damages, exemplary
22 damages, punitive damages, losses, costs, expenses or attorneys’ fees.

23 **1.6** “Class Counsel” means Shernoff Bidart Echeverria LLP, Kershaw, Talley & Barlow, PC,
24 Nelson & Fraenkel LLP, and Bentley & More LLP, individually and collectively, the
25 attorneys appointed by the Court to serve as Class Counsel.

26 **1.7** “Class Counsels’ Fees and Expenses” means (1) the amount of the award approved by the
27 Court to be paid to Class Counsel for attorneys’ fees and reimbursement of Class
28 Counsels’ costs and expenses, (2) any Service Awards paid to the Plaintiffs, and (3) any

1 Current Settlement Administration Expenses.

2 **1.8** “Class List” means the CalPERS LTC Policies identified by policy number.

3 **1.9** “Class Notice” means the notice of the Settlement approved by the Court to be sent by the
4 Settlement Administrator, as described in Section 5.3, to the persons on the Notice List.
5 The Parties will submit the Class Notice substantially in the form attached to this
6 Agreement as Exhibit A-1 along with a Cover Letter from Class Counsel and Plaintiffs
7 substantially in the form attached to this Agreement as Exhibit A-2, for the Court’s
8 approval.¹

9 **1.10** “Class Website” means the website set up by the Settlement Administrator containing
10 relevant information regarding the Settlement.

11 **1.11** “Court” means the Superior Court for the State of California for the County of Los
12 Angeles, Hon. William F. Highberger, or such other judge of that Court as to which the
13 Action may hereafter be assigned, which Court is presiding over the Action.

14 **1.12** “Current Policyholder” means a Settlement Class Member who has not allowed their
15 CalPERS LTC Policy to Lapse and who is not On Claim.

16 **1.13** “Current Settlement Administration Expenses” means all fees, costs, and expenses
17 incurred by the Settlement Administrator in connection with this Second Settlement
18 Agreement, including but not limited to Class Notice costs, settlement and claims
19 administration, and costs associated with the Settlement Account, including costs
20 associated with or caused by the setting up of and/or maintenance of the Settlement
21 Account, and shall include any fees, costs, and expenses incurred by the Settlement
22 Administrator with respect to the Prior Settlement except for the \$900,000 paid by
23 CalPERS for Settlement Administration Costs related to the Prior Settlement. All Current
24 Settlement Administration Expenses shall be paid from any award of Class Counsel’s
25 Fees and Expenses.

26
27 ¹ The Preliminary Approval Order is attached to this Agreement as Exhibit A. That Order further
28 attaches Exhibits 1-10, which includes various Forms, Notices, and other documents referenced herein.
References to exhibits attached to the Preliminary Approval Order are thus delineated as “A-[].”

- 1 **1.14** “Defendant” or “CalPERS” means California Public Employees’ Retirement System.
- 2 **1.15** “Election Form” means the online private and secure form that can be submitted by
3 Settlement Class Members selecting any options available under the Settlement, and, if
4 applicable, confirming and acknowledging the Surrender of the Settlement Class
5 Member’s CalPERS LTC Policy upon the Final Settlement Date and confirming and
6 acknowledging the obligation to continue to pay premiums to CalPERS until the Final
7 Settlement Date.
- 8 **1.16** “Fairness Hearing” means any hearing held by the Court on any motion(s) for final
9 approval of the Settlement Agreement for purposes of: (i) entering the Order and
10 Judgment; (ii) determining whether the Settlement Agreement should be approved as fair,
11 reasonable, adequate and in the best interests of the Settlement Class Members; (iii) ruling
12 upon an application by Class Counsel for attorneys’ fees and reimbursement of expenses
13 and Service Award payments for the Plaintiffs and Settlement Administration Expenses;
14 and (iv) ruling on any other matters raised or considered.
- 15 **1.17** “Final Approval Date” means the date on which the Court enters its Order and Judgment
16 approving the Settlement Agreement.
- 17 **1.18** “Final Settlement Award” means the payment to be provided to each Participating
18 Settlement Class Member as outlined in Sections 2.2 and 2.5 below.
- 19 **1.19** “Final Settlement Category” or “Final Settlement Categories” means the category, as of
20 the Final Settlement Date, that a Participating Settlement Class Member falls into for the
21 purposes of determining the Final Settlement Award.
- 22 **1.20** “Final Settlement Date” means the date on which the Order and Final Judgment becomes
23 final, which shall be the latest of: (i) the date of final affirmance on any appeal of the
24 Order and Judgment (including both appeals as of right and discretionary review); (ii) the
25 date of final dismissal with prejudice of the last pending appeal from the Order and
26 Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any
27 form of valid appeal from the Order and Judgment.
- 28 **1.21** “Final Settlement List” means the list provided to CalPERS and Class Counsel by the

1 Settlement Administrator that identifies all Settlement Class Members who have
2 submitted a timely Request for Exclusion.

3 **1.22** “Individual Award Letter” means the form to be sent by the Settlement Administrator with
4 the Class Notice informing Settlement Class Members about the amount of their
5 Settlement award based on their Initial Settlement Category. Included within this
6 definition are the Individual Award Letters and online Election Forms (attached hereto as
7 Exhibits A- 3 through 10). All versions of the Individual Award Letters shall be in
8 substantially the form as the Exhibits identified previously.

9 **1.23** “Initial Settlement Administration Expenses” shall mean Current Settlement
10 Administration Expenses incurred before the Final Settlement Date.

11 **1.24** “Initial Settlement Category” means the category based on policyholder status as of
12 December 31, 2022, that a Settlement Class Member would fall into for purposes of
13 determining the Final Settlement Award if that determination were being made as of
14 December 31, 2022.

15 **1.25** “Lapse” means that the coverage provided under a Settlement Class Member’s CalPERS
16 LTC Policy has terminated as a result of the Settlement Class Member’s failure to pay
17 premiums pursuant to the terms of their CalPERS LTC Policy or as a result of the
18 Settlement Class Member’s affirmative action to cancel their CalPERS LTC Policy.

19 **1.26** “Lapse Claim Form(s)” means the form(s) which Participating Settlement Class Members
20 must submit online to the Settlement Administrator to confirm that they allowed their
21 CalPERS LTC Policy to Lapse as a result of the Challenged Increase. “Lapse Claim
22 Form(s)” shall also include any Lapse Claim Form submitted by a Settlement Class
23 member under the Prior Settlement Agreement.

24 **1.27** “Late Election Form” means the form for Participating Settlement Members who go On
25 Claim between the Preliminary Approval Date and the Final Settlement Date, that the
26 Participating Settlement Member fills out to identify whether the Participating Settlement
27 Class Member elects to retain their CalPERS LTC Policy or to select a different option
28 based on the Participating Settlement Class Member’s Initial Settlement Category. The

1 Late Election Form shall be in substantially the form as Exhibit A-10 hereto.

2 **1.28** “Notice Date” means the date on which the Settlement Administrator initially mails the
3 Class Notice, or, if the Settlement Administrator initially mails the Class Notice on a
4 rolling basis, the date on which the Settlement Administrator mails the Class Notice that is
5 latest in time.

6 **1.29** “Notice List” means those individuals, along with their addresses, that are reflected in
7 Defendant’s records as the last known policy owners of the CalPERS LTC Policies on the
8 Class List. The Notice List shall identify the name of each Settlement Class Member, all
9 contact information that the CalPERS LTC program has for each Settlement Class
10 Member, the policy number for the Settlement Class Member, the date that Settlement
11 Class Member began paying premiums for their CalPERS LTC Policy, the Initial
12 Settlement Category into which each Settlement Class Member falls, and the Final
13 Settlement Award each Settlement Class Member would receive from the Settlement if
14 the Settlement were final on the date the Notice List is created. If the Settlement
15 Administrator is unable to contact any Settlement Class Member, CalPERS shall add to
16 the Notice List, upon request by the Settlement Administrator, the social security number
17 for Settlement Class Members who the Settlement Administrator is not able to contact.

18 **1.30** “On Claim” means the individual (a) has submitted an application for benefits under their
19 policy which application is subsequently granted, or (b) is receiving benefits under their
20 policy.

21 **1.31** “Order and Final Judgment” means the (i) Court’s Order Granting Final Approval to Class
22 Action Settlement, and (ii) Final Judgment on Class Action Settlement Between Plaintiffs
23 and California Public Employees’ Retirement System. The Final Judgment on Class
24 Action Settlement Between Plaintiffs and California Public Employees’ Retirement
25 System shall incorporate the terms of the Settlement in accordance with California Rules
26 of Court 3.769 and 3.771. Pursuant to California Rule of Court 3.769(h), after granting
27 final approval of the Settlement, the Court shall retain jurisdiction over the Parties to
28 enforce the terms of the Order and Final Judgment. The Parties will submit proposed

1 forms of the Order Granting Final Approval to Class Action Settlement and the Final
2 Judgment on Class Action Settlement Between Plaintiffs and California Public
3 Employees' Retirement System substantially in the forms attached to this Agreement as
4 Exhibit B (the Final Approval Order) and Exhibit C (the Final Judgment) for the Court's
5 approval.

6 **1.32** "Participating Settlement Class Member" means any Settlement Class Member who does
7 not opt out of the Settlement by submitting a timely Request for Exclusion pursuant to
8 Section 6.1.

9 **1.33** "Parties" means, collectively, Plaintiffs and Defendant.

10 **1.34** "Plaintiff" or "Plaintiffs" means Holly Wedding, Richard M. Lodyga, and Eileen Lodyga,
11 individually and collectively, and as representatives of the Settlement Class, and their
12 assigns, successors-in-interest, representatives, employees, managers and members.

13 **1.35** "Plaintiffs' Service Award(s)" means the amount of any award approved by the Court to
14 be paid to Plaintiffs from the Settlement Fund, not including any settlement relief the
15 Plaintiffs may be eligible to receive, as compensation for efforts undertaken by them on
16 behalf of the Settlement Class.

17 **1.36** "Preliminary Approval Date" means the date on which the Court enters the Preliminary
18 Approval Order.

19 **1.37** "Preliminary Approval Order" means the [Proposed] Order Granting Preliminary
20 Approval of Class Action Settlement substantially in the form attached to this Settlement
21 Agreement as Exhibit A and as approved by the Court.

22 **1.38** "Prior Settlement Agreement" shall mean the Settlement Agreement previously agreed to
23 by the Parties on July 12, 2021, that became null and void on April 20, 2022.

24 **1.39** "Released Claims" means any and all Claims that (a) were asserted in the Action, (b)
25 could have been asserted in the Action, (c) hereafter may be asserted, and (d) arise out of
26 or relate to the facts, transactions, events, occurrences, acts, disclosures, statements,
27 omissions, or failures to act concerning the Challenged Increase. Except as to the benefits
28 provided under the terms of this Settlement, "Released Claims" include the denial of

1 benefits to any Settlement Class Member while On Claim if benefits are denied solely
2 because the Settlement Class Member has exhausted their benefits as a result of choosing
3 to reduce their benefits in response to the Challenged Increase. “Released Claims”
4 specifically do not include any claims arising from the denial of benefits to any Settlement
5 Class Member while On Claim for any other reason.

6 **1.40** “Released Parties” means, individually and collectively, the State of California,
7 Defendant, and Defendant’s current and former agents, representatives, principals,
8 employees, independent contractors, attorneys, directors, board members, officers,
9 parents, fiduciaries, administrators, partners, creditors, insurance providers, subsidiaries,
10 divisions, affiliates, related entities, predecessors, successors and assignees.

11 **1.41** “Releasing Parties” means each Plaintiff and Participating Settlement Class Member on
12 behalf of themselves and their respective agents, heirs, relatives, representatives,
13 attorneys, successors, trustees, subrogees, executors, assignees, and all other persons or
14 entities acting by, through, under, or in concert with any of them purporting to claim on
15 their behalf. Releasing Parties does not include any Settlement Class Member who timely
16 and validly requests exclusion from the Settlement Class.

17 **1.42** “Request for Exclusion” means a request for exclusion from the Settlement by a
18 Settlement Class Member that is to be sent by the Settlement Class Member to the
19 Settlement Administrator by or before the Response Deadline, pursuant to Section 6.1 of
20 this Agreement. Settlement Class Members may submit a Request for Exclusion in a form
21 sufficient to provide the information necessary to inform the Settlement Administrator of
22 the Settlement Class Member’s decision to request exclusion which shall include the name
23 and address of the Settlement Class Member along with an express statement by the
24 Settlement Class Member that he/she wishes to be excluded from the Settlement and must
25 be signed by the Settlement Class Member.

26 **1.43** “Response Deadline” means the date no later than sixty (60) calendar days from the
27 Notice Date.

28 **1.44** “Settlement” means all terms of the settlement set forth in this Second Settlement

1 Agreement.

2 **1.45** “Settlement Account” means the bank account established by the Settlement
3 Administrator pursuant to the terms of this Second Settlement Agreement from which
4 monies payable under the terms of the Settlement shall be paid, as set forth herein. The
5 Settlement Account is intended to be a “qualified settlement fund” (“Qualified Settlement
6 Fund” or “QSF”) within the meaning of Treasury Regulation § 1.468B-1. The Settlement
7 Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be
8 responsible for filing tax returns for the Settlement Fund and paying from the Qualified
9 Settlement Fund any taxes owed with respect to the Settlement Account. The Parties
10 hereto agree that the Settlement Account shall be treated as a “qualified settlement fund”
11 from the earliest date possible, and agree to any relation-back election required to treat the
12 Settlement Account as a “qualified settlement fund” from the earliest date possible.
13 Defense Counsel agree to provide promptly to the Settlement Administrator the statement
14 described in Treasury Regulation § 1.468B-3(e), if necessary. All taxes on any interest
15 earned by money in the Settlement Account shall be paid out of the Settlement Account,
16 out of the interest earned on the Settlement Account, shall be considered to be a cost of
17 administration of the Settlement, shall be timely paid by the Settlement Administrator
18 without prior order of the Court, and under no circumstance shall Defendants have any tax
19 liability related to the Settlement or the Settlement Account. All funds held in the
20 Settlement Account and all earnings thereon shall be deemed to be *in custodia legis* of the
21 Court and shall remain subject to the jurisdiction of the Court until such time as the funds
22 shall have been disbursed pursuant to the terms of the Second Settlement Agreement or
23 further order of the Court. The Settlement Account shall be established under terms
24 acceptable to Plaintiffs and Defendant at a financial institution with more than \$20 billion
25 in an account or accounts insured by an agency or agencies of the United States
26 government, with insurance that exceeds any amounts deposited therein, for use in the
27 Settlement to facilitate the effectuation and payment of consideration paid to Participating
28 Settlement Class Members, Current Settlement Administration Expenses, Plaintiffs’

1 Service Awards, and Class Counsels' Fees and Expenses. The Settlement Administrator
2 may only use the funds paid by the Defendant into the Settlement Account as specified in
3 and consistent with the terms of the Second Settlement Agreement and pursuant to an
4 Order of the Court. Further, for the avoidance of doubt, any expenses or fees associated
5 with or caused by the setting up of and/or maintenance of the Settlement Account shall be
6 paid as Current Settlement Administration Expenses.

7 **1.46** "Settlement Administrator" means the entity appointed by the Court to send notice to the
8 Settlement Class and administer the Settlement as referenced herein.

9 **1.47** "Second Settlement Agreement" means this Second Class Action Settlement Agreement
10 and Release.

11 **1.48** "Settlement Class" means: any individual who was a California citizen in February 2013,
12 and who purchased LTC1 and LTC2 policies that included the automatic inflation
13 protection benefit and were subjected to the Challenged Increase. Policyholders who
14 converted their policies to LTC3 policies prior to the implementation of the Challenged
15 Increase are not included in the Settlement Class, even if the conversion occurred after the
16 Challenged Increase was approved in October 2012. The Settlement Class does not
17 include those individuals who opted out of the Class certified by the Court on January 28,
18 2016, and who are identified on Exhibit D hereto.

19 **1.49** "Settlement Class Member(s)" means all persons who are in the Settlement Class.

20 **1.50** "Settlement Fund" means the (i) Total Settlement Amount, (ii) Class Counsels' Fees and
21 Expenses; (iii) Plaintiffs' Service Awards; and (iv) Current Settlement Administration
22 Expenses. Defendant shall have no financial obligations under this Second Settlement
23 Agreement or the Settlement other than payment of the Settlement Fund. The Settlement
24 Fund shall be deposited by Defendant into the Settlement Account in accordance with
25 Section 2.1.

26 **1.51** "Surrender" means that the Participating Settlement Class Member is giving up any and
27 all contractual and other rights arising under or relating to, in whole or in part, their
28 CalPERS LTC Policy in exchange for the receipt of benefits as provided under the

1 Settlement. For the sake of clarity, Participating Settlement Class Members who elect to
2 Surrender their CalPERS LTC Policies shall no longer have an LTC Policy with
3 CalPERS, and CalPERS shall have no further obligations under the policy issued by
4 CalPERS to that Participating Settlement Class Member or liability based on it.

5 **1.52** “Total Settlement Amount” means the amount to be calculated pursuant to the terms of
6 Sections 2.1, 2.2, 2.3 and 2.4 below to be the total consideration paid by Defendant out of
7 its Long Term Care Fund for the benefit of the Participating Settlement Class Members.

8 **1.53** “Unknown Claims” means any claims asserted, that might have been asserted, or that
9 hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts,
10 disclosures, statements, omissions, or failures to act that were alleged in the Action with
11 respect to the Released Claims that Plaintiffs or any Participating Settlement Class
12 Member does not know or suspect to exist in their favor at the time of the entry of the
13 Order and Judgment, and which if known by them might have affected their decision to
14 opt out of or object to the Settlement.

15 **1.54** The terms “they” or “their” shall also mean “he or she” and “his or her” or “it” or “its,”
16 where applicable. “Person” includes individuals and entities. Defined terms expressed in
17 the singular also include the plural form of such term, and vice versa, where applicable.

18 **1.55** All references herein to Sections refer to the Sections and paragraphs of this Second
19 Settlement Agreement, unless otherwise expressly stated in the reference.

20 **2. SETTLEMENT RELIEF**

21 **2.1** CalPERS agrees that, in exchange for: (i) entry of the Order and Final Judgment; (ii) the
22 release of claims provided pursuant to Section 8; and (iii) the conditions set forth in
23 Section 2.2, it will, within seventy-five (75) days of the Final Settlement Date, pay the
24 Settlement Fund into the Settlement Account, less (i) any amount previously deposited
25 into the Settlement Account and (ii) any payments owed to Class Members in Category I
26 or Participating Class Members eligible to reverse their election pursuant to Section 5.7.
27 It will pay any remaining portion of the Settlement Fund owed to Class Members in
28 Category I or Participating Class Members eligible to reverse their election pursuant to

Section 5.7 by no later than thirty (30) days after the Settlement Administrator informs CalPERS of all elections made by policyholders in Category I or by policyholders who validly reversed their elections pursuant to Section 5.7.

2.2 The payments to Participating Settlement Class Members included in the Total Settlement Amount shall be based on the settlement structure outlined below and shall be calculated as follows:

FINAL SETTLEMENT CATEGORY	PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS
<p>CATEGORY A. Participating Settlement Class Members who are Current Policyholders and who are not On Claim on the Final Settlement Date.</p>	<p>Participating Settlement Class Members who, on the Final Settlement Date, are Current Policyholders and who are not On Claim shall have the following options:</p> <p style="padding-left: 40px;">Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon</p>

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	<p>payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY B. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date, and who paid the Challenged Increase.</p>	<p>Participating Settlement Class Members who paid any part of the Challenged Increase and are On Claim both on the Notice Date and on the Final Settlement Date, shall have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a</p>

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	<p>minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY C. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>Participating Settlement Class Members who are On Claim on both the Notice Date and the Final Settlement Date, but reduced their benefits as a result of the Challenged Increase before going On Claim, shall receive have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the</p>

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	<p>inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.</p>
<p>CATEGORY D. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014, and who submit a Lapse Claim Form stating under penalty of perjury that</p>

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	<p>they let their policy lapse as a result of the Challenged Increase, shall receive a refund equivalent to 40% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of their CalPERS LTC Policy through the date their CalPERS LTC Policy Lapsed, less any amounts paid in benefits under their CalPERS LTC Policy.</p>
<p>CATEGORY E. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date, and who submit a Lapse Claim Form stating under penalty of perjury that they let their CalPERS LTC Policy lapse as a result of the Challenged Increase, will receive 80% of all Additional Premiums paid, or \$2,000, whichever is greater.</p>
<p>CATEGORY F. Participating Settlement Class Members who passed away after February 1, 2013, and before the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, and (3) reduced their benefits as a result of the Challenged Increase, shall receive 80% of all</p>

	Additional Premiums paid or, \$2,000, whichever is greater.
<p>CATEGORY G. Participating Settlement Class Members who passed away after February 1, 2013, and before the Final Settlement Date, who paid the Challenged Increase, and who never reduced benefits as a result of the Challenge Increase.</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, (3) paid the Challenged Increase, and (4) never reduced their benefits as a result of the Challenged Increase, shall receive 80% of all Additional Premiums paid.</p>
<p>CATEGORY H. Participating Settlement Class Members who paid the Challenged Increase, went On Claim, and exhausted their benefits before the Final Settlement Date.</p>	<p>Participating Settlement Class Members who paid the Challenged Increase, who went On Claim at any time before the Final Settlement Date, and exhausted their benefits before the Final Settlement Date, shall receive a refund of 80% of all Additional Premiums paid.</p>
<p>CATEGORY I. Participating Settlement Class Members who are Current Policyholders, who were not On Claim as of the Notice Date, but are On Claim as of the Final Settlement Date.</p>	<p>Participating Settlement Class Members who are Current Policyholders, who were not On Claim as of the Notice Date, but are On Claim as of the Final Settlement Date, shall receive a Late Election Form giving them the following options:</p> <p style="text-align: center;">Option 1: Receive a refund</p>

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	<p>equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a cash payment of \$1,000 and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Members who does not return an Late Election Form shall be deemed to have selected Option 2.</p>
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2.3 The Final Settlement Categories above shall be determined as follows: Within forty-five

1 (45) days of the Final Settlement Date, CalPERS shall submit to the Settlement
2 Administrator an updated list of all Participating Settlement Class Members, the Final
3 Settlement Category they fall into, and a calculation of their Final Settlement Awards.
4 The list shall be current as of the Final Settlement Date and include all premiums paid by
5 the Participating Settlement Class Members up through that date.

6 **2.4** To the extent any Participating Settlement Class Member disputes their Final Settlement
7 Category or Final Settlement Award, they may submit their dispute to the Settlement
8 Administrator within thirty (30) days of the mailing of their settlement check. The
9 Settlement Administrator will have the sole authority to resolve any disputes regarding the
10 Final Settlement Category or Final Settlement Award of the Participating Settlement Class
11 Member. However, the Settlement Administrator shall provide copies of all disputes to
12 counsel for CalPERS and Class Counsel for review and response. The Settlement
13 Administrator shall resolve any disputes within thirty (30) days. If a Participating
14 Settlement Class Member's dispute is upheld, then within fourteen (14) days of the
15 Settlement Administrator issuing a decision, CalPERS shall deposit into the Settlement
16 Account any additional funds required to be paid as a result of the resolution of the
17 dispute. The Settlement Administrator shall issue payment to the Participating Settlement
18 Class Members within 15 days of receipt of any additional funds required to be paid as a
19 result of the resolution of the dispute.

20 **2.5** Within thirty (30) days after receiving the Total Settlement Amount, the Settlement
21 Administrator shall deliver to each Participating Settlement Class Member (except for
22 Settlement Class Members who are in Category I above or who validly reverse their
23 election pursuant to Section 5.7) by U.S. mail, first-class postage prepaid, a settlement
24 check in the amount of the Final Settlement Award to which they are entitled, if any.
25 Settlement checks will be automatically mailed without any further action on the part of
26 the Participating Settlement Class Members, except that settlement checks will be mailed
27 to Participating Settlement Class Members in Categories D and E above only if they have
28 submitted a Lapse Claim Form, as described in Section 5.5 below. Settlement checks will

1 be mailed to Participating Settlement Class Members who are in Category I above or who
2 validly reverse their election pursuant to Section 5.7, within sixty (60) days of receipt by
3 CalPERS of the list of elections made by policyholders on the Late Election List and
4 policyholders eligible to reverse their elections pursuant to Section 5.7.

5 **2.6** In order to remain in Category A, Participating Settlement Class Members must continue
6 paying the premiums established by CalPERS up to the Final Settlement Date, no matter
7 the amount of the premium. Within five (5) days of the Final Settlement Date, the
8 Settlement Administrator shall send a letter to all Participating Settlement Class Members
9 in Category A who selected Option 1 informing them of the Final Settlement Date and
10 advising the Participating Settlement Class Members that they should no longer make any
11 premium payments to CalPERS.

12 **2.7** In addition to the settlement benefits set forth in this Second Settlement Agreement,
13 Defendant agrees that for a period of time commencing from the execution of this Second
14 Settlement Agreement until October 31, 2024, it will not implement any new premium
15 rate increase as to Participating Settlement Class Members.

16 **2.8** No later than three-hundred sixty-five (365) days after the conclusion of the distribution of
17 the Total Settlement Amount, the Settlement Administrator shall submit to the Court a
18 report identifying all cash payments made to the Participating Settlement Class Members
19 and all checks issued to Participating Settlement Class Member that remain uncashed.
20 Thereafter, subject to Court approval, within thirty (30) days after the report is filed with
21 the Court, a hearing shall be scheduled before the Court to confirm that the distribution of
22 all funds associated with any uncashed checks issued to Participating Settlement Class
23 Members shall be made to the California State Controller's Unclaimed Money Fund. No
24 later than thirty (30) days after the Court issues its Order directing the distribution of all
25 funds associated with any uncashed checks to the California State Controller's Unclaimed
26 Money Fund, the Settlement Administrator shall transfer all such funds with such
27 information as required by the State Controller to identify the beneficiary of the funds.
28 Any remaining funds in excess of funds associated with uncashed checks shall be

1 distributed to an appropriate cy pres recipient subject to Court approval.

2 **2.9** To the extent the Court finds that the Settlement does not meet the standard for
3 preliminary or final approval, the Parties will negotiate in good faith to modify the
4 Settlement directly or with the assistance of the Hon. Layn Phillips (Ret.) and endeavor to
5 resolve the issue(s) to the satisfaction of the Court.

6 **3. PRELIMINARY AND FINAL APPROVAL**

7 **3.1** The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of
8 the Settlement no later than March 10, 2023. Plaintiffs shall also move for an order: (i)
9 certifying the Settlement Class; and (ii) approving the Class Notice plan. Plaintiffs will
10 share with CalPERS' counsel drafts of the motions seeking preliminary and final approval
11 of the Settlement, and all other settlement-related filings (excluding Class Counsels'
12 motion for Plaintiffs' Service Award(s) and Class Counsels' Fees and Expenses), no less
13 than five (5) days before they are filed.

14 **3.2** Subject to approval by the Court, Defendant conditionally consents to certification of the
15 Settlement Class for settlement purposes only. Defendant agrees to class action treatment
16 of the claims alleged or potentially asserted solely for the purpose of effecting the
17 compromise and settlement of those claims on a class basis as set forth in the Second
18 Settlement Agreement. If the Second Settlement Agreement is terminated pursuant to the
19 provisions set forth in Section 18 or the Final Settlement Date does not occur for any
20 reason, the Parties will not offer this Second Settlement Agreement, any agreement
21 negotiated between the Parties in connection with or regarding the Settlement or the
22 Second Settlement Agreement, or any motion seeking approval of the Settlement or
23 Second Settlement Agreement in connection with any motion to decertify the class
24 certified by the Court in its Order dated January 28, 2016, or in any other proceeding in
25 this Action or any other case or legal proceeding.

26 **3.3** Class Counsel agrees to file a motion for final approval of the Settlement and an
27 Application for Plaintiffs' Service Award and Class Counsels' Fees and Expenses no later
28 than sixteen (16) court days, before the Fairness Hearing at which the Application will be

1 heard.

2 **4. SETTLEMENT ADMINISTRATOR**

3 **4.1** The Parties shall request contemporaneously with seeking preliminary approval that the
4 Court appoint the Settlement Administrator.

5 **4.2** The Settlement Administrator shall establish the Settlement Account, and shall be
6 responsible for effectuating Class Notice and administering the Settlement Account and the
7 Second Settlement consistent with the terms of the Second Settlement Agreement and the
8 Court's Orders.

9 **5. NOTICE**

10 **5.1** By no later than March 8, 2023, CalPERS shall submit to Class Counsel the Notice List.
11 The Notice List shall be designated Confidential Information pursuant to the Protective
12 Order entered in the Action. Class Counsel shall submit the Notice List to the Settlement
13 Administrator only after the Settlement Administrator agrees to be bound by the Protective
14 Order. The Parties agree and understand that if more time is needed to prepare the Notice
15 List, they will agree on another date for delivering the Notice List to Class Counsel, unless
16 otherwise ordered by the Court.

17 **5.2** Subject to the requirements of any orders entered by the Court, no later than fourteen (14)
18 days after the signing of this Second Settlement Agreement by all Parties, or three (3)
19 business days after the Preliminary Approval Date, whichever is later, CalPERS shall
20 deposit the sum of \$900,000 with the Settlement Administrator to cover Initial Settlement
21 Administration Expenses. Should the Final Settlement Date occur, the \$900,000 deposited
22 by CalPERS for the Second Settlement shall be credited towards any amounts due for Class
23 Counsel's Fees and Expenses. If the Final Settlement Date never occurs, CalPERS and
24 Class Counsel shall each be responsible for ½ of all Administration Expenses associated
25 with this settlement over and above \$900,000. However, in no event shall CalPERS pay
26 more than \$1,000,000 of the total Current Settlement Administration Expenses, and Class
27 Counsel shall be responsible for all remaining Current Settlement Administration Expenses
28 over and above the \$1,000,000 paid by CalPERS.

1 **5.3** No later than thirty (30) days after receipt of the Notice List, the Settlement Administrator
2 shall disseminate the Class Notice to all Settlement Class Members by regular mail (and
3 also by email to all Settlement Class Members whose email addresses are known). The
4 Class Notice shall contain the content and be substantially in the form as attached hereto as
5 Exhibit A-1, shall be approved by the Court, and shall advise Settlement Class Members of
6 (i) their rights to object to the Settlement under the procedures and in accordance with the
7 deadlines set by the Court, (ii) their rights to request exclusion from the Settlement under
8 the procedures and in accordance with the deadlines set by the Court (“opt out”), and (iii)
9 the specific release language that will be included in the Order and Judgment that will be
10 binding on them if the Settlement is approved. The Class Notice shall include an Individual
11 Settlement Award Form. Based on their Initial Settlement Category as determined from
12 CalPERS’ records, the Individual Settlement Award Form shall provide each Settlement
13 Class Member with the following information: (1) the amount they will receive if they elect
14 a premium refund under the Settlement, they use no additional benefits under their
15 CalPERS LTC Policy, and their Initial Settlement Category does not change prior to the
16 Final Settlement Date; (2) the Settlement Class Member’s current address and point of
17 contact; (3) a statement to Settlement Class Members who are Current Policyholders who
18 are not On Claim that they must continue to pay premiums established by CalPERS for
19 their CalPERS LTC policy until the Final Settlement Date in order to remain in Category A.

20 **5.4** For Settlement Class Members in Categories A, B, and C as defined in Section 2.2 above,
21 the Class Notice will also include information as to how Class Members can access an
22 online portal to complete an Election Form to elect whether they are selecting Option 1 or
23 Option 2 under the Second Settlement. The Election Form shall be completed online no
24 later than sixty (60) days after the Notice Date. The Settlement Administrator shall develop
25 processes for Settlement Class Members to return Election Forms by regular mail in the
26 event that the Settlement Class Member cannot access the online portal. Failure to return
27 the Election Form does not prevent a Current Policyholder from becoming a Participating
28 Settlement Class Member. Any Class Member in Categories A, B, and C who does not

1 complete an Election Form within sixty (60) days will be deemed to have elected Option 2,
2 whereby the Participating Settlement Class Member receives a \$1,000 cash payment and
3 retains all benefits under their CalPERS LTC Policy.

4 **5.5** For Participating Settlement Class Members who let their CalPERS LTC Policies Lapse as
5 a result of the Challenged Increase (Categories D and E as defined in Section 2.2 above),
6 those Participating Settlement Class Members shall be required to complete and submit a
7 Lapse Claim Form online by no later than sixty (60) days after the Notice Date stating
8 under penalty of perjury that they let their CalPERS LTC Policy lapse as a result of the
9 Challenged Increase. Any prior Lapse Claim Form submitted under the Prior Settlement
10 shall be deemed applicable to this Second Settlement Agreement and shall satisfy the Lapse
11 Notice requirement.

12 **5.6** For Settlement Class Members who are Current Policyholders who were not On Claim as of
13 the Notice Date but are On Claim as of the Final Settlement Date (Category I as defined in
14 Section 2.2 above), CalPERS shall submit a list of such policyholders (“Late Election List”)
15 to the Settlement Administrator by no later than fifteen (15) days after the Final Settlement
16 Date. No later than fifteen (15) days after receiving the Late Election List, the Settlement
17 Administrator shall disseminate to Participating Settlement Class Members on the Late
18 Election List via regular mail a Late Election Form that informs the Participating
19 Settlement Class Member of their right to choose, within thirty (30) days of the date that the
20 Settlement Administrator mails the letters, whether to keep their CalPERS LTC Policy in
21 place and receive a \$1,000 cash payment or to Surrender their CalPERS LTC Policy in
22 exchange for a payment of 80% of premiums paid less benefits received. The Settlement
23 Administrator shall develop methods for Participating Settlement Class Members on the
24 Late Election List to submit their election choice by mail or through a secure online portal.
25 Participating Settlement Class Members who do not complete their Election Form within
26 thirty (30) days of the date that the Settlement Administrator mails the Late Election Letter
27 shall be deemed to have elected to keep their CalPERS LTC Policy in place and receive the
28 payment pursuant to Option 2. The Settlement Administrator shall provide a list identifying

1 all election choices of those Participating Settlement Class Members on the Late Election
2 List to CalPERS no later than fifteen (15) days after the expiration of the deadline for
3 Participating Settlement Class Members to complete their Late Election Forms.

4 **5.7** Any Settlement Class Member in Category A who selected Option 1 and contacts CalPERS
5 or the Administrator in writing within forty-five (45) days after the Final Settlement Date
6 seeking to reverse their election, shall be entitled to do so if they can establish that 1) on the
7 Final Settlement Date they were in need of and receiving the type of care that would qualify
8 for benefits under their CalPERS LTC Policy (but for any elimination period) and 2) within
9 thirty (30) days following the Final Settlement Date they submitted an application for
10 benefits which is subsequently granted by CalPERS.

11 **5.8** To the extent a Settlement Class Member's address, phone number, or email address is
12 deemed inoperable or outdated, the Settlement Administrator shall make good faith efforts
13 to identify alternative addresses, phone numbers, or email addresses. Also, for Settlement
14 Class Members who cannot be contacted, the Settlement Administrator shall make good
15 faith efforts to locate and contact relatives or other authorized individuals to advise them of
16 the Settlement and the right to seek exclusion or to participate in the benefits of the
17 Settlement.

18 **5.9** For Settlement Class Members who are deceased, the Settlement Administrator shall make
19 good faith efforts to identify and contact the Settlement Class Members' heirs and to
20 provide them with the Class Notice.

21 **5.10** To answer questions concerning the Second Settlement and Settlement Class Members'
22 options, the Settlement Administrator shall establish a toll free phone number and/or email
23 address to provide information regarding the Second Settlement and to respond to inquiries
24 from Settlement Class Members. The Settlement Administrator shall also develop and
25 publish a dedicated website at www.calpersltcclassaction.com to ensure that Settlement
26 Class Members' questions about the Settlement are answered in an adequate and timely
27 manner.

28 **5.11** The erroneous mailing of a Class Notice to a person who is not in the Settlement Class shall

1 not render such person a member of the Settlement Class or otherwise entitle such person to
2 participate in the Settlement.

3 **5.12** Fourteen (14) days after the Response Deadline, the Settlement Administrator shall provide
4 Class Counsel and CalPERS with the Final Settlement List. And, nineteen (19) days after
5 the Response Deadline, the Settlement Administrator shall file a report with the Court
6 identifying all of its actions taken with respect to Class Notice and identifying all
7 Settlement Class Members who have timely filed a Request for Exclusion.

8 **6. RESPONSES TO CLASS NOTICE**

9 **6.1** The Class Notice shall direct that each Settlement Class Member wishing to opt-out of the
10 Settlement must submit a written and signed Request for Exclusion from the Settlement to
11 the Settlement Administrator by mail. The Request for Exclusion must be signed and
12 postmarked by the Response Deadline. For Settlement Class Members who submit their
13 Request for Exclusion by mail, the date of the postmark on the return mailing envelope
14 shall be the exclusive means to determine whether a Request for Exclusion has been timely
15 submitted. The Class Notice shall provide instructions to Settlement Class Members on
16 how to submit a Request for Exclusion.

17 **6.2** Class Counsel shall be entitled to communicate with any Settlement Class Member who
18 submits a timely Request for Exclusion or any Settlement Class Member to determine
19 whether the request was knowingly made and to seek to have the Settlement Class Member
20 retract the Request for Exclusion.

21 **6.3** Every Settlement Class Member who does not file a timely written Request for Exclusion in
22 accordance with Section 6.1 above shall be bound by all subsequent proceedings, orders,
23 and judgments in this Action.

24 **6.4** The Class Notice shall state that Settlement Class Members, except those who have
25 submitted a Request for Exclusion, shall have the right to submit written objections to the
26 Settlement and/or to appear at the Final Approval Hearing (the then-current date of which
27 shall be included in the Class Notice) and that if no objection is submitted then it is waived
28 and the Settlement Class Member is deemed to agree with the proposed Second Settlement.

1 Written objections, if any, must be served on the Settlement Administrator no later than the
2 Response Deadline. Settlement Class Members' written comments must include: (1) their
3 full name and current address and, if the Settlement Class Member is separately represented
4 by an attorney, the name of their attorney and attorney's address; (2) reference to the matter
5 of *Wedding v. CalPERS*, Case No. BC517444; (3) if the Settlement Class Member objects
6 to the Second Settlement, the factual and legal reasons for the objection (including all
7 relevant documents that pertain to their objection); (4) a statement that the Settlement Class
8 Member has reviewed the Settlement Class definition and understands that they are a
9 Settlement Class Member, and has not opted out of the Settlement Class; (5) a Notice of
10 Intention to Appear at the Final Approval Hearing if the Settlement Class Member intends
11 to appear in person at the hearing; and (6) the Settlement Class Member's signature.
12 Settlement Class Members who have not filed a timely Request for Exclusion may also
13 appear at the Final Approval Hearing and voice their objection even if they have not
14 submitted a written objection in accordance with the procedures outlined in this paragraph.

15 **6.5** The Parties may file responses to written objections any time prior to the Fairness Hearing
16 at which the written objections will be heard, or as otherwise directed by the Court.

17 **7. CLASS COUNSELS' FEES AND EXPENSES**

18 **7.1** In addition to the Total Settlement Amount, Defendant agrees to pay out of its Long Term
19 Care Fund, pursuant to Court approval, an award of reasonable attorneys' fees and
20 reimbursement for reasonable costs to Class Counsel. The total amount of Class Counsel
21 Fees and Expenses (including, without limitation, amounts deposited with the Settlement
22 Administrator pursuant to Section 5.2, Plaintiffs' Service Award(s) pursuant to Section 7.2,
23 and Current Settlement Administration Expenses) shall not exceed \$80 million.

24 **7.2** Class Counsel may move the Court, and Defendant agrees not to oppose the motion, for a
25 service award payment to each Plaintiff in a total amount for all Plaintiffs not to exceed
26 \$85,000 to compensate Plaintiffs for efforts undertaken by them on behalf of the Settlement
27 Class. The payment of this service award shall be made to each Plaintiff in addition to, and
28

1 shall not diminish or prejudice in any way, any settlement relief they may be eligible to
2 receive.

3 **7.3** Defendant and Plaintiffs shall not be liable or obligated to pay any fees, expenses, costs, or
4 disbursements to any person, either directly or indirectly, in connection with the claims
5 brought by the Releasing Parties in this Action, this Second Settlement Agreement, or the
6 Second Settlement, other than those expressly provided in this Second Settlement
7 Agreement. This Section shall have no effect on claims brought in the Action by parties
8 other than the Releasing Parties that are unrelated to this Second Settlement Agreement or
9 the Second Settlement.

10 **7.4** The Parties agree that the Second Settlement is not conditioned on the Court's approval of
11 Plaintiffs' Service Award or Class Counsels' Fees and Expenses.

12 **7.5** Defendant CalPERS shall not have any responsibility for, or interest in, or liability
13 whatsoever with respect to the allocation among Class Counsel, and/or any other person
14 who may assert some claim thereto, of any fee or expense award that the Court may make
15 in the Action.

16 **8. RELEASES AND WAIVERS OF RIGHTS**

17 **8.1** Upon the issuance of funds and benefits to Participating Class Members pursuant to Section
18 2.5 of the Second Settlement, the Releasing Parties shall be deemed to have, and by
19 operation of the Order and Judgment shall have, fully, finally, and forever released,
20 relinquished and discharged the Released Parties of and from all Released Claims.

21 **8.2** With respect to any and all Claims released under this Agreement, the Parties stipulate and
22 agree that, upon issuance of funds or benefits to Participating Settlement Class Members of
23 the Final Settlement Award pursuant to Section 2.5 of the Second Settlement, Plaintiffs
24 shall be deemed to have, and by operation of the Order and Judgment shall have, expressly
25 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
26 benefits of Section 1542 of the California Civil Code, which provides:

27 **A general release does not extend to claims that the creditor or**
28 **releasing party does not know or suspect to exist in his or her favor at**

1 **the time of executing the release and that, if known by him or her,**
2 **would have materially affected his or her settlement with the debtor or**
3 **released party.**

4 Plaintiffs shall, upon the issuance of funds or benefits to Participating Settlement
5 Class Members pursuant to Section 2.5 of the Second Settlement, be deemed to have, and
6 by operation of the Order and Judgment shall have, waived any and all provisions, rights,
7 and benefits conferred by any law of any state or territory of the United States, or
8 principle of common law, which is similar, comparable, or equivalent to Section 1542 of
9 the California Civil Code. Plaintiffs may hereafter discover facts in addition to or
10 different from those that they now know or believe to be true with respect to the subject
11 matter of the Released Claims, but Plaintiffs, upon the issuance of funds to Participating
12 Settlement Class Members pursuant to Section 2.5 of the Second Settlement, shall be
13 deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and
14 forever settled and released any and all Released Claims, known or unknown, suspected or
15 unsuspected, contingent or non-contingent, whether or not concealed or hidden, which
16 now exist, or heretofore have existed upon any theory of law or equity now existing or
17 coming into existence in the future, including, but not limited to, conduct relating to the
18 Released Claims that is negligent, intentional, with or without malice, or any breach of
19 any duty, law, or rule without regard to subsequent discovery or existence of such
20 different or additional fact.

21 **8.3** Nothing in this Release shall preclude any action to enforce the terms of this Second
22 Settlement Agreement.

23 **9. COVENANT NOT TO SUE**

24 **9.1** Plaintiffs, on behalf of themselves and the other Releasing Parties, covenant and agree that
25 they will not sue (at law, in equity, in any regulatory proceeding, or otherwise) Defendant
26 or any other Released Parties with respect to the Released Claims.

1 **10. NO ADMISSION OF LIABILITY OR WRONGDOING**

2 **10.1** The Parties agree and acknowledge that they are entering into this Second Settlement
3 Agreement solely to avoid the burden, expenses, and risk of continued litigation.
4 Defendant expressly disclaims and denies any wrongdoing or liability whatsoever. Neither
5 this Second Settlement Agreement nor the Second Settlement nor any drafts or
6 communications related thereto, nor any act performed or document executed pursuant to,
7 or in furtherance of, the Second Settlement Agreement or the Second Settlement: (a) is or
8 may be deemed to be or may be used as an admission of, or evidence of, the validity of any
9 Released Claim, or of any wrongdoing or liability of the Released Parties, or any of them;
10 or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any
11 fault or omission of the Released Parties, or any of them, in any civil, criminal, or
12 administrative proceeding in any court, administrative agency, or other tribunal. Nothing in
13 this paragraph shall prevent Defendant and/or any of the Released Parties from using this
14 Second Settlement Agreement and Second Settlement or the Order and Judgment in any
15 action that may be brought against them in order to support a defense or counterclaim based
16 on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment
17 bar or reduction, or any other theory of claim preclusion or issue preclusion or similar
18 defense or counterclaim.

19 **11. FAIR, REASONABLE, AND ADEQUATE SETTLEMENT**

20 **11.1** The Parties believe this Second Settlement Agreement is a fair, reasonable, and adequate
21 settlement of the Action and have arrived at this Second Settlement Agreement after arms-
22 length negotiations (including multiple day-long mediation sessions conducted by the Hon.
23 Layn Phillips (Ret.) on September 4, 2019; October 7, 2019; November 14, 2019; and
24 March 27, 2021) as well as numerous communications with Judge Phillips (Ret.)
25 throughout the period from August 2019 through January 2023, which led not only to the
26 Prior Settlement but to this Second Settlement, taking into account all relevant factors,
27 present and potential.
28

1 **12. AUTHORITY**

2 **12.1** In executing this Second Settlement Agreement, Plaintiffs, on behalf of themselves and the
3 Settlement Class, represent and warrant that, as far as they are aware, Settlement Class
4 Members are the only persons having any interest in any of the claims that are described or
5 referred to herein, or in any of the pleadings, records, and papers in the Action, and, except
6 as provided herein, Plaintiffs are unaware of said claims or any part thereof having been
7 assigned, granted or transferred in any way to any other person, firm, or entity.

8 **12.2** This Second Settlement Agreement is executed voluntarily and without duress or undue
9 influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

10 **12.3** This Second Settlement Agreement shall bind and inure to the benefit of the respective
11 successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

12 **12.4** The Parties hereby acknowledge that they have been represented in negotiations for and in
13 the preparation of this Second Settlement Agreement by independent counsel of their own
14 choosing, that they have read this Second Settlement Agreement and have had it fully
15 explained to them by such counsel, and that they are fully aware of the contents of this
16 Second Settlement Agreement and of its legal effect.

17 **12.5** Each Party warrants and represents that there are no liens or claims of lien or assignments
18 in law or equity or otherwise of or against any of the claims or causes of action released
19 herein and, further, that each Party is fully entitled and duly authorized to give this
20 complete and final release and discharge.

21 **13. CONSTRUCTION AND INTERPRETATION**

22 **13.1** Neither the Parties nor their respective counsel shall be deemed the drafter of this Second
23 Settlement Agreement for purposes of interpreting any provision hereof in any judicial or
24 other proceeding that may arise between or among them.

25 **14. MODIFICATIONS AND AMENDMENTS**

26 **14.1** This Second Settlement Agreement supersedes all prior and contemporaneous negotiations
27 and agreements. No amendment, change or modification of this Second Settlement
28 Agreement or any part thereof shall be valid unless in writing and signed by the Parties.

1 **15. NO REPRESENTATIONS OF FACT**

2 **15.1** In entering into and executing this Second Settlement Agreement, the Parties warrant that
3 they are acting upon their respective independent judgments and upon the advice of their
4 respective counsel, and not in reliance upon any warranty or representation, express or
5 implied, of any nature or kind by any other person or entity, other than the warranties and
6 representations expressly made in this Second Settlement Agreement.

7 **16. GOVERNING LAW**

8 **16.1** This Second Settlement Agreement is entered into in accordance with the laws of the State
9 of California and shall be governed by and interpreted in accordance with the laws of the
10 State of California, without regard to its conflict of law principles.

11 **17. FURTHER ASSURANCES**

12 **17.1** Each of the Parties hereto shall execute and deliver any and all additional papers,
13 documents, and other assurances, and shall do any and all acts or thing reasonably
14 necessary in connection with the performance of its or their obligations hereunder to carry
15 out the express intent of the Parties hereto.

16 **18. TERMINATION**

17 **18.1** CalPERS shall have the option, but not the obligation, to terminate this Second Settlement
18 if more than 1% of the Settlement Class (by policy count) timely and validly requests to be
19 excluded from the Second Settlement. CalPERS shall exercise such option within ten (10)
20 days after CalPERS receives the Final Settlement List from the Settlement Administrator,
21 provided however that if CalPERS in its sole discretion determines that additional time is
22 required for CalPERS to make the decision as to whether to terminate, the Parties shall
23 work cooperatively, including as necessary to continue the Fairness Hearing, to provide
24 such time as CalPERS in its sole discretion determines is required to make the decision.
25 Notwithstanding the above, in no event shall CalPERS have more than sixty (60) days after
26 CalPERS receives the Final Settlement List from the Settlement Administrator to make
27 such decision.
28

1 **19. CONTINUING JURISDICTION**

2 **19.1** The Parties to this Second Settlement Agreement stipulate that the Order and Final
3 Judgment shall provide that the Court shall retain personal and subject matter jurisdiction
4 over the Action and the Parties and Participating Settlement Class Members after the entry
5 of the Order and Final Judgment.

6 **20. PRESS RELEASES**

7 **20.1** If the Parties initiate any public comments to the media or respond to any media inquiries,
8 they shall either (a) work cooperatively to announce the Second Settlement either via joint
9 press release or, if a Party wishes to announce the Second Settlement via a unilateral press
10 release, after obtaining consent from the other Party regarding the language of the press
11 release, which consent shall not be unreasonably withheld, and with any dispute over the
12 content of a disputed unilateral press release being resolved by the Hon. Layn Phillips
13 (Ret.), (b) work cooperatively to coordinate appropriate public comments about the Second
14 Settlement, and/or (c) refer to publicly filed documents in the Action. The Parties shall not
15 otherwise make any other statements to the media or issue any press releases, generally,
16 concerning the Second Settlement.

17 **21. TAX REPORTING AND NO PREVAILING PARTY**

18 **21.1** Any Participating Settlement Class Member or any other persons or entities receiving any
19 payment or consideration pursuant to this Second Settlement Agreement shall alone be
20 responsible for the reporting and payment of any federal, state, and/or local income or other
21 form of tax on any payment or consideration made pursuant to this Second Settlement
22 Agreement, and Defendant shall have no obligations to report or pay any federal, state,
23 and/or local income or other form of tax on any payment or consideration made pursuant to
24 this Second Settlement Agreement.

25 **21.2** All taxes resulting from the tax liabilities of the Settlement Account shall be paid solely out
26 of the Settlement Account.

27 **21.3** No Party shall be deemed the prevailing party for any purposes of this Action.
28

1 **22. COUNTERPARTS**

2 **22.1** This Second Settlement Agreement may be executed in counterparts, each of which shall
3 constitute an original, but all of which together shall constitute one and the same
4 instrument. The several signature pages may be collected and annexed to one or more
5 documents to form a complete counterpart. Photocopies of executed copies of this Second
6 Settlement Agreement may be treated as originals.

7 **23. NOTICES**

8 Unless otherwise specifically provided herein, all notices, demands, or other
9 communications given hereunder shall be in writing and shall be deemed to have been duly
10 given as of the date of electronic mailing. Postal mailing will be provided as well,
11 addressed as follows:

12 **To Class Counsel:**

13 Michael J. Bidart
14 mbidart@shemoff.com
15 SHERNOFF BIDART ECHEVERRIA LLP
600 South Indian Hill Boulevard
Claremont, California 91711

16 Gregory L. Bentley
17 gbentley@bentleymore.com
18 BENTLEY & MORE, LLP
4931 Birch Street
Newport Beach, California 92660

19 Gretchen M. Nelson
20 gnelson@nflawfirm.com
21 NELSON & FRAENKEL LLP
22 601 So. Figueroa Street, Suite 2050
Los Angeles, CA 90017

23 Stuart C. Talley
24 stuart@ktblegal.com
25 KERSHAW, TALLEY & BARLOW PC
26 401 Watt Avenue
27 Sacramento, CA 95864
28

1 **To CalPERS Counsel:**

2 Ragesh Tangri
3 rtangri@mofo.com
4 Allyson R. Bennett
5 abennett@mofo.com
6 MORRISON FOERSTER
7 425 Market Street
8 San Francisco, CA 94105

9 Matthew G. Jacobs, CalPERS
10 Matthew.Jacobs@calpers.ca.gov
11 Lincoln Plaza North
12 400 Q Street, Suite 3340
13 Sacramento, CA 95811

14 General Counsel, CalPERS
15 Lego_Court_Filing@calpers.ca.gov
16 Lincoln Plaza North
17 400 Q Street, Suite 3340
18 Sacramento, CA 95811

19 **24. OTHER PROVISIONS**

20 **24.1** The Parties: (a) acknowledge that it is their intent to consummate this Second Settlement
21 Agreement, (b) agree to cooperate in good faith to the extent reasonably necessary to effect
22 and implement all terms and conditions of the Second Settlement Agreement and to
23 exercise their best efforts to fulfill the foregoing terms and conditions of the Second
24 Settlement Agreement, and (c) agree to cooperate in good faith to obtain preliminary and
25 final approval of the Second Settlement and to finalize the Second Settlement.

26 **24.2** Plaintiffs: (a) agree to serve as representatives of the Settlement Class; (b) remain willing,
27 able, and ready to perform all of the duties and obligations of a representative of the
28 Settlement Class; (c) are familiar with the allegations in the Action, or have had such
allegations described or conveyed to them; (d) have consulted with Class Counsel about the
Action (including discovery conducted in the Action), this Second Settlement Agreement,
and the obligations of a representative of the Settlement Class; and (e) shall remain and
serve as representatives of the Settlement Class until the terms of this Second Settlement
Agreement are effectuated and fully implemented, this Second Settlement Agreement is

1 terminated in accordance with its terms, or the Court at any time determines that the
2 Plaintiffs cannot represent the Settlement Class.

3 **24.3** No person or entity shall have any claim against Plaintiffs, Class Counsel, the Settlement
4 Administrator, Defendant's counsel, or any of the Released Parties based on actions taken
5 substantially in accordance with the Second Settlement Agreement and the Second
6 Settlement contained therein or further orders of the Court.

7 **24.4** Plaintiffs and Class Counsel agree that if this Second Settlement Agreement or the Second
8 Settlement fails to be approved, fails to become effective, or otherwise fails to be
9 consummated, or if there is no Final Settlement Date, then: (a) the Parties will be returned
10 to the *status quo ante*, as if this Second Settlement Agreement had never been negotiated or
11 executed, except that, as provided in Section 5.2, Defendant shall be responsible for no
12 more than \$1,000,000 in Settlement Administration Expenses and Class Counsel shall be
13 responsible for the remaining Current Settlement Administration Expenses; and (b)
14 Defendant shall retain, and expressly reserves, any and all of the rights it had prior to the
15 execution of this Second Settlement Agreement to object to the maintenance of the Action
16 as a class action by Class Counsel and Plaintiffs. Plaintiffs and Class Counsel agree that
17 nothing in this Second Settlement Agreement or other papers or proceedings related to the
18 Second Settlement shall be used as evidence or argument concerning whether the Action
19 may properly be maintained as a class action, whether the purported class is ascertainable,
20 or whether Class Counsel or Plaintiffs can adequately represent class members under
21 applicable law. If the Agreement is deemed void or the Final Settlement Date does not
22 occur, Plaintiffs and Class Counsel agree not to argue or present any argument, and hereby
23 waive any argument, that Defendant could not contest (or is estopped from contesting)
24 maintenance of this Action as a class action based on any grounds Defendant had prior to
25 the execution of this Second Settlement Agreement; and this Second Settlement Agreement
26 shall not be deemed an admission by, or ground for estoppel against, Defendant that class
27 certification or any claims brought in the Action are proper or that such class certification
28 or claims cannot be contested on any grounds that Defendant had prior to the execution of

1 this Second Settlement Agreement. In the event the Second Settlement Agreement is
2 declared void or the Final Settlement Date does not occur, Plaintiffs and Class Counsel
3 retain and reserve any and all rights and arguments they had prior to execution of this
4 Agreement to oppose Defendant's positions and arguments. Each of the Parties will be
5 restored to the place they were in as of the date this Second Settlement Agreement was
6 signed with the right to assert in the Action any argument or defense that was available to
7 them at that time.

8 **24.5** The Parties agree, to the extent permitted by law, that all agreements made and orders
9 entered during the course of the Action relating to confidentiality of information shall
10 survive this Second Settlement Agreement.

11 **24.6** Other than necessary disclosures made to the Court or the Settlement Administrator, this
12 Second Settlement Agreement and all related information and communication shall be held
13 strictly confidential by Plaintiffs, Class Counsel and their agents until such time as the
14 Parties file this Second Settlement Agreement with the Court.

15 **24.7** The Parties and their counsel further agree that their discussions and the information
16 exchanged in the course of negotiating this Second Settlement Agreement are confidential
17 under the terms of the mediation agreement signed by the Parties in connection with the
18 mediation sessions with the Hon. Layn Phillips (Ret.) and any follow-up negotiations
19 between the Parties' counsel. Such exchanged information was made available on the
20 condition that neither the Parties nor their counsel may disclose it to third parties (other
21 than experts or consultants retained by the Parties in connection with the Action and subject
22 to confidentiality restrictions), that it not be the subject of public comment, and that it not
23 be publicly disclosed or used by the Parties or their counsel in any way in the Action should
24 it not settle, or in any other proceeding; provided however, that nothing contained herein
25 shall prohibit the Parties from seeking such information through formal discovery if not
26 previously requested through formal discovery or from referring to the existence of such
27 information in connection with the Settlement of the Action.

28 **24.8** The Parties reserve the right to agree between themselves on any reasonable extensions of

1 time that might be necessary to carry out any of the provisions of this Second Settlement
2 Agreement.

3
4 IN WITNESS THEREOF, each of the signatories has read and understood this Second Settlement
5 Agreement, has executed it, and represents that they are authorized to execute this Second Settlement
6 Agreement on behalf of the Party or Parties they represent, who or which has agreed to be bound by its
7 terms and has entered into this Second Settlement Agreement.

8 **CalPERS**

Plaintiffs

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11 _____
12 Matthew G. Jacobs
13 General Counsel

Holly Wedding
Plaintiff and Class Representative

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Date

Date

Richard M. Lodyga
Plaintiff and Class Representative

Date

Eileen Lodyga
Plaintiff and Class Representative

Date

1 time that might be necessary to carry out any of the provisions of this Second Settlement
2 Agreement.

3
4 IN WITNESS THEREOF, each of the signatories has read and understood this Second Settlement
5 Agreement, has executed it, and represents that they are authorized to execute this Second Settlement
6 Agreement on behalf of the Party or Parties they represent, who or which has agreed to be bound by its
7 terms and has entered into this Second Settlement Agreement.

8 **CalPERS**

Plaintiffs

9
10 DocuSigned by:

Matt Jacobs

11 Matthew G. Jacobs
12 General Counsel
2/27/2023

13 Date

14 Holly Wedding
15 Plaintiff and Class Representative

16 Date

17 Richard M. Lodyga
18 Plaintiff and Class Representative

19 Date

20 Eileen Lodyga
21 Plaintiff and Class Representative

22 Date

1 time that might be necessary to carry out any of the provisions of this Second Settlement
2 Agreement.

3
4 IN WITNESS THEREOF, each of the signatories has read and understood this Second Settlement
5 Agreement, has executed it, and represents that they are authorized to execute this Second Settlement
6 Agreement on behalf of the Party or Parties they represent, who or which has agreed to be bound by its
7 terms and has entered into this Second Settlement Agreement.

8 **CalPERS**

8 **Plaintiffs**

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11 _____
11 Matthew G. Jacobs
12 General Counsel

10 *Holly Marie Wedding*
11 _____
11 Holly Wedding Holly Marie Wedding (Feb 27, 2023 13:11 PST)
12 Plaintiff and Class Representative

13 _____
13 Date

13 _____
13 Date

14
15 *Richard M. Lodyga*
16 _____
16 Richard M. Lodyga
17 Plaintiff and Class Representative

17 *2/27/2023*
17 _____
17 Date

18
19 *Eileen Lodyga*
20 _____
20 Eileen Lodyga
21 Plaintiff and Class Representative

21 *2/27/2023*
22 _____
22 Date

1 **Approved as to form.**

2 Dated: February 27, 2023

MORRISON & FOERSTER

3
4 By: 
5 RAGESH TANGRI

6 Attorney for Defendant
7 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
8 SYSTEM

9 Dated: February 27, 2023

SHERNOFF BIDART ECHEVERRIA LLP

10
11 By: _____
12 MICHAEL J. BIDART
13 REID EHRLICH
14 Attorneys for Plaintiffs and the Class

15 Dated: February 27, 2023

BENTLEY & MORE, LLP

16
17 By: _____
18 GREGORY L. BENTLEY
19 MATTHEW W. CLARK
20 Attorneys for Plaintiffs and the Class

21 Dated: February 27, 2023

NELSON & FRAENKEL LLP

22
23 By: _____
24 GRETCHEN M. NELSON
25 STUART R. FRAENKEL
26 Attorneys for Plaintiffs and the Class
27
28

1 **Approved as to form.**

2 Dated: February 27, 2023

MORRISON & FOERSTER


3
4

5 By: _____
6 RAGESH TANGRI
7 Attorney for Defendant
8 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
9 SYSTEM

10 Dated: February 27, 2023

SHERNOFF BIDART ECHEVERRIA LLP

11
12

13 By:  _____
14 MICHAEL J. BIDART
15 REID EHRLICH
16 Attorneys for Plaintiffs and the Class

17 Dated: February 27, 2023

BENTLEY & MORE, LLP

18
19

20 By: _____
21 GREGORY L. BENTLEY
22 MATTHEW W. CLARK
23 Attorneys for Plaintiffs and the Class

24 Dated: February 27, 2023

NELSON & FRAENKEL LLP

25
26

27 By: _____
28 GRETCHEN M. NELSON
STUART R. FRAENKEL
Attorneys for Plaintiffs and the Class

1 **Approved as to form.**

2 Dated: February 27, 2023

MORRISON & FOERSTER

3
4
5 By: _____
RAGESH TANGRI

6 Attorney for Defendant
7 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
8 SYSTEM


9 Dated: February 27, 2023

SHERNOFF BIDART ECHEVERRIA LLP

10
11 By: _____
12 MICHAEL J. BIDART
13 REID EHRLICH
14 Attorneys for Plaintiffs and the Class

15 Dated: February 27, 2023

BENTLEY & MORE, LLP

16
17 By:  _____
18 GREGORY L. BENTLEY
19 MATTHEW W. CLARK

20 Attorneys for Plaintiffs and the Class

21 Dated: February 27, 2023

NELSON & FRAENKEL LLP

22
23 By:  _____
24 GRETCHEN M. NELSON
25 STUART R. FRAENKEL

26 Attorneys for Plaintiffs and the Class

1 Dated: February 27, 2023

KERSHAW TALLEY BARLOW PC

2
3 By: 
4 STUART C. TALLEY

5 Attorneys for Plaintiffs and the Class

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EXHIBIT A

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

1 The Motion for Preliminary Approval of Second Class Action Settlement (“Second
2 Settlement”) came before this Court, the Honorable William F. Highberger, presiding, on March
3 10, 2023. The Court having considered the papers submitted in support of the Motion, HEREBY
4 ORDERS THE FOLLOWING:

5 1. The Court grants preliminary approval of the Second Settlement based upon the
6 terms set forth in the Second Class Action Settlement Agreement and Release (“Second
7 Settlement Agreement”) filed herewith on February 27, 2023. Capitalized terms not otherwise
8 defined in this Order shall have the definitions set forth in the Second Settlement Agreement.¹

9 2. The Court finds, for purposes of settlement only, that the requirements for
10 provisional certification of the Settlement Class under the California Code of Civil Procedure and
11 all other applicable laws and rules are met by the Settlement Class as follows: (a) joinder of all
12 Settlement Class Members in a single proceeding would be impracticable, if not impossible,
13 because of their numbers and dispersion; (b) there are questions of law and fact common to the
14 Settlement Class; (c) claims asserted by the Plaintiffs are typical of the claims of the Settlement
15 Class that they seek to represent for purposes of settlement; (d) Plaintiffs have fairly and
16 adequately represented the interests of the Settlement Class and will continue to do so;
17 (e) Plaintiffs and the Settlement Class are represented by qualified, reputable counsel who are
18 experienced in prosecuting class actions, including those involving the practices alleged in the
19 this action; and (f) final relief is appropriate to the Settlement Class as a whole.

20 3. The following Settlement Class is conditionally certified for purposes of
21 settlement only: Any individual who was a California citizen in February 2013, and who
22 purchased LTC1 and/or LTC2 policies from California Public Employees’ Retirement System
23 (“CalPERS”) that included the automatic inflation protection benefit and were subjected to the
24 Challenged Increase. Policyholders who converted their policies to LTC3 policies prior to the
25 implementation of the Challenged Increase are not included in the Settlement Class, even if the
26

27 ¹ In documents distributed to the Settlement Class, the Second Settlement is referred to as the
“New Settlement” or “Second Settlement.”

1 conversion occurred after the Challenged Increase was approved in October 2012. The
2 Settlement Class does not include those individuals who opted out of the Class certified by the
3 Court on January 28, 2016.

4 4. The Second Settlement appears to be fair, adequate and reasonable to the
5 Settlement Class. The Second Settlement falls within the range of reasonableness and appears to
6 be presumptively valid, subject only to any objections that may be raised at the Fairness Hearing.

7 5. Plaintiffs Holly Wedding, Richard Lodyga and Eileen Lodyga are conditionally
8 approved as the class representatives for the Settlement Class.

9 6. The proposed Plaintiffs' Service Award of \$85,000 in total for all Plaintiffs for
10 their service as Class Representatives is conditionally approved.

11 7. Michael Bidart and Reid Ehrlich of Shernoff, Bidart & Echeverria LLP; Stuart
12 Talley of Kershaw Talley Barlow PC; Gretchen M. Nelson of Nelson & Fraenkel LLP; and
13 Gregory Bentley of Bentley & More LLP, are conditionally approved as Class Counsel for the
14 Settlement Class.

15 8. The proposed award of up to \$80 million of the Total Settlement Amount in Class
16 Counsels' Fees and Expenses is conditionally approved, (out of which all administration expenses
17 in connection with the Second Settlement and all expenses in connection with the administration
18 of the Prior Settlement (except \$900,000 paid by CalPERS), Service Awards to Plaintiffs and up
19 to \$2,500,000 in costs to Class Counsel shall be paid).

20 9. A final approval hearing on the question of whether the Second Settlement should
21 be finally approved as fair, reasonable and adequate as to Settlement Class Members, and whether
22 the Court shall award attorneys' fees and expenses to Class Counsel, and the Plaintiffs' Service
23 Awards is scheduled in Department 10 on the date and time set forth in Paragraph 17(q) below.

24 10. The Court confirms Epiq as the Settlement Administrator.

25 11. The Court approves, as to form and content, the Class Notice in substantially the
26 forms attached hereto as:

- 27 • Exhibit 1 (the Long Form Notice);
- Exhibit 2 (Cover Letter to all Settlement Class Members);

- Exhibit 3 (the Category A Letter and Individual Award Form);
- Exhibit 4 (the Category B and C Letter and Individual Award Form);
- Exhibit 5 (the Category D Letter and Lapse Claim Form);
- Exhibit 6 (the Category E Letter and Lapse Claim Form);
- Exhibit 7 (the Category F Letter and Estate Award Form)
- Exhibit 8 (the Category G Letter and Estate Award Form);
- Exhibit 9 (the Category H Letter)
- Exhibit 10 (Late Election Letter and Form).

The Court approves the procedure for Settlement Class Members to participate in, to opt out of, and to object to, the Second Settlement as set forth in the Class Notice.

12. The Court directs the mailing of the Class Notice by first class mail and by electronic mail to Settlement Class Members in accordance with the implementation schedule set forth in Paragraph 15 below. The Court finds the dates selected for the mailing and distribution of the Class Notice, as set forth in the implementation schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

13. The Court directs the Settlement Administrator to circulate to the Parties any Requests for Exclusion and any Objections to the Second Settlement that are received by the Settlement Administrator within five (5) business days of receipt of the Request for Exclusion or Objection. In addition, the Court directs the Settlement Administrator to provide the Parties with the Final Settlement List of all Settlement Class Members who have timely submitted a Request for Exclusion no later than 14 days after the Response Deadline.

14. To facilitate administration of the Second Settlement pending final approval, the Court hereby enjoins Plaintiffs and all Settlement Class Members from filing or prosecuting any claims, suits or administrative proceedings regarding claims released by the Second Settlement unless and until such Settlement Class Members have filed valid Requests for Exclusion with the Settlement Administrator and the Response Deadline has elapsed. This provision shall not apply to claims not alleged in the Action.

15. The Court orders the following **Implementation Schedule** for further proceedings:

a.	Deadline for Defendant to submit the Notice List to Class Counsel and Settlement Administrator (Second Settlement Agreement, Section 5.1)	March 8, 2023
b.	Notice Date: Deadline for Settlement Administrator to Mail and Email the Class Notice to Settlement Class Members (Second Settlement Agreement, Section 5.3)	April 7, 2023 [30 days after receipt of data from Defendant]
c.	Response Deadline: Deadline for Settlement Class Members to (i) Submit Requests for Exclusion; (ii) Complete their Election Form if they are in Categories A, B or C and the Lapse Form if they are in Category D or E; and (iii) Submit any Written Objections to Settlement. (Second Settlement Agreement, Section 1.43 and 6.1)	June 6, 2023 [60 days after the Notice Date]
d.	Deadline for the Settlement Administrator to Submit to the Parties and File with the Court a Final Settlement List Identifying all Individuals Who have Submitted a Request for Exclusion (Second Settlement Agreement, Section 5.12)	June 20, 2023 [14 days after the Response Deadline]

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e.	Deadline for CalPERS to Advise Class Counsel of Confirmation or Termination of Settlement (Second Settlement Agreement, Section 18.1)	June 30, 2023 [10 days after receipt of Final Settlement List from Settlement Administrator (but in no event more than 60 days after the Response Deadline)]
f.	Deadline for Class Counsel to file Motion for Final Approval of Settlement (Including Responses to Any Objections) (Second Settlement Agreement, Section 3.3)	_____ [16 court days prior to Fairness Hearing]
g.	Deadline for Class Counsel to file Motion for Attorneys’ Fees, Costs and Plaintiffs’ Service Award (Second Settlement Agreement, Section 3.3)	_____ [16 court days prior to Fairness Hearing]
h.	Deadline for Settlement Administrator to file a report with the Court identifying all actions taken with respect to Class Notice, identifying all Settlement Class Members who have timely file a Request for Exclusion, and submitting all objections to the Second Settlement (Second Settlement Agreement, Section 5.12)	_____ [16 court days prior to Fairness Hearing]
i.	Fairness Hearing: Final Approval Hearing and Hearing on Motion for Class Counsels’ Fees and Expenses and Plaintiffs’ Service Awards (Second Settlement Agreement, Section 1.16)	July __, 2023

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j.	Final Settlement Date (Second Settlement Agreement, Section 1.20)	[Date By Which All Appeals are Final or 60 days after service of Notice of Entry of Order and Judgment if no appeal is filed]
k.	Deadline for Settlement Administrator to send a letter to all Participating Settlement Class Members who have elected a premium refund re: Final Settlement Date and that they should no longer make premium payments to CalPERS (Second Settlement Agreement, Section 2.6)	[5 days after the Final Settlement Date]
l.	Deadline for CalPERS to Submit to the Settlement Administrator a Late Election List of Settlement Class Members who are Current Policyholders who were not on Claim as of the Notice Date but are on Claim as of the Final Settlement Date (Second Settlement Agreement, Section 5.6)	15 days after Final Settlement Date]
m.	Deadline for Settlement Administrator to mail to Participating Settlement Class Members on the Late Election List a Late Election Form (Second Settlement Agreement, Section 5.6)	[30 days after Final Settlement Date]

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n.	Deadline for Participating Settlement Class Members to submit the Late Election Form (Second Settlement Agreement, Section 5.6)	30 days after Settlement Administrator mails the Late Election Form]
o.	Deadline for Settlement Administrator to provide list to CalPERS identifying all election choices of Participating Settlement Class Members on the Late Election List (Second Settlement Agreement, Section 5.6)	[15 days after the expiration of the deadline for Participating Settlement Class Members to complete their Late Election Forms]
p.	Deadline for CalPERS to advise Settlement Administrator and Class Counsel of the Final Settlement Categories and Award Amounts (Second Settlement Agreement, Section 2.3)	[45 days after Final Settlement Date]
q.	Deadline for CalPERS to fund the Second Settlement for all policyholders who are not in Category I or eligible to reverse their elections under Section 5.6 (Second Settlement Agreement, Section 2.1)	[75 days after Final Settlement Date]
r.	Deadline for CalPERS to fund the Second Settlement for policyholders in Category I and eligible to reverse their elections under Section 5.7 (Second Settlement Agreement, Section 2.1)	[30 days after the Settlement Administrator provides CalPERS with list of identifying all election choices of Participating Settlement Class Members on the Late Election List

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s.	Deadline for Settlement Administrator to Mail Checks to Participating Settlement Class Members (Second Settlement Agreement, Section 2.5)	[30 days after receipt of Settlement Fund from CalPERS or 105 days after the Final Settlement Date]
t.	Deadline for Settlement Administrator to Mail Checks to Participating Settlement Class Members in Category I and eligible to reverse their elections uner Section 5.7 (Second Settlement Agreement, Sections 2.1 and 2.5)	[30 days after CalPERS funds the Second Settlement for policyholders in Category I and eligible to reverse their elections under Section 5.7
u.	Deadline for Participating Settlement Class Members to submit any dispute as to Final Settlement Category or Final Settlement Award (Second Settlement Agreement, Section	[30 days after Settlement Administrator Mails Settlement checks]
v.	Deadline for Settlement Administrator to Resolve any Disputes Submitted by Participating Settlement Class Members (Second Settlement Agreement, Section 2.4)	[30 days after the deadline for all disputes to be submitted]
w.	Deadline for CalPERS to fund any additional monies owed to Participating Settlement Class Members resulting from the Settlement Administrator’s resolution of any disputes. (Second Settlement Agreement, Section 2.4)	[14 days after Settlement Administrator resolves any disputes in the Participating Class Members favor]

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x.	Deadline for Settlement Administrator to mail check to the Participating Settlement Class Members whose dispute was resolved in the Participating Settlement Class Members favor (Second Settlement Agreement, Section 2.4)	[15 days after CalPERS funds the monies owed as a result of the resolution of the dispute]
y.	Deadline for Class Counsel to Submit Final Report on Settlement that identifies all funds paid out, identifies all checks that remain uncashed, and identifies any residual funds remaining in the Settlement Fund (Second Settlement Agreement, Section 2.8)	[365 days after Final Settlement Date]

IT IS SO ORDERED

Dated: _____, 2023

HON. WILLIAM F. HIGHBERGER
Judge of the Superior Court

EXHIBIT A-1

1
2 **NOTICE OF PROPOSED SECOND CLASS ACTION SETTLEMENT**

3
4 **SUPERIOR COURT OF CALIFORNIA**
5 **FOR THE COUNTY OF LOS ANGELES**

6 ***HOLLY WEDDING, ET AL. V. CALIFORNIA PUBLIC EMPLOYEES***
7 ***RETIREMENT SYSTEM, ET AL., CASE NO. BC517444***

8 *A court authorized this notice. This is not a solicitation from a lawyer.*

9
10 **IF YOU WERE A CALIFORNIA CITIZEN ON FEBRUARY 1, 2013 AND**
11 **YOU PURCHASED A LONG-TERM CARE INSURANCE POLICY FROM**
12 **CALPERS THAT INCLUDED AUTOMATIC INFLATION PROTECTION**
13 **BENEFITS AND YOU WERE SUBJECTED TO THE 85% PREMIUM**
14 **INCREASE ANNOUNCED BY CALPERS IN 2013 AND IMPLEMENTED**
15 **IN 2015 AND 2016, YOU ARE ENTITLED TO PARTICIPATE IN A**
16 **PROPOSED SECOND CLASS ACTION SETTLEMENT.**

17 **TO UNDERSTAND YOUR RIGHTS, PLEASE READ THIS**
18 **NOTICE CAREFULLY.**

- 19
- 20 • In July 2021, the parties in this case entered into a prior settlement agreement (the
21 “Prior Settlement”) and you received a notice that was sent to all Settlement Class
22 Members. Unfortunately, because too many Class Members elected to opt out
23 and keep their CalPERS policies, the Prior Settlement was terminated on April
24 20, 2022.
 - 25 • However, a **new** proposed class action settlement (the “New Settlement” or
26 “Second Settlement”) has been reached between plaintiffs and class
27 representatives Holly Wedding, Richard Lodyga and Eileen Lodyga
28 (“Plaintiffs”), on behalf of themselves and the proposed Settlement Class, which
is defined in response to Question 4, and Defendant California Public Employees
Retirement System (“CalPERS”). This is a **new settlement** with **different terms**
and conditions. Please read this Notice **carefully**.
 - Because this is a new class action settlement with different options and remedies,
you are required to **respond to this settlement Notice**. Selections from the Prior
Settlement will **not** be carried over to the New Settlement. You must respond to
this Notice **even if** you responded to notice of the Prior Settlement.

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- The New Settlement resolves a class action lawsuit for a subgroup of Class Members based on the claim that CalPERS breached the insurance contract between Plaintiffs and other individuals who purchased a Long-Term Care Policy (either LTC1 or LTC2) with automatic inflation protection benefits by raising premiums 85% for these Class Members. This increase was announced by CalPERS in 2013 and implemented in 2015 and 2016. CalPERS denies all liability to Settlement Class Members, asserts that it did not breach the terms of the contract of insurance, and has entered into the New Settlement solely for purposes of resolving this dispute.
- Please read this Notice carefully. However, if you still have questions after reading the Notice, you may contact the Settlement Administrator at _____, visit the Settlement Website at www.CalPERSLTCClassAction.com or email the Settlement Administrator at _____
- The New Settlement provides different benefits to Settlement Class Members depending on whether they are current policyholders who are not on claim, current policyholders who are on claim, or prior policyholders who allowed their CalPERS Long-Term Care (“LTC”) Policies to lapse, exhausted their benefits, or died. The benefits provided by the New Settlement for each category are outlined below and will be provided to Settlement Class Members based on their Final Settlement Category on the Final Settlement Date, which date is explained in response to Question 7 below:

FINAL SETTLEMENT CATEGORY	POTENTIAL AWARDS TO PARTICIPATING SETTLEMENT CLASS MEMBERS
CATEGORY A. Participating Settlement Class Members who are Current Policyholders and who are not on claim on the Final Settlement Date	Participating Settlement Class Members who, on the Final Settlement Date, are Current Policyholders and who are not On Claim shall have the following options: Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any

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	<p>benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not make an election shall be deemed to have selected Option 2.</p>
<p>CATEGORY B. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date and who paid the Challenged Increase.</p>	<p>Participating Settlement Class Members who paid any part of the Challenged Increase and are On Claim both on the Notice Date and on the Final Settlement Date, shall have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender</p>

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	<p>their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not make an election shall be deemed to have selected Option 2.</p>
<p>CATEGORY C. Participating Settlement Class Members who are On Claim both on the Notice Date and the Final Settlement Date and who reduced benefits as a result of the Challenged Increase.</p>	<p>Participating Settlement Class Members who are On Claim on both the Notice Date and the Final Settlement Date, but reduced their benefits as a result of the Challenged Increase before going On Claim, shall receive have the following options:</p> <p>Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a \$1,000 cash payment and shall</p>

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	<p>retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Member who does not make an election shall be deemed to have selected Option 2.</p>
<p>CATEGORY D. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013 and December 31, 2014.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013, and December 31, 2014, and who submit a Lapse Claim Form stating under penalty of perjury that they let their policy lapse as a result of the Challenged Increase, shall receive a refund equivalent to 40% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of their CalPERS LTC Policy through the date their CalPERS LTC Policy Lapsed, less any amounts paid in benefits under their CalPERS LTC Policy.</p>
<p>CATEGORY E. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015 and the Final Settlement Date.</p>	<p>Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015, and the Final Settlement Date, and who submit a Lapse Claim Form stating under penalty of perjury that they let their CalPERS LTC Policy lapse as a result of the Challenged Increase, will receive 80% of all Additional Premiums paid, or \$2,000, whichever is greater.</p>
<p>CATEGORY F. Participating Settlement Class Members who passed away after February 1, 2013 and before the Final Settlement Date, and who reduced benefits as a result of the Challenged Increase.</p>	<p>The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, and (3) reduced their benefits as a result of the Challenged Increase, shall receive 80% of all</p>

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	Additional Premiums paid or, \$2,000, whichever is greater.
CATEGORY G. Participating Settlement Class Members who passed away after February 1, 2013 and before the Final Settlement Date, and who paid the Challenged Increase and never reduced benefits in response to the Challenge Increase.	The estates of Participating Settlement Class Members who (1) died after February 1, 2013, and before the Final Settlement Date, (2) were Current Policyholders or were On Claim at the time of their death, (3) paid the Challenged Increase, and (4) never reduced their benefits as a result of the Challenged Increase, shall receive 80% of all Additional Premiums paid.
CATEGORY H. Participating Settlement Class Members who paid the Challenged Increase, went On Claim, and exhausted their benefits before the Final Settlement Date	Participating Settlement Class Members who paid the Challenged Increase, who went On Claim at any time before the Final Settlement Date, and exhausted their benefits before the Final Settlement Date, shall receive a refund of 80% of all Additional Premiums paid.
CATEGORY I. Participating Settlement Class Members who are Current Policyholders who were not On Claim as of the Notice Date but are On Claim as of the Final Settlement Date.	Participating Settlement Class Members who are Current Policyholders, who were not On Claim as of the Notice Date, but are on Claim as of the Final Settlement Date, shall receive a Late Election Form giving them the following options: Option 1: Receive a refund equivalent to 80% of all premiums paid to CalPERS for their CalPERS LTC Policy from the inception of the policy through the Final Settlement Date, less any benefits paid under the CalPERS LTC Policy. Any Participating Settlement Class Member who elects Option 1 shall receive a minimum payment of no less than \$8,000. All Participating

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	<p>Settlement Class Members who select Option 1 shall Surrender their CalPERS LTC Policy upon payment of this refund.</p> <p>Option 2: Participating Settlement Class Members who elect Option 2 shall receive a cash payment of \$1,000 and shall retain their Policies and all benefits due thereunder.</p> <p>Any Participating Settlement Class Members who do not submit a Late Election Form shall be deemed to have selected Option 2.</p>
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The enclosed Individual Award Letter identifies the Initial Settlement Category that you fall into and the amount of the benefits that you will be entitled to receive from the New Settlement if you are still in that Settlement Category when the New Settlement becomes Final and you use no additional benefits under your Policy.

IF YOU ARE IN “SETTLEMENT CATEGORY A” YOU MUST CONTINUE TO MAKE YOUR PREMIUM PAYMENTS TO CALPERS UNTIL THE NEW SETTLEMENT BECOMES FINAL TO OBTAIN THE PREMIUM REFUND AVAILABLE UNDER THE NEW SETTLEMENT.

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE NEW SETTLEMENT

<p>IF YOU ARE IN “CATEGORY A, B or C,” <u>PLEASE GO ONLINE AND COMPLETE THE ELECTION FORM</u></p>	<p>Subject to the Court’s final approval of the terms of the New Settlement, you will be entitled to receive a refund of 80% of all premiums paid to CalPERS for your LTC Policy from its inception through the Final Settlement Date (less any benefits paid).</p> <p>In exchange for this refund, you will give up your claims in this</p>
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<p>STATING WHETHER YOU WANT EITHER OPTION 1 - A REFUND OF 80% OF ALL PREMIUMS PAID TO CALPERS IN EXCHANGE FOR GIVING UP YOUR POLICY OR OPTION 2 - RETAIN YOUR POLICY AND RECEIVE \$1,000 CASH PAYMENT</p>	<p>case within the scope of the release set forth below, and you will give up your CalPERS LTC Policy. By giving up your CalPERS LTC Policy, you will not be entitled to any of the benefits of your CalPERS LTC insurance going forward.</p> <p>OR, you can retain your CalPERS LTC Insurance Policy and receive \$1,000. Additionally, if you elect this option, your current premium rate cannot be increased prior to November 1, 2024. If you are a “Category A, B or C” Class Member and do not respond to this Notice then you will be deemed to have selected Option 2 to retain your CalPERS LTC Insurance Policy and receive the \$1,000 cash payment and the benefit of the temporary premium freeze.</p> <p>Importantly, to receive either of the two options under Category A you MUST be a current policyholder—and continue paying premiums—until the New Settlement becomes final and effective. Your right to receive the benefits is dependent on the status of your LTC Policy on the Final Settlement Date, which is the date that the settlement becomes final and effective. This is described further in response to Question 7 below.</p>
<p>IF YOU ARE IN “CATEGORY D” OR “CATEGORY E,” YOU MUST <u>SUBMIT A LAPSE CLAIM FORM ONLINE</u></p>	<p>In order to receive your settlement award, you must go online and electronically sign and submit a Lapse Claim Form by [60 days from mailing]. If you do not complete a Lapse Claim Form electronically, you will not receive any benefits from the New Settlement.</p>
<p>FOR SETTLEMENT CLASS</p>	<p>If you submit a Request for Exclusion, which must be postmarked by [+60 from mailing], you will <u>NOT</u> receive any settlement payment and will not release any claims you may</p>

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MEMBERS IN ALL CATEGORIES, YOU CAN EXCLUDE YOURSELF FROM THE NEW SETTLEMENT	have against CalPERS. You will then need to retain your own attorney if you wish to pursue those claims.
FOR SETTLEMENT CLASS MEMBERS IN ALL CATEGORIES, YOU CAN OBJECT	If you wish to object to the New Settlement, you must submit a written objection, and supporting papers, to the Settlement Administrator that is postmarked no later than [+60 from mailing] . You may not request exclusion and also object to the New Settlement.

- **Your rights and options as a Settlement Class Member—and how to exercise them—are explained in more detail in this Notice.**
- **The Court still has to decide whether to grant final approval of the New Settlement. Settlement payments will only be issued if the Court grants final approval of the New Settlement and the New Settlement becomes final and effective.**
- **SETTLEMENT CLASS MEMBERS WHO FALL INTO “SETTLEMENT CATEGORY A” MUST BE CURRENT POLICYHOLDERS—AND CONTINUE TO PAY THEIR PREMIUMS—UNTIL THE DATE ON WHICH THE NEW SETTLEMENT IS FINAL AND EFFECTIVE TO BE ELIGIBLE TO RECEIVE A REFUND OR TO RECEIVE THE \$1,000 CASH PAYMENT AND THE BENEFIT OF THE TEMPORARY PREMIUM FREEZE.**
- **Additional information regarding the New Settlement is available through the Settlement Administrator or Class Counsel, whose contact information is provided in this Notice.**

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DEADLINES

Settlement Class Members who are current CalPERS LTC policyholders (Category A-C):

Go Online at _____ and electronically sign and submit the Election Form _____(60 days)_____

Class Members who let their CalPERS LTC Policies lapse (Categories D and E):

Go Online at _____ and electronically sign and submit the Lapse Form _____(60 days)_____

All Class Members:

Exclude yourself from the Settlement (postmarked) _____(60 days)_____

File an Objection to the Settlement (postmarked) _____(60 days)_____

BASIC INFORMATION

1. Why did I get this notice?

Defendant’s records show that you were a California citizen in February 2013, that you hold or held an LTC Policy issued by CalPERS that included automatic inflation protection benefits, and that you were subject to an 85% premium increase announced by CalPERS in 2013. This Notice explains the Action, the New Settlement, and your legal rights.

The lawsuit is known as *Holly Wedding, et al. v. California Public Employees’ Retirement Fund*, and is pending in the Superior Court of California for the County of Los Angeles, Case No. BC517444 (the “Action”). Holly Wedding, Richard Lodyga and Eileen Lodyga are the Plaintiffs and Class Representatives, and they sued CalPERS and others, who are called the Defendants.

2. What is the Action about?

In 1995, CalPERS began selling LTC policies to Class Members. In February 2013, CalPERS announced it was increasing the premiums for certain policies sold between 1995 and 2004 by 85% and that these rate increases would be implemented in 2015 and 2016. The lawsuit generally alleges that it was improper for CalPERS

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2 to impose this 85% rate increase. CalPERS denies that it did anything improper
3 and denies that anything it may have done caused injuries to the Class.

4 **3. Why is this lawsuit a class action?**

5 In a class action, one or more people called the “Plaintiff(s)” sues on behalf of
6 people who have similar alleged claims. All of these people are a “class” or “class
7 members.” The Court resolves the issues for all class members, except for those
8 who exclude themselves from the class. On January 28, 2016, the Honorable Jane
9 Johnson issued an order certifying a class in this case. Thereafter, on March 10,
10 2023, the Honorable William F. Highberger issued an Order conditionally
11 certifying this Settlement Class for purposes of this New Settlement only.

12 **4. Who is in the Settlement Class?**

13 “Settlement Class Members” or the “Settlement Class” means all persons who meet
14 all of the following three criteria: (1) were citizens of California in February 2013;
15 (2) purchased an LTC Policy from CalPERS during the period 1995 to 2004 that
16 included automatic inflation protection benefits; and (3) were subjected to the 85%
17 premium increase announced by CalPERS in 2013 and implemented in 2015 and
18 2016. Policyholders who converted their policies to LTC3 policies prior to the
19 implementation of the Challenged Increase are not included in the Settlement Class,
20 even if the conversion occurred after the 85% rate increase was approved by the
21 CalPERS Board in October 2012. The Settlement Class does not include those
22 individuals who opted out of the Class certified by the Court on January 28, 2016.
23 To be clear, if you opted out of the Prior Settlement in 2021, that opt out is no
24 longer operative, and you are still a Settlement Class Member in the New
25 Settlement, unless you choose to opt out again by submitting a valid request for
26 exclusion.

27 **5. Why didn’t the Prior Settlement go forward?**

28 The Prior Settlement included a provision that if more than 10% of the prior
Settlement Class excluded themselves from the Prior Settlement, the Prior
Settlement could be terminated. More than 30% of the prior Settlement Class
requested exclusion and the Prior Settlement was terminated.

6. Why is there a New Settlement?

After the Prior Settlement was terminated, Class Counsel and CalPERS
immediately began negotiations to see if a new settlement could be reached, while

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2 at the same time preparing to bring this case to trial. Class Counsel requested a
3 trial date on the earliest possible date that could be scheduled. The Court set the
4 trial for May 15, 2023.

5 In February 2023, after all expert discovery was done, Plaintiffs and CalPERS
6 reached agreement on the New Settlement.

7 The New Settlement allows Settlement Class Members who want to exit the
8 program and give up their policies to receive an 80% premium refund, or, for those
9 who wish to retain their policies, the option of receiving \$1,000 cash payments as
10 well as a moratorium on premium increases prior to November 1, 2024. The New
11 Settlement will also provide benefits to those who lapsed or died. The New
12 Settlement balances the interests of all Settlement Class Members by providing
13 significant benefits to those who wish to leave (or have left) the program while at
14 the same time ensuring that the CalPERS LTC program is able to meet its ongoing
15 and future financial obligations.

16 Plaintiffs and their lawyers think the New Settlement achieves the above goals and
17 is in the best interests of all Settlement Class Members.

18 **THE NEW SETTLEMENT BENEFITS—WHAT YOU GET**

19 **7. What does the New Settlement provide?**

20 Under the terms of the New Settlement, Defendant will pay into a Qualified
21 Settlement Fund (“QSF”), maintained by the Settlement Administrator, an amount
22 that is equal to benefits payable to all Settlement Class Members who are eligible
23 to receive 80% refunds or other cash payments based on the categories described
24 in Section __ above. If there are no requests for exclusion from the Settlement Class
25 and the Settlement Class Members make the same decisions that they made as to
26 the Prior Settlement, the total amount to be paid by CalPERS to Class Members is
27 estimated by Plaintiffs’ experts to be \$740 million. CalPERS will also pay up to
28 \$80 million in total for attorneys’ fees and expenses, Settlement Administration
costs, and Service Awards for the named Plaintiffs.

Enclosed with this Notice is an Individual Award Letter which identifies your
Initial Settlement Category and the amount that you are entitled to receive under
the New Settlement, calculated as of December 31, 2022. That amount may
decrease if your Initial Settlement Category changes or if you use any benefits
under your CalPERS policy prior to the Final Settlement Date. If your policyholder

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2 status does change, your final award will be based on your Final Settlement
3 Category on the Final Settlement Date.

4 For those Settlement Class Members who are in Categories A, B or C, the amount
5 of the potential premium refund listed in your Award Letter reflects 80% of all
6 premiums you have paid for your CalPERS LTC Policy up to December 31, 2022,
7 less any benefits paid.

8 If you remain in Category A as of the Final Settlement Date, you do not use any
9 benefits under your policy, and you choose to receive a premium refund in
10 exchange for giving up your CalPERS LTC policy, you will also receive 80% of
11 all additional premiums paid after December 31, 2022, so the amount in your
12 Award Letter may increase upon final approval of the New Settlement.

13 Once the New Settlement becomes Final as defined below, it is **estimated** that
14 settlement payments to Settlement Class Members, as well as the service award to
15 Plaintiffs, and payment to Class Counsel for Court-awarded attorneys' fees and
16 expenses will be made within 105 calendar days following the date that the
17 Settlement becomes Final. "Final" will mean the latest of the following dates, as
18 applicable: (i) expiration of all potential appeal periods without a filing of a notice
19 of appeal of the final approval order or judgment; or (ii) final affirmance of the
20 final approval order and judgment by an appellate court as a result of any appeal(s),
21 or (iii) final dismissal or denial of all such appeals (including any petitions for
22 review, rehearing, certiorari, etc.) such that the final approval order and judgment
23 is no longer subject to further judicial review.

24 Following distribution of the individual settlement payments, any uncashed checks
25 issued to Settlement Class Members will be sent to the California State Controller's
26 Unclaimed Money Fund and will include information required by the State
27 Controller to identify the beneficiary of the funds. Any other funds remaining in
28 the QSF will be distributed to a cy pres recipient (a charitable organization)
approved by the Court.

8. What am I giving up in exchange for the settlement benefits?

Under the term of the New Settlement, all Settlement Class Members will release CalPERS, and all of its respective current, former, and future parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their respective officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives from any and all breach of contract claims, rights, demands, liabilities, and/or causes of action of every nature and

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2 description, whether known or unknown, arising from or related to the 85%
3 premium increase announced in 2013, including, without limitation, statutory,
4 constitutional, contractual, and/or common law claims.

5 For Settlement Class Members in Categories A, B or C, if you elect a premium
6 refund, you will also be required to surrender your CalPERS LTC Policy and will
7 not be entitled to any benefits from that policy in the future.

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13 **9. Is there a chance the New Settlement may not go forward?**

14 Yes. Like the Prior Settlement, under the terms of the New Settlement, CalPERS
15 has the option to terminate the Settlement. CalPERS may exercise this option if
16 more than 1% of Class Members exclude themselves from the New Settlement.
17 Also, there is a possibility that the Court may not grant Final Approval of the New
18 Settlement. If either of these events occurs, the litigation against CalPERS will
19 continue.

20 **Because there is the possibility that the New Settlement may not go forward,**
21 **it is critical that you make any decisions concerning your LTC Insurance as if**
22 **there was no New Settlement.**

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28 **HOW TO GET A SETTLEMENT PAYMENT**

10. How do I get a settlement payment?

Subject to the Court’s final approval of the terms of the New Settlement, your
submission of the required information, and the New Settlement becoming final
and effective, any settlement payment you are entitled to under the Settlement
Agreement will automatically be mailed to you at the address where this Notice
was mailed (unless you timely provide a forwarding address to the Settlement
Administrator). In exchange for this settlement payment, you will give up your
claims in this case.

11. When will I get my check?

Checks will be mailed to eligible Settlement Class Members only after the Court
grants “final approval” of the New Settlement and the New Settlement becomes
final and effective. If the Court approves the New Settlement after a hearing on
[final approval hearing date] (see “The Court’s Final Approval Hearing” below),
there may be appeals. If there are any appeals, resolving them could take some
time, so please be patient. If there is an appeal, the settlement website will be
updated. If there is no appeal, then the New Settlement will become final and

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2 effective 60 days after final approval. Plaintiffs' counsel estimates that checks will
3 be mailed to eligible class members within 105 days after the New Settlement
4 becomes final and effective.

5 Please also be advised that you will only have 90 days from the date that the checks
6 are issued to cash the check. If you do not cash your check within 90 days of the
7 date of its issuance, your individual settlement check will be voided. You will be
8 permitted to request the reissuance of the check from the Settlement Administrator
9 for a period of up to 90 days thereafter. And if your Settlement funds are ultimately
sent to the State Controller's Unclaimed Property Fund, you will be entitled to seek
to obtain the funds from the State Controller.

10 **EXCLUDING YOURSELF FROM THE NEW SETTLEMENT**

11 **12. How do I exclude myself or "opt out" of the New Settlement?**

12 If you do not wish to participate in the New Settlement ("opt out"), you must
13 complete and send a timely written Request for Exclusion that is dated and sets
14 forth your name and address and expressly states that you wish to be excluded from
15 the Settlement Class. A Request for Exclusion must be signed, dated and mailed
16 by First Class U.S. Mail, or the equivalent, postmarked no later than [+60 from date
of mailing] to the following:

17 [settlement administrator info]

18 Settlement Class Members who fail to submit a valid and timely Request for
19 Exclusion on or before the above-specified deadline will be bound by all terms of
20 the New Settlement and any final judgment entered in the Action if the New
21 Settlement is approved by the Court.

22 **13. If I exclude myself, can I get anything from the New Settlement?**

23 **No.** If you exclude yourself then you will not get anything from the New Settlement
24 and you will not be bound by the New Settlement. You will not get a Settlement
25 payment and will not be entitled to the temporary freeze on premium increases. If
26 you are a current policyholder, you will retain all of the benefits of your CalPERS
27 LTC Policy provided you continue to pay premiums to CalPERS. If you exclude
28 yourself and wish to proceed with litigation against CalPERS, then you will need
to retain your own attorney to pursue litigation against CalPERS.

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14. If I don't exclude myself from the New Settlement, can I sue later?

No. Unless you exclude yourself from the New Settlement, you give up the right to sue the Defendant for the claims in this lawsuit. You must exclude yourself from the Settlement Class to start or continue your own lawsuit with your own lawyer.

15. If I Excluded myself from the Prior Settlement, does that mean that I am excluded from the New Settlement?

No. Any decision you made with respect to the Prior Settlement does not affect the New Settlement. You must now decide what you wish to do with respect to the New Settlement.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has appointed the following lawyers to serve as Class Counsel for the Settlement Class:

Michael J. Bidart
mbidart@shernoff.com
SHERNOFF BIDART
ECHEVERRIA LLP
600 South Indian Hill Boulevard
Claremont, California 91711

Gretchen M. Nelson, Esq.
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NELSON & FRAENKEL
LLP
601 So. Figueroa, Ste. 2050
Los Angeles, California
90017

Gregory L. Bentley
gbentley@bentleymore.com
BENTLEY & MORE, LLP
4931 Birch Street
Newport Beach, California
92660

Stuart C. Talley
stuart@ktblegal.com
KERSHAW TALLEY
BARLOW PC
401 Watt Avenue
Sacramento, CA 95864

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17. How will the costs of the lawsuit and the Settlement be paid?

In addition to the refunds and other relief provided to Class Members, as part of the New Settlement, CalPERS has also agreed to separately pay no more than \$80 million which will be used to pay Class Counsel’s attorneys’ fees, unreimbursed litigation expenses incurred by Class Counsel that are no more than \$2.5 million, and Settlement Administration costs for both the Prior Settlement and this settlement which are estimated to be \$5 million and Service Awards for the Plaintiffs.

A request will be made to the Court for approval of a total amount not to exceed \$85,000 for Service Awards, which will also be paid from the award of fees and costs. This payment is for the service Plaintiffs have provided to the Class in bringing this lawsuit and for taking on the risk of litigation, and for the extensive assistance they provided throughout the course of the Action.

The Court may award less than the amount requested for Service Awards and it may award less in attorneys’ fees and expenses.

Importantly, under no circumstances will the amounts awarded for attorneys’ fees and costs or the Service Awards or Settlement Administration costs reduce the payments to be made to Settlement Class Members under the New Settlement.

OBJECTING TO THE NEW SETTLEMENT

18. How do I object to the New Settlement?

Any Settlement Class Member may object to the proposed New Settlement, or any portion thereof, by mailing a written objection, and supporting papers, to the Settlement Administrator at the following addresses by regular U.S. Mail postmarked no later than [+60 days from mailing],:

[settlement administrator
info]

A written objection must contain: (1) the case name and number for this action, (2) the full name of the objecting Settlement Class Member, (3) the Settlement Class Member’s LTC policy number, (4) the basis for the objection, (5) if the Settlement Class Member intends to appear at the Final Approval Hearing (see response to

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2 Questions 20 and 21 below), and (6) the identity of the Settlement Class Member’s
3 counsel, if any. If a Settlement Class Member wishes to appear at the Court’s Final
4 Approval Hearing and orally present his or her objection to the Court, the objector’s
5 written statement should include the objector’s statement of intent to appear at the
6 Court’s Final Approval Hearing. **Notwithstanding, in the discretion of the Court,**
7 **the objection of any Settlement Class Member, or person purporting to object**
8 **on behalf of any Settlement Class Member, may be received or considered by**
9 **the Court at the Final Approval Hearing, regardless of whether a written**
10 **notice of objection is filed or delivered to the parties.** Any Settlement Class
11 Member who submits an objection remains eligible to receive monetary
12 compensation from the New Settlement. If you timely submit a request for
13 exclusion from the New Settlement you may not submit an objection to the New
14 Settlement. If the Court overrules any objections and grants final approval of the
15 New Settlement, any Settlement Class Member who submitted an objection but did
16 not submit a timely and valid Request for Exclusion will be bound by the Release
17 set forth in Question 8 above.

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19 **19. What’s the difference between objecting and asking to be**
20 **excluded?**

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22 Objecting is simply telling the Court you do not like something about the New
23 Settlement. If you object, you are still a part of the Settlement Class. Excluding
24 yourself is telling the Court that you do not want to be part of the Settlement Class.

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26 **THE COURT’S FINAL APPROVAL HEARING**

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28 The Court will hold a hearing to decide whether to approve the New Settlement. You
may attend and you may ask to speak at the Final Approval Hearing, but you don’t
have to. **If you intend to appear at the Final Approval Hearing it is important**
to visit the Los Angeles County Superior Court website at www.lacourt.org
to determine whether there are any social distancing or Covid-19 related
guidelines for in-person court appearances.

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30 **20. When and where will the Court decide whether to approve the New**
31 **Settlement?**

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33 The Court will hold a “Final Approval Hearing” on [final approval hearing date
34 and time], in **Department 10** at the Superior Court of California for the County of
35 Los Angeles, located at **312 N. Spring St., Los Angeles, 90012**. The hearing may
36 be moved to a different date and/or time without additional notice but any change
37 of date or time will be posted on the Settlement website at

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2 www.CalPERSLTCCClassAction.com. At this hearing, the Court will consider
3 whether the New Settlement is fair, reasonable, and adequate. If there are
4 objections, the Court will consider them. The Court will also decide how much to
5 pay Class Counsel for their fees and costs, and the amount in Service Awards for
6 Plaintiffs. After the hearing, the Court will decide whether to approve the New
7 Settlement. It is unknown how long these decisions will take.

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12 **21. Do I have to come to the hearing?**

13 No. Class Counsel will answer any questions the Court may have. But, you are
14 welcome to come at your own expense. If you send an objection, you do not have
15 to come to Court to talk about it. As long as you have mailed your written objection
16 on time, the Court will consider it. You may also pay (at your own expense)
17 another lawyer to attend for you, but it is not required.

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20 **22. May I speak at the hearing?**

21 If you wish to appear at the Final Approval Hearing and orally present your
22 objection to the Court, you should include in your written objection that you intend
23 to appear at the Final Approval Hearing. Notwithstanding, in the discretion of the
24 Court, the objection of any Settlement Class Member who has not requested
25 exclusion, or person purporting to object on behalf of any Settlement Class
26 Member, may be received or considered by the Court at the Final Approval
27 Hearing, regardless of whether a written notice of objection is mailed to the
28 Settlement Administrator.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing and you are in Categories A, B, C, F, G, H, or I, you will receive
the benefits provided for in the New Settlement in accordance with your Final
Settlement Category as described above, and you will be bound by the release of
claims, subject to the Court's final approval of the terms of the New Settlement. If
you are in Categories A, B, C, or I and do nothing, it will be presumed that you
have selected Option 2 (keeping your LTC policy and receiving the \$1,000
payment) for each of those Categories. If you are in Category D or E, you must
return your Lapse Claim Form to receive any benefits of the New Settlement.

GETTING MORE INFORMATION

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24. How do I get more information?

This notice summarizes the New Settlement. More details are in the Second Settlement Agreement and filings made before the Court. Such documents are accessible via a website at: www.CalPERSLTCClassAction.com. You may also contact Class Counsel or the Settlement Administrator for more information.

Do not contact the Court, CalPERS or LTCG regarding this Notice or the New Settlement.

EXHIBIT A-2



CalPERS Long-Term Care Class Action

Letter From Plaintiffs and Class Counsel

Regarding New Settlement

Legal Name: _____

CalPERS Policy Number: _____

Current Address: _____

Unique ID: _____

PIN: _____

Dear _____

This letter is to inform you of a Proposed New Settlement in the matter of *Wedding, et al. v. California Public Employees’ Retirement System, et al.*

A. Overview

This class-action lawsuit was filed in August 2013. It alleges that the 85% premium increase that CalPERS announced in February 2013, and implemented in 2015-2016, was not permitted under the terms of the Long-Term Care (“LTC”) Insurance contracts between CalPERS and Class Members. You are a member of the Class in this case because you purchased an LTC Insurance contract from CalPERS with “automatic inflation protection benefits” and were subjected to this 85% rate increase.

As you may recall, in July 2021 you received notice of a settlement that had previously been reached by the parties in this case (the “Prior Settlement”). Unfortunately, the Prior Settlement never became effective and was terminated by agreement in April 2022.

Nevertheless, the parties continued to explore settlement options and on February 27, 2023, the parties reached agreement on a new settlement (the “New Settlement”). The following documents containing details about the New Settlement are enclosed with this letter:

- Notice of Class Action Settlement [email notice to provide link to this document on Settlement website]
- Individual Award Letter [email notice to provide CM with unique ID and PIN to access form on website]

Importantly, this is a new settlement with new terms and relief for the Settlement Class. The New Settlement will affect your rights unless you ask to be excluded from the Settlement. Also, there are strict time limits described in the Notice and the accompanying materials.

Therefore, please read the enclosed documents carefully and immediately. These documents will set forth how much you will receive under the New Settlement and will explain why the Plaintiffs and Class Counsel are recommending the New Settlement.

B. What Happened to the Prior Settlement?

The parties in this case previously agreed to a settlement in July 2021. Under this Prior Settlement, Class Members who elected to participate in the settlement could receive a full premium refund in exchange for surrendering their policy, or have their refund applied to a potential replacement policy. Two highly experienced insurance brokerages were tasked with securing this replacement policy.

However, if Class Members wanted to retain their CalPERS LTC policies, they had to opt out of the Prior Settlement and were not entitled to receive any benefits from the Prior Settlement. The Prior Settlement contained a provision that allowed the settlement to be terminated if more than 10% of the Class elected to exclude themselves and retain their CalPERS LTC policies.

After approaching 90 insurance companies, the insurance brokerages working with Class Counsel were not able to secure a viable replacement policy. And, after notifying the Settlement Class Members who had chosen this option that a replacement policy could not be secured, approximately 30% of the Settlement Class elected to exclude themselves from the settlement in order to retain their CalPERS LTC policies. Because so many class members elected to keep their CalPERS policies, the Prior Settlement was terminated by mutual agreement on April 20, 2022.

C. What are the Terms of the New Settlement?

After the Prior Settlement was terminated, the parties worked diligently to reach a settlement that would (1) provide substantial refunds to Class Members who want to exit the CalPERS LTC Program; (2) provide benefits to Class Members who want to keep their CalPERS LTC policies, instead of requiring them to opt out of the settlement; and (3) achieve these objectives while preserving the CalPERS LTC Program's ability to meet its financial obligations to pay benefits to its policyholders.

Consistent with these goals, the terms of the New Settlement incorporate many of the terms of the Prior Settlement, but are different in three important ways.

First, Class Members do **not** need to opt out of the New Settlement if they want to retain their CalPERS LTC policies. If you are a current policyholder and want to keep your CalPERS LTC policy, you will be included in the New Settlement and will automatically receive \$1,000. In addition, CalPERS has agreed under the New Settlement not to impose any new premium increases on Settlement Class Members prior to November 1, 2024.

Second, if you are a current policyholder and want to receive a premium refund in exchange for surrendering your policy, the refund will be 80% of all the premiums you have paid into the CalPERS LTC Program (less benefits received) from the inception of your policy until the New Settlement becomes final.

Third, for Class Members who are "on claim" (meaning they are currently receiving benefits or have applied for and may receive benefits under their policy prior to the New Settlement becoming final), they will also have the

Letter from Class Counsel and Plaintiffs

option of cancelling their policy and receiving an 80% premium refund (less benefits received) or keeping their policy in exchange for a cash payment of \$1,000. Class Members who let their policies lapse, exhausted their benefits, or who passed away before going on claim will receive certain cash benefits which are outlined in the Notice at page .

As with the Prior Settlement, current policyholders paying premiums **must** continue to pay their premiums until the New Settlement becomes final to remain eligible for the 80 percent refund of premiums or \$1,000 cash payment. If a policyholder stops paying their premiums before the New Settlement becomes final, then they will not obtain the same benefits of the New Settlement.

D. What Will I Receive Under the New Settlement?

Your Class Member category and details about your estimated award under the New Settlement are set forth in the enclosed Award Letter. Class Members fall into two main categories: (1) current policyholders who are paying premiums; and (2) those who are on claim. Other categories include policyholders who let their policies lapse, policyholders who have exhausted their benefits, and those who have died.

The information in the Award Letter was based on your policyholder status as of December 31, 2022. But your final Class Member category and the award you receive will be determined at the time the New Settlement becomes final. If your Class Member category does not change between December 31, 2022, and the date the New Settlement becomes final, then you will receive the relief identified in the Award Letter (except that the amount for those requesting a premium refund may be higher because you will have paid additional premiums after December 31, 2022). Please read this form and the enclosed Notice carefully.

E. Why is Class Counsel Recommending the New Settlement?

There are several reasons why Class Counsel is recommending this New Settlement, even though many Class Members will receive less as compared to the Prior Settlement.

First, the CalPERS LTC Program was set up as a “closed fund.” This means that there are only two sources of revenue for the Program: the premiums paid by policyholders and the earnings generated from investments made by the Program. One of the main concerns in moving forward with a trial is that if Class Counsel succeeds and obtains a large verdict and judgment against CalPERS, this could significantly impact the ability of the Program to pay the benefits of Class Members who retain their policies and other current policyholders. The New Settlement is therefore designed both to provide benefits to Class Members while at the same time ensuring the long-term viability of the Program to pay ongoing and future claims costs.

Second, the termination of the Prior Settlement demonstrated that many Class Members want to keep their CalPERS LTC policies. The New Settlement therefore allows Class Members to receive some relief without forcing them to surrender their policies. Individuals desiring to stay with the Program will receive two significant benefits—a cash payment to offset higher premium costs *and* a rate freeze that ensures CalPERS will not implement any new premium increases until at least November 1, 2024.

Third, the ability to cancel your CalPERS policy and receive an 80% refund of all premiums paid (less benefits received) for insurance coverage that many Class Members have had for more than 20 years is a substantial benefit that would not otherwise be available. Many Class Members have informed us they are tired of rate increases or benefit reductions and have lost faith in CalPERS’ ability to properly manage this Program. However, because these Class Members have invested many thousands of dollars in premiums, they feel compelled to continue with the Program. This New Settlement provides those Class Members with a feasible path out of the Program. Without the New Settlement, Class Members who want to leave the Program would not receive a refund of any premiums.

Letter from Class Counsel and Plaintiffs

Indeed, the 80% premium refund (less benefits received) provided by the New Settlement is better than options provided to policyholders by other commercial carriers who provide LTC Insurance and have instituted premium increases. As you may know, the problems that have plagued the CalPERS LTC Program over the years are not unique. Since LTC Insurance became popular 25 years ago, almost every commercial LTC Insurance provider in the country has either withdrawn from the market entirely and/or had to impose premium increases. Class Counsel is aware of another LTC insurer that—as recently as last year—was implementing an 80% rate increase but was offering policyholders a “Cash Buyout” option that would only refund roughly 20% of premiums paid.

We are frustrated that the premium refund is 80%, instead of the 100% agreed to by CalPERS in the Prior Settlement. However, that reduction is a result of changes in the LTC Fund’s financial condition coupled with CalPERS’ need to ensure that it can meet its ongoing obligations to those who retain their LTC policies. We are equally frustrated with the amount to be paid to those who retain their policies. But this amount is all that CalPERS believes it can afford. If CalPERS were paying more in premium refunds and payments to those retaining their policies, then that could jeopardize its ability to continue paying benefits to its policyholders.

Fourth, time is of the essence in getting relief to Class Members. If this litigation continues, Class Counsel has serious concerns that *thousands* of additional Class Members will pass away and will not personally realize any of the benefits from any potential future verdict and judgment. The average age of the Class is now 76, and since this litigation was initiated nearly a decade ago more than 14,846 Class Members have died. Moreover, even if the Class prevails at trial, CalPERS will undoubtedly appeal. This process could take another 2-4 years and, plaintiffs’ actuaries estimate that an additional 9,000 Class Members will die during this time.

Finally, as with any litigation, there is always a chance that the Class could lose at trial (or on appeal). In this lawsuit, Plaintiffs and the Class assert that CalPERS could not implement a premium increase if the increase was caused by or as a result of Class Member’s “automatic inflation protection benefits.” However, CalPERS and its experts intend to present evidence at trial that the 85% rate increase was *not* related to automatic inflation protection benefits, and that the *primary* reason for the 85% premium increase was a change in CalPERS’ expected investment earnings. CalPERS will also argue that a rate increase of 80.1% would have been necessary if it had not implemented the challenged 85% rate increase; that Class Members who reduced their benefits in response to the 85% increase did not suffer any damage because, among other things, they paid lower premiums; and that Class Members who reduced benefits are not entitled to any recovery until they go on claim and are denied benefits that they would have otherwise received prior to reducing benefits. If a jury (or appellate court) accepted any of these arguments, then Class Members would receive nothing or virtually nothing.

F. Where can I obtain additional information about the New Settlement?

If you have questions about the New Settlement that are not answered in the [\[linked\]/enclosed](#) documents, you will find additional information on the Settlement website at www.CalpersLTCClassAction.com. If your questions are still not answered, you can call [1-866-217-8056](tel:1-866-217-8056) anytime from Monday through Friday between the hours of 6:00 a.m. to 6:00 p.m. Pacific Time.

Please do not contact CalPERS or LTCG about the Settlement, as they will be unable to provide you with additional information.

Letter from Class Counsel and Plaintiffs

Michael Bidart

Stuart Talley

Gretchen Nelson

Gregory L. Bentley

Eileen Lodyga

Richard Lodyga

Holly Wedding

EXHIBIT A-3

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORY A

Legal Name: _____

CalPERS Policy Number: _____

Current Address: _____

Unique ID: _____

PIN: _____

CalPERS' records indicate that you are a current Long-Term Care ("LTC") Insurance policyholder. This means that you are currently paying premiums to CalPERS for LTC Insurance and are not currently receiving benefits under your Policy. Under the New Settlement, this would put you into "Category A." As a Category A Class Member, you have two award options to consider under the New Settlement.

TO SELECT YOUR OPTION, PLEASE VISIT [WWW. _____](#) AND INPUT THE UNIQUE ID AND PIN PRINTED ABOVE.

IT IS IMPORTANT TO UNDERSTAND THAT BECAUSE THIS IS A NEW SETTLEMENT, YOU MUST MAKE A NEW ELECTION AND ANY PREVIOUS ELECTIONS YOU SUBMITTED IN RESPONSE TO THE PRIOR SETTLEMENT WILL NOT BE APPLICABLE TO THE NEW SETTLEMENT. IF YOU DO NOT MAKE AN ELECTION, IT WILL BE PRESUMED THAT YOU ARE SELECTING OPTION 2 AND WILL RETAIN YOUR POLICY.

Option 1: Receive an 80% Refund of Premiums Paid (Less LTC Benefits Previously Received) and Surrender your CalPERS LTC Policy.

If you select Option 1, you will receive a refund equal to 80% of all premiums paid from your Policy's inception through the date the New Settlement becomes final (less any amounts paid in benefits under your Policy) but in no event will you receive less than \$8,000. In exchange for this payment, you will Surrender your CalPERS LTC Policy and you will no longer be entitled to any benefits from the policy.

CalPERS's records show that from the inception of your Policy through December 31, 2022 you paid \$___ in premiums for your insurance and [received \$___ in benefits][received no benefits]. Thus, should you remain in Category A as of the Final Settlement Date and use no additional benefits under your Policy, the total amount you will receive from the New Settlement if it is approved by the Court will be no less than:

\$ _____

Importantly, if you remain a current policyholder and you do not go On Claim, this amount will increase to include 80% of any additional premiums you pay between December 31, 2022, and the date the New Settlement becomes final. Also, please be assured that if you select a premium refund but go On Claim before the New Settlement becomes final, you will have the right to rescind this selection. That is, you will have the option to change your selection to opt for retaining your Policy and receiving a \$1,000 cash payment.

Also, it is important to recognize that there is a possibility that the New Settlement may not become final for several months or may not be approved. Therefore, if you want to remain in Category A and remain eligible to receive a premium refund, it is important that you continue paying premiums until the New Settlement is final. You will be notified when you can stop paying premiums on your CalPERS LTC Policy.

Option 2: Keep your CalPERS LTC Policy and Receive a \$1,000 Cash Payment

If you select Option 2, you will receive a cash payment of \$1,000. Additionally, you will receive the benefit of CalPERS' agreement not to implement any premium increases on your policy prior to November 1, 2024.

To make your election, please go online and complete the Form with the Unique ID and PIN printed above. **If you do not submit the Form and do not opt out of the New Settlement, you will be deemed to have selected Option 2. If you have any questions about your options, please call 1-866-217-8056 or visit the Settlement website at www.CalPERSLTCClassAction.com.**

If you believe your categorization changed after December 31, 2022, please note that the Parties anticipate updating your categorization, as appropriate, before awards are finalized and distributed.

If you have trouble completing your election online, you may contact the Settlement Administrator at _____.

When the Settlement becomes final, a check made payable to your legal name will be sent to the above listed address. If you want to change your address, please email _____.

EXHIBIT A-4

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORIES B AND C

Legal Name: _____

CalPERS Policy Number: _____

Current Address: _____

Unique ID: _____

PIN: _____

CalPERS' records indicate that you are currently On Claim and receiving benefits or you have applied for benefits and are awaiting a decision on your eligibility under your CalPERS' Long-Term Care ("LTC") Policy. Under the New Settlement, you are entitled to benefits as a "Category B" or "Category C" Class Member. As a Category B or C Class Member, you have two award options to consider under the New Settlement.

Option 1: Receive a Refund of 80% of All Premiums Paid (Less LTC Benefits Previously Received) and Surrender your CalPERS LTC Policy.

If you select Option 1, you will receive a refund equal to 80% of all premiums paid from your Policy's inception through the date the New Settlement becomes final (less any amounts paid in benefits under your Policy).

However, it is very important to understand that if you select Option 1, you will surrender your Long-Term Care Policy with CalPERS and will no longer be entitled to receive any further benefits under your CalPERS Long-Term Care Policy. For Class Members who are On Claim or have applied to go On Claim, selecting this option only makes sense in rare circumstances. If you are considering Option 1, we would urge you to contact Class Counsel at _____ to discuss your decision.

CalPERS' records show that from the inception of your policy through December 31, 2022 you paid \$___ in premiums for your insurance and [received \$___ in benefits][received no benefits]. Thus, should you remain in Category B or C as of the Final Settlement Date and use no additional benefits under your Policy, the total amount you will receive from the New Settlement if you select this option will be no less than:

\$ _____

Option 2: Keep your CalPERS LTC Policy and Receive a \$1,000 Cash Payment

If you select Option 2, you will receive a \$1,000 cash payment. You will not lose any rights you have under your CalPERS LTC Policy, you will continue to stay On Claim, and you will continue receiving the full benefits you are entitled to under your Policy.

For most Class Members who are currently On Claim or have applied to go On Claim, Option 2 is the best option since it preserves your right to continue receiving benefits under your CalPERS LTC Policy.

To make your election, please fill out and return the enclosed Election Form or fill it out online at _____. **If you do not submit or return the Form and do not opt out of the New Settlement, you will be deemed to have selected Option 2.** If you have any questions about your options, please call _____ or visit the Settlement website at www.CalPERSLTCClassAction.com.

If you believe your categorization changed after December 31, 2022, please note that the Parties anticipate updating your categorization, as appropriate, before awards are finalized and distributed.

You may also access and submit this Election Form online at www.CalPERSLTCClassAction.com with the Unique ID and PIN printed above.

When the Settlement becomes final a check made payable to your legal name will be sent to the above listed address. If you want to change your address, please email_____.

YOUR ELECTION

I hereby acknowledge that I received the Settlement Package that includes the Class Notice, Award Letter and this Election Form. After considering this information I hereby elect to:

Please only choose one option by initialing next to your selected option and signing this Form below. If you choose more than one option, you will be deemed to have selected Option 2.

Option 1:

_____ Surrender my CalPERS LTC Policy and receive a refund of 80% of all premiums paid by me from my Policy's inception through the date the Settlement become final (less any benefits paid). **WARNING: For Class Members who are On Claim or are applying to go On Claim, selecting this option only makes sense in rare circumstances. If you are considering Option 1, we would urge you to contact Class Counsel to discuss your decision before you complete and return this form.**

Option 2:

_____ Keep my CalPERS LTC Policy and receive a \$1,000 cash payment. **For most Class Members who are currently On Claim or have applied to go On Claim, Option 2 is the best option since it preserves your right to continue receiving benefits under your CalPERS LTC Policy.**

SIGNATURE

PRINT NAME

DATE

EXHIBIT A-5

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORY D

Legal Name: _____

CalPERS Policy Number: _____

Current Address: _____

Unique ID: _____

PIN: _____

CalPERS' records indicate that in February 2013 you had a Long-Term Care ("LTC") Insurance Policy issued by CalPERS and were informed by CalPERS in or about February 2013 that your CalPERS LTC Policy would be subjected to an 85% premium increase. CalPERS' records also indicate that between February 1, 2013, and December 31, 2014, you let your CalPERS LTC Policy lapse. This means you are in Category D in the New Settlement.

As described more fully in the Notice accompanying this Award Letter, the terms of the New Settlement between CalPERS and the Class provide that individuals who let their LTC Policies lapse between February 1, 2013 and December 31, 2014 may be entitled to receive a refund equal to 40% of all premiums paid by the Settlement Class Member from the Policy inception date through the date the Policy lapsed (less any benefits received). However, to receive this refund, you must declare under penalty of perjury that you let your CalPERS LTC Policy lapse as a result of the 85% premium increase that CalPERS announced in February 2013. For purposes of this provision "as a result of" means that the rate increase was a substantial factor in your decision to let your policy lapse.

CalPERS' records show that from the inception of your Policy through the date that you lapsed, the amount that you paid in premiums (less any benefits that you received) was \$ _____. Thus, the refund you will receive from the New Settlement if it is approved by the Court is:

\$ _____

To receive your refund under the New Settlement, you are required to complete a Lapse Claim Form online by accessing the form at www.CalPERSLTCClassAction.com with the UniqueID and PIN printed above. If you do not submit the Lapse Claim Form online by the deadline, you will receive nothing from the New Settlement.

If you believe your categorization changed after December 31, 2022, please note that the Parties anticipate updating your categorization, as appropriate, before awards are finalized and distributed.

When the Settlement becomes final a check made payable to your legal name will be sent to the above listed address. If you want to change your address, please email _____.

EXHIBIT A-6

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORY E

Legal Name: _____

CalPERS Policy Number: _____

Current Address: _____

Unique ID: _____

PIN: _____

CalPERS' records indicate that in February 2013 you had a Long-Term Care ("LTC") Insurance Policy issued by CalPERS and were informed by CalPERS in or about February 2013 that your CalPERS LTC Policy would be subjected to an 85% premium increase. CalPERS' records also indicated that on or after January 1, 2015, you let your CalPERS LTC Policy lapse. This means you are in Category E under the New Settlement.

As described more fully in the Notice accompanying this Award Letter, the terms of the New Settlement between CalPERS and the Class provide that individuals who let their LTC Policies lapse on or after January 1, 2015 may be entitled to receive a refund of 80% of all Additional Premiums paid as a result of the 85% rate increase, or \$2,000, whichever is greater. However, to receive this refund, you must declare under penalty of perjury that you let your CalPERS LTC Policy lapse as a result of the 85% premium increase that CalPERS announced in February 2013. For purposes of this provision "as a result of" means that the rate increase was a substantial factor in your decision to let your policy lapse.

CalPERS' records show that you paid \$ _____ in Additional Premiums as a result of the 85% increase. Thus, if the New Settlement is approved by the Court, you will receive:

\$ _____

To receive your refund under the New Settlement, you are required to complete a Lapse Claim Form online at www.CalPERSLTCClassAction.com with the UniqueID and PIN printed above by no later than _____. If you do not submit the Lapse Claim Form online by the deadline, you will receive nothing from the Settlement.

If you believe your categorization changed after December 31, 2022, please note that the Parties anticipate updating your categorization, as appropriate, before awards are finalized and distributed.

When the Settlement becomes final a check made payable to your legal name will be sent to the above listed address. If you want to change your address, please email _____.

EXHIBIT A-7

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORY F

Legal Name: _____

CalPERS Policy Number: _____

Current Address:

CalPERS' records indicate that you may be the surviving heir of _____. Its records also indicate that in February 2013, _____ had a Long-Term Care ("LTC") Insurance Policy issued by CalPERS, and reduced benefits in response to a rate increase announced by CalPERS in February 2013. This means the Estate of _____ is in Category F under the New Settlement.

As described more fully in the Notice accompanying this Award Letter, the terms of the New Settlement between CalPERS and the Class provide that the estates of individuals who purchased CalPERS LTC Insurance Policies and reduced their benefits as a result of the rate increase announced in February 2013 are entitled to a return of 80% of any Additional Premiums paid as a result of CalPERS' 85% premium increase, or \$2,000, whichever is greater.

CalPERS' records show that after CalPERS raised _____'s premiums, the amount of Additional Premiums paid as a result of the 85% premium increase through December 31, 2022, was \$_____. Thus, and considering the \$2,000 minimum payment, if the New Settlement is approved by the Court, _____'s estate will receive:

\$_____

If _____ paid Additional Premiums after December 31, 2022, the amount paid under the New Settlement will also incorporate 80% of these Additional Premium payments.

There is nothing that you need to do to receive this payment. A check will be sent to you for the foregoing amount when the New Settlement becomes final. **Importantly, if we do not hear from you, the Settlement check will be made payable to the "Estate of _____."** If you want to change your address, please email _____.

EXHIBIT A-8

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORY G

Legal Name: _____

CalPERS Policy Number: _____

Current Address:

CalPERS' records indicate that you may be the surviving heir of _____. Its records also indicate that in February 2013, _____ had a Long-Term Care ("LTC") Insurance Policy issued by CalPERS and paid Additional Premiums as a result of CalPERS implementation of the 85% premium increase (announced in 2013 but implemented in 2015-2016). This means the Estate of _____ is in Category G under the New Settlement.

As described more fully in the Notice accompanying this Award Letter, the terms of the New Settlement between CalPERS and the Class provide that the estates of individuals who purchased CalPERS LTC Insurance Policies, paid Additional Premiums as a result of the premium increase, and died before the Final Settlement Date are entitled to a refund equal to 80% of any Additional Premiums paid as a result of the 85% premium increase.

CalPERS's records show that after CalPERS raised _____'s premiums, the amount of Additional Premiums paid as a result of the 85% premium increase through December 31, 2022 was \$ _____. Thus, if the New Settlement is approved by the Court, _____'s estate will receive:

\$ _____

If _____ paid Additional Premiums after December 31, 2022, the amount paid under the New Settlement will also incorporate 80% of these Additional Premium payments.

There is nothing that you need to do to receive this payment. A check will be sent to you for the foregoing amount when the New Settlement becomes final. **Importantly, if we do not hear from you, the Settlement check will be made payable to the "Estate of _____."** If you want to change your address, please email _____.

EXHIBIT A-9

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION

NEW SETTLEMENT—CATEGORY H

Legal Name: _____

CalPERS Policy Number: _____

Current Address:

CalPERS' records indicate that you paid the 85% rate increase announced by CalPERS in February 2013, went On Claim and exhausted all of your CalPERS LTC benefits. Under the New Settlement, you are entitled to receive 80% of all Additional Premiums you paid as a result of the 85% premium increase.

CalPERS' records show that from 2015 through December 2022 you paid \$___ in Additional Premiums for your insurance as a result of the 85% increase. Thus, should you remain in Category H as of the Final Settlement Date under your Policy, the total amount you will receive from the New Settlement if you select this option will be no less than:

\$ _____

There is nothing that you need to do to receive this payment. A check will be sent to you for the foregoing amount if you remain in Category H when the New Settlement becomes final.

When the Settlement becomes final a check made payable to your legal name will be sent to the above listed address. If you want to change your address, please email _____.

EXHIBIT A-10

CALPERS LONG-TERM CARE INSURANCE CLASS ACTION
NEW SETTLEMENT—CATEGORY I—LATE ELECTION FORM

Legal Name: _____

CalPERS Policy Number: _____

Current Address:

As you are aware, you are a member of a Class Action lawsuit that was filed against CalPERS that arises from the 85% premium increase it announced in 2013. In ____ 2023 you received Notice of a New Settlement that was intended to resolve the claims asserted in the case. At that time, CalPERS' records indicated that—as of December 31, 2022—you were a Current Policyholder who was paying premiums to CalPERS and not receiving any benefits under your LTC policy. As a Current Policyholder, you were entitled to the relief given to Class Members in Category A of the New Settlement and were given the choice of either (1) surrendering your CalPERS LTC Policy in exchange for a refund of 80% of premiums you paid for the policy (less any benefits received), or (2) keeping your LTC Policy and receiving a \$1,000 cash payment.

We have been advised by CalPERS that your status as a Policyholder changed because you are now On Claim or have applied to go On Claim. Under the New Settlement, Class Members who go On Claim before the New Settlement becomes Final are given a second chance to make an election as to the relief they would like under the New Settlement. As before, you have the option of either keeping your CalPERS LTC Policy and receiving a \$1,000 cash payment, or surrendering your Policy in exchange for a refund of 80% of the premiums you paid (less any benefits received).

IT IS IMPORTANT TO UNDERSTAND THAT EVEN THOUGH YOU MAY HAVE PREVIOUSLY SELECTED RELIEF AS A “CATEGORY A” CLASS MEMBER, YOUR CHANGE IN STATUS REQUIRES YOU TO RE-SUBMIT A NEW ELECTION. IF YOU DO NOT RESPOND TO THIS NOTICE, IT WILL BE PRESUMED THAT YOU NOW WANT TO KEEP YOUR CALPERS LTC POLICY AND WILL RECEIVE A \$1,000 PAYMENT (OPTION 2). PLEASE READ THE FOLLOWING CAREFULLY.

Option 1: Receive a Refund of 80% of All Premiums Paid (Less LTC Benefits Previously Received) and Surrender your CalPERS LTC Policy.

If you select Option 1, you will receive a refund equal to 80% of all premiums paid from your Policy's inception through the date the New Settlement becomes final (less any amounts paid in benefits under your Policy).

However, it is very important to understand that if you select Option 1, you will surrender your Long-Term Care Policy with CalPERS and will no longer be entitled to receive any further benefits under your CalPERS Long-Term Care Policy. For Class Members who are On Claim or have applied to go On Claim, selecting this option only makes sense in rare circumstances. Therefore, if you are considering Option 1, we would urge you to contact Class Counsel at _____ to discuss your decision.

CalPERS' records show that from the inception of your Policy through the date you went On Claim, you paid \$___ in premiums for your insurance and [received \$___ in benefits] [received no

benefits]. Thus, should you select Option 1, the total amount you will receive from the New Settlement if you select this option will be the amount set forth below less any additional benefits received under your Policy after the Final Settlement Date:

\$ _____

Option 2: Keep your CalPERS LTC Policy and Receive a \$1,000 Cash Payment

If you select Option 2, you will receive a \$1,000 cash payment. You will not lose any rights you have under your CalPERS LTC Policy, you will continue to stay On Claim, and you will continue receiving the full benefits you are entitled to under your Policy.

For most Class Members who are currently On Claim or have applied to go On Claim, Option 2 is the best option since it preserves your right to continue receiving benefits under your CalPERS LTC Policy.

It is very important that you return this Late Election Form to us as quickly as possible. The Late Election Form must be postmarked no later than 30 days after it was mailed to you to make an election.

If you do not return the Form, fail to make an election, or select both options, you will be deemed to have selected Option 2, will receive a \$1,000 payment, and will keep your CalPERS LTC Policy in place and be entitled to maintain all benefits and contractual rights available under your CalPERS LTC Policy, except those expressly released under the Settlement. If you have any questions about your options, please call 1-866-217-8056 or visit the Settlement website at www.CalPERSLTCClassAction.com.

You may also access and submit this Late Election Form online at www.CalPERSLTCClassAction.com with the UniqueID and PIN printed above.

YOUR ELECTION

I hereby acknowledge receiving this Late Election Form. After considering this information, I hereby elect to:

Please only choose one option by initialing next to your selected option and signing this Form below. If you choose more than one option, you will be deemed to have selected Option 2.

Option 1:

_____ Surrender my CalPERS LTC Policy and receive a refund of 80% of all premiums paid by me from my Policy's inception through the date the Final Settlement Date (less any benefits paid). **WARNING: For Class Members who are On Claim or are applying to go On Claim, selecting this option only makes sense in rare circumstances. If you are considering Option 1, we would urge you to contact Class Counsel to discuss your decision before you complete and return this Form.**

Option 2:

_____ Keep my CalPERS LTC Policy and receive a \$1,000 cash payment. **For most Class Members who are currently On Claim or have applied to go On Claim, Option 2 is the best option since it preserves your right to continue receiving benefits under your CalPERS LTC Policy.**

SIGNATURE

PRINT NAME

DATE

When the Settlement becomes final a check made payable to your legal name will be sent to the above listed address. If you want to change your address, please email _____ or provide an updated address in the space below:

(Update address fields OCR)

You can return this form to:

CalPERS LTC Class Action

P.O. Box 6790

Portland, OR 97228-6790

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

HOLLY WEDDING, et al.,
Plaintiffs,

v.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, et al.,
Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4936

CASE NO. BC517444

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE WILLIAM F.
HIGHBERGER—DEPT. SS10

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL TO SECOND CLASS ACTION
SETTLEMENT**

Date:
Time:
Department 10 – Spring Street Courthouse

TRIAL DATE: MARCH 1, 2022
COMPLAINT FILED: AUGUST 6, 2013

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Second Class Action Settlement came on for hearing
3 before this Court, the Honorable William F. Highberger, presiding, on _____. The Court
4 having considered the papers submitted in support of the Motion, HEREBY ORDERS THE
5 FOLLOWING:

6 1. The Court has jurisdiction over the subject matter of this action, the Class
7 Representatives, the Settlement Class as defined in the Second Class Action Settlement
8 Agreement and Release filed on February 27, 2023, (the “Second Settlement Agreement” or
9 “Second Settlement”), and the Defendants. Capitalized terms not otherwise defined in this Order
10 shall have the definitions set forth in the Second Settlement Agreement.

11 2. Pursuant to the Order Granting Preliminary Approval of Second Class Action
12 Settlement, the Class Notice was sent to each individual identified on the Notice List by first-
13 class mail. The Class Notice informed the each member of the Settlement Class, including those
14 who requested exclusion, of the terms of the Second Settlement, their right to receive the benefits
15 of the Second Settlement, their right to object to the Second Settlement or to elect not to
16 participate in the Second Settlement, and their right to appear in person or by counsel at the
17 Fairness Hearing and be heard regarding approval of the Second Settlement. Adequate periods of
18 time were provided by each of these procedures. There were no objections [or there were ____
19 objections] to the Second Settlement from any [or ____] Settlement Class Member(s). The
20 Court finds and determines that this notice procedure afforded adequate protections to all
21 members of the Settlement Class including those who requested exclusion and provides the basis
22 for the Court to make an informed decision regarding approval of the Second Settlement based on
23 the responses of the Settlement Class. The Court finds and determines that the notice provided in
24 this case was the best notice practicable, which satisfied the requirements of law and due process.

25 3. ____ individuals have submitted valid and timely requests for exclusion and those
26 who have requested exclusion are identified on Exhibit ___ hereto. Those individuals identified
27 on Exhibit __ are not bound by the terms of the Second Settlement and preserve all their rights,
28 benefits and obligations including the benefits and obligations afforded by the CalPERS LTC

1 policy held by these individuals.

2 4. The Court grants final approval, for purposes of the Second Settlement only, of the
3 Settlement Class as defined in the Second Settlement Agreement.

4 5. The Court finds and determines that fees and expenses in the amount of
5 \$ _____ for Settlement Administration services are fair and reasonable and orders that
6 Settlement Administrator be paid from the Settlement Fund.

7 6. The Court determines by separate Order the request by the Plaintiffs and Class
8 Counsel for Service Awards to Plaintiffs and the request by Class Counsel for an award of fees
9 and costs (collectively the "Class Award").

10 7. The Court finds and determines that the Final Settlement Awards to be paid to the
11 members of the Settlement Class as provided for by the Second Settlement Agreement, are fair
12 and reasonable. The Court hereby gives final approval to and orders the payment of those
13 amounts to be made by the Settlement Administrator to the Participating Settlement Class
14 Members within 105 days after the Final Settlement Date.

15 8. The Parties are hereby ordered to comply with the terms of the Second Settlement.

16 9. Nothing in this Order will preclude any action to enforce the Parties' obligations
17 under the Second Settlement or under this Order, including the requirement that CalPERS fund
18 the Second Settlement in accordance with the Second Settlement Agreement.

19 10. Pursuant to the Second Settlement, Participating Settlement Class Members, are
20 permanently barred from prosecuting the Released Claims against the Released Parties under the
21 Second Settlement.

22 11. Pursuant to the Second Settlement, the Plaintiffs shall be deemed to have entered
23 into a Section 1542 release of claims as set forth in Paragraph 8.2 of the Second Settlement
24 Agreement.

25 12. Pursuant to California Civil Procedure Code section 384(b), within 365 days of the
26 Final Settlement Date, Class Counsel shall submit to the Court a report that identifies (i) the total
27 amount of the checks issued to and cashed by Participating Settlement Class Members; (ii) the
28 total amounts paid for administration of the Second Settlement and the Prior Settlement; (iii) the

1 total amount paid to Class Counsel and Plaintiffs; and (iv) the total amount of any funds that
2 remain in the Settlement Account. Upon receiving the report, the Court will determine whether
3 further reports and/or a hearing will be necessary. Upon receipt of the report regarding
4 distribution of settlement checks, the Court will direct that the Settlement Administrator pay
5 within thirty (30) days of the Court's Order, any funds in the Settlement Account that are due to
6 any Participating Settlement Class Member who did not cash his/her check, to the California State
7 Controller's Unclaimed Property fund for the benefit of each Participating Settlement Class
8 Member who did not cash his/her check, with all information required by the State Controller to
9 identify each individual who did not cash his/her check. And, pursuant to California Code of
10 Civil Procedure section 384(b), the Court will direct that any funds remaining in the Settlement
11 Account after payment of funds to the California State Controller's Unclaimed Property fund, be
12 distributed to Participating Settlement Class Members, or if such distribution is not feasible,
13 direct Class Counsel to submit an amendment to the Final Judgment and direct the Settlement
14 Administrator to pay the funds to [cy pres recipient].

15 13. Without affecting the finality of this Order in any way, the Court retains
16 jurisdiction of all matters relating to the interpretation, administration, implementation,
17 effectuation and enforcement of this Order and the Second Settlement.

18 14. The Parties will bear their own costs and attorneys' fees except as otherwise
19 provided by the Court's Order granting the Class Award.

20
21 **IT IS SO ORDERED.**

22
23 Dated: _____, 2023

24 HON. WILLIAM F. HIGHBERGER
25 Judge of the Superior Court

EXHIBIT C

1 On _____, this Court gave final approval to the class settlement between
2 Plaintiffs Eileen and Richard Lodyga and Holly Wedding (collectively “Plaintiffs”), and
3 Defendant California Public Employees’ Retirement System (“Defendant” or “CalPERS”) and
4 entered its Order Granting Final Approval to Second Class Action Settlement (the “Final
5 Approval Order”). Capitalized terms not otherwise defined in this Judgment shall have the
6 definitions set forth in the Second Settlement Agreement.

7 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

8 1. The Settlement Class is defined as any individual who was a California citizen in
9 February 2013, and who purchased LTC1 and LTC2 policies that included the automatic inflation
10 protection benefit and were subjected to the Challenged Increase. Policyholders who converted
11 their policies to LTC3 policies prior to the implementation of the Challenged Increase are not
12 included in the Settlement Class, even if the conversion occurred after the Challenged Increase
13 was approved in October 2012. The Settlement Class does not include those individuals who
14 opted out of the Class certified by the Court on January 28, 2016.

15 2. _____ members of the Settlement Class timely requested to be
16 excluded from the Settlement Class prior to the deadline on _____. A list of
17 members who requested exclusion is attached as Exhibit 1 hereto.

18 3. Plaintiffs Eileen and Richard Lodyga, Holly Wedding and all Participating
19 Settlement Class Members shall take from their complaint as to CalPERS only the relief set forth
20 in: (a) Second Class Action Settlement Agreement and Release (the “Settlement Agreement”), a
21 copy of which is attached as Exhibit A to the Declaration of Gretchen M. Nelson, dated February
22 27, 2023; and (b) the Final Approval Order, filed on _____.

23 4. This Judgment is intended to be a final disposition of the above-captioned action
24 as against CalPERS only, and is intended to be immediately appealable, including as to any
25 members of the Class certified by the Court’s Order, dated January 28, 2016 whose claims were
26 dismissed as a result of the Court’s Statement of Decision, dated July 27, 2020.
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5. Pursuant to the Settlement Agreement, California Code of Civil Procedure Section 664.4 and Rule 3.769(h) of the California Rules of Court, this Court retains jurisdiction over the parties to the Settlement solely to enforce the terms of the Settlement Agreement, the Final Approval Order, and this Judgment.

Dated: _____

Hon. William F. Highberger
Judge of the Superior Court

EXHIBIT D

	FirstName	LastName
1	Betty	Teeters
2	Annette	Davis
3	Bobby	Fraker
4	Bernard	Hartman
5	Marion	Kodani
6	William	Kodani
7	Christina	Merlo
8	Carole	McGrael
9	Fredricka	Nezbeth
10	Kathleen	Peng
11	Charles	Mares
12	David	Prince
13	Douglas	Brenn
14	Delores	Hudson
15	Diana	Clifford
16	Dianna	Fox
17	Edna	Baker
18	Ann	Willman
19	Gerald	Lorenzetti
20	Gary	Combes
21	Irene	Kwan-Carey
22	James	Burton
23	Jean	Akins
24	Linda	Herron
25	Joy	Moriconi
26	Richard	Aldrich
27	Mari	Cobb
28	Kenneth	Yglesias
29	Linda	Lee
30	Lynnette	Myhre
31	Luke	Serpa
32	Mark	Van Vlack
33	Mary	Hatcher
34	David	Winzenz
35	Ralph	Cobb
36	Susanne	Burton
37	Susan	Greer
38	Shonda	Durden
39	James	Coote
40	Allen	Lamoureaux
41	Vivian	Olsen
42	Elio	Abrami

43	Joan	Aldrich
44	Donald	Batey
45	Luella	Berger
46	James	Berry
47	Phillip	Bingham
48	Thelma	Bingham
49	Shirley	Black
50	Betty	Bones
51	Angeline	Brown
52	Frank	Brown
53	Christine	Campbell
54	Ileana	Capra
55	Delcina	Cassella
56	Connie	Chavez
57	Isma	Cochran
58	Edwin	Colegrove
59	Lola	Colegrove
60	Frances	Cooté
61	Connie	Creamer
62	Sophia	Da Costa
63	Michael	Davis
64	Dolores	Denny
65	Evelynn	Derganc
66	Shirley	Dessin
67	Frances	Drum
68	Jane	Eller
69	Fred	Endo
70	Joseph	Evers
71	Awilda	Fagin
72	Robert	Fagin
73	Blaine	Foltz
74	Nancy	Fong
75	Susan	Forrester
76	James	Freeman
77	Patricia	Freeman
78	Jess	Goodman
79	Lucille	Goodman
80	QUANG	HO
81	Kathryn	Hall
82	Margo	Handelsman
83	James	Hatcher
84	Hiroko	Hayashigatani
85	Shotaro	Hayashigatani

86	Ellen	Hill
87	Shirley	Huddleston
88	Andrew	Hudson Jr
89	Douglas	Hutton
90	Thomas	Iyemura
91	George	Izaguirre
92	Vernice	Jackson
93	David	Jeheber
94	Catherine	Johnson
95	Gloria	Johnson Barrows
96	Rosemary	Jorgens
97	Barry	Kaufman
98	Barbara	Kawamoto-Combes
99	Irene	Lanchester
100	Martha	Lauritzen
101	Cynthia	Learned
102	Ruth	London
103	Lucille	Lukaszewski
104	MASUMI	MASUNAGA
105	Dorothy	MacDonald
106	William	Manning
107	Lorraine	Marlowe
108	Kimiko	Masunaga
109	Tommie	McKinnon
110	Dale	McVey
111	Margit	Meeker
112	Walter	Miller
113	Barbara	Moffatt
114	Marcia	Munn
115	Robert	Munn
116	Keiko	Nishimoto
117	Koji	Nishimoto
118	Stephen	Nishimoto
119	Lynda	O'Rourke
120	Katherine	Otamura
121	David	Owen
122	Linda	Owen
123	Harrienne	Ozawa
124	Carol Mae	Peel
125	Helen	Pike
126	Walter	Pike
127	Mary Louise	Poehm
128	Otto	Poehm

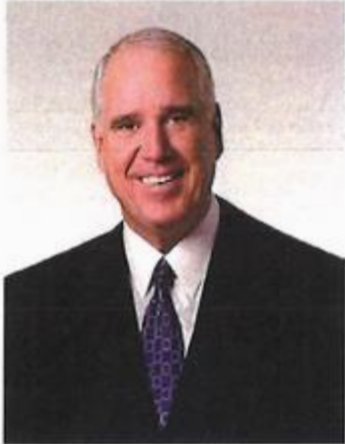
129	Jeffrey	Reynolds
130	Morgan	Rice
131	Winona	Richter
132	Irmgard	Rigsby
133	Esperanza	Rodriguez
134	Donna	Romley
135	Phillip	Romley
136	Alexandra	Ross
137	DENNIS	STUART
138	DIANE	STUART
139	Diane	Santos
140	Linda	Schiavino
141	Lois	Schildmeyer
142	Kathleen	Serpa
143	Sydney	Shanks
144	Beverly	Simmons
145	Ronnie	Simmons
146	Laura	Simonian
147	Sharon	Smith
148	Phyllis	Staggs
149	Elsie	Taylor
150	James	Tighe
151	Mary	Tomlin
152	Karen	Touchon
153	Rose	Vanderloo
154	Carmelina	Visser
155	Ayako	Wada
156	Evelyn	Wallace
157	Dorothy	Warner-Jeheber
158	Fred	Webb
159	Sheila	Webb
160	Janice	Whitehouse
161	Laurie	Whitsel
162	Richard	Whitsel
163	Dalt	Williams
164	Patricia	Williams
165	Annette	Winner
166	Marilyn	Winzenz
167	George	Wong
168	Judy	Wong
169	Donna	Yglesias

EXHIBIT 2



SHERNOFF BIDART
ECHEVERRIA ^{LLP}

LAWYERS FOR INSURANCE POLICYHOLDERS



Michael J. Bidart

As a preeminent consumer attorney, Michael J. Bidart has made a major impact on our healthcare system. Mr. Bidart is the Managing Partner for the firm, and he leads the firm's HMO Litigation and Property/Casualty Departments.

Since bringing his expertise to the firm in 1986, Mr. Bidart has developed the firm's health insurance practice by successfully prosecuting bad faith disputes against insurers and HMOs.

His inexhaustible efforts were showcased in 1999 with a landmark \$120.5 million verdict against Aetna over its refusal to pay for care recommended by the health plan's own physicians (*Goodrich v.*

Aetna).

Mr. Bidart's dedication and expertise are also exemplified by many earlier landmark decisions. In *State Farm v. Superior Court* (1996) he helped establish conclusively that Business & Professions Code §17200 unfair business practice liability applies to insurance companies in California. For victims of the 1994 Northridge earthquake he won more than \$300 million.

He was a key player in the California Public Employees' Retirement System's decision to expand its health care benefits for women with breast cancer, and he led the firm's effort to ensure that prostate cancer patients statewide receive proton beam therapy as a covered benefit under their insurance policies.

Mr. Bidart has been named a Super Lawyer by *Law & Politics Magazine* every year since 2004, has been a Super Lawyer Top 100 Attorney every year since 2004 and Top 10 from 2018 to 2021. In 2019, he was named a Top Healthcare Attorney in California by the *Los Angeles Daily Journal*. He has been profiled in the *National Law Journal*, *The American Lawyer* and *California Lawyer Magazine*, which have recognized him as one of California's most influential lawyers. The Wall Street Journal has also noted that Mr. Bidart's success in healthcare litigation helped to reignite the debate in Congress over whether patients should have the right to sue their health plans.

A well-known lecturer and keynote speaker on HMO litigation and bad faith insurance practices, Mr. Bidart has been a featured speaker for the Association of Trial Lawyers of America, Consumer Attorneys of California, American Conference Institute, The Rutter Group, the California Judges Association and many others.



**SHERNOFF BIDART
ECHEVERRIA^{LLP}**

LAWYERS FOR INSURANCE POLICYHOLDERS

Mr. Bidart has served on the Board of Governors of Consumer Attorneys of California and Consumer Attorneys Association of Los Angeles, on the Board of Regents of Loyola Marymount University.

Mr. Bidart graduated from California State Polytechnic University, Pomona (B.S., 1971) and Pepperdine University School of Law (J.D., 1974) and has been the recipient of the Distinguished Alumnus Award of both universities.

AREAS OF PRACTICE

- Healthcare
- HMO Litigation
- Property/Casualty

(100% of Practice Devoted to Litigation)

EDUCATION

- Pepperdine University School of Law, Malibu, California, 1974; Doctor of Jurisprudence
- California State Polytechnic University, Pomona, California, 1971; Bachelor of Science, Economics

HONORS AND AWARDS

- Consumer Attorneys Association of Los Angeles (CAALA) Trial Lawyer of the Year, 2015
- CAL ABOTA Trial Lawyer of the Year, 2011
- *Los Angeles Daily Journal* Top Verdict Honoree, 2016
- *Los Angeles Daily Journal* Top 25 California Plaintiff Attorney, 2015, 2016
- *Los Angeles Daily Journal* Top Healthcare Attorney in California, 2019
- Southern California Super Lawyers Top 100, 2004-2020
- Southern California Super Lawyers Top 10, 2020
- *Law & Politics Magazine*, Super Lawyer, 2004-2020
- *Who's Who Legal: Insurance & Reinsurance*, 2016
- Best Lawyers' Inland Empire Insurance Law "Lawyer of the Year", 2014, 2017
- *Law360* Insurance Law MVP, 2014-2015
- Association of Southern California Defense Counsel (ASCDC), Civil Advocate Award, 2008
- California's 100 Most Influential Lawyers, *California Lawyer Magazine*



**SHERNOFF BIDART
ECHEVERRIA^{LLP}**

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PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- American Board of Trial Advocates (ABOTA), Fellow
- American College of Trial Lawyers (ACTL), Fellow
- International Academy of Trial Lawyers (IATL), Fellow
- Consumer Attorneys of California, Past Member of the Board of Governors
- American Association for Justice
- Consumer Attorneys Association of Los Angeles, Past Member of the Board of Governors
- Loyola Marymount University; Board of Regents (Emeritus)
- American Bar Association
- Los Angeles County Bar Association
- San Bernardino County Bar Association

BAR ADMISSIONS

Federal

- United States Supreme Court
- U.S. Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Southern District of California

State

- California Supreme Court

PUBLIC SPEAKING/LECTURES

- Lecturer, HMO Litigation and Bad Faith Insurance Practices
- Keynote Speaker, HMO Litigation and Bad Faith Insurance Practices
- Featured Speaker, Association of Trial Lawyers of America
- Featured Speaker, Consumer Attorneys of California (CAOC)
- Featured Speaker, Consumer Attorneys of California (CAALA)
- Featured Speaker, American Conference Institute
- Featured Speaker, The Rutter Group
- Featured Speaker, California Judges Association
- Featured Speaker, PIAA National Medical Liability Conference
- Featured Speaker, Pepperdine University Trial Lawyer conference



SHERNOFF BIDART
ECHEVERRIA^{LLP}

LAWYERS FOR INSURANCE POLICYHOLDERS

- Featured Speaker, Consumer Attorneys of Inland Empire (CAOIE)
- Featured Speaker, Orange County Trial Lawyers Association (OCTLA)

OFFICIALLY REPORTED CASES (PARTIAL LISTING)

Dozens of published opinions are the result of Mr. Bidart's work on behalf of insurance consumers; he has made his mark, helping to establish protections for insureds throughout California. Below are some of his more prominent published decisions.

- ***Berman v. Health Net***, 80 Cal.App.4th 1359, 96 Cal.Rptr.2d 295, 2000 WL 681029, 00 Cal. Daily Op. Serv. 4164, 2000 Daily Journal D.A.R. 5573, Cal.App. 2 Dist., May 26, 2000 (No. B125182) – An employee agreed, by enrolling in a medical insurance plan, to submit any dispute to arbitration. The insured and his wife, in the course of her treatment under the medical plan, brought an action against the medical insurer for breach of the duty of good faith and fair dealing, breach of contract, breach of fiduciary duty, negligent and intentional infliction of emotional distress, and for injunctive relief for unfair competition. Counsel for the parties stipulated that defendant's challenges to the pleadings would not be deemed a waiver of its right to seek an order compelling arbitration. The parties then engaged in extensive discovery. The trial court denied defendants' subsequent motion to compel arbitration, finding that defendant waived the right to compel arbitration by engaging in substantial discovery, and the trial court also denied defendant's motion for reconsideration. The Court of Appeal affirmed the judgment denying defendant's motion to compel arbitration. The court held that defendant waived its right to compel arbitration under the parties' agreement. The trial court properly drew an inference that defendant sought and obtained information not available in arbitration during discovery, thus causing prejudice to plaintiff, and that inference was supported by the record.
- ***Burks v. Kaiser Foundation Health Plan, Inc.***, 160 Cal.App.4th 1021, 73 Cal.Rptr.3d 257, 2008 WL 590872, 08 Cal. Daily Op. Serv. 2717, 2008 Daily Journal D.A.R. 3321, Cal.App. 3 Dist., March 05, 2008 (No. C054374.) – A health plan subscriber brought action against a health plan. The plan petitioned to compel arbitration. The Sacramento Super Court denied petition, after which The Court of Appeal held that the arbitration notice on the plan enrollment form was not "prominently displayed," and the arbitration notice did not substantially comply with California Health & Safety Code § 1361.2.
- ***Goodrich v. Aetna, Inc.***, Not Reported in Cal.Rptr.2d , 1999 WL 181418, Not Officially Published, Cal.App.Super., March 29, 1999 (No. RCV 20499.) – Aetna Insurance was found guilty by a jury in California of letting David Goodrich die a painful death from



SHERNOFF BIDART
ECHEVERRIA^{LLP}

LAWYERS FOR INSURANCE POLICYHOLDERS

cancer resulting in Aetna's denial of the timely delivery of essential care services. Despite Aetna's claim to the contrary, the Aetna health care policy was found to not contain any exclusions or limitations to the health care treatments recommended by the Aetna in-plan cancer doctor's (oncologist). Aetna claims processors used a "Terminal Illness Policy" procedures and guidelines process to deny treatment to Mr. Goodrich even though the Mr. Goodrich's insurance policy did not contain any exclusions for experimental or investigational procedures. The jury awarded damages totaling just over \$120 million. On appeal, the California Appeals Court stated Mr. Goodrich was "exemplary human being in every aspect of his life" and found that Aetna's parent company, Aetna Services, Inc. should also be liable and that the verdict, the largest against an HMO in history, was not excessive.

- ***Groom v. Health Net***, 82 Cal.App.4th 1189, 98 Cal.Rptr.2d 836, 2000 WL 1123604, 00 Cal. Daily Op. Serv. 6693, 2000 Daily Journal D.A.R. 8797, Cal.App. 2 Dist., August 09, 2000 (No. B131271.) – A member of a health plan administered by an HMO brought an action against the organization, alleging that plaintiff suffered a stroke after the HMO refused to timely provide appropriate examinations and medication. The defendant moved to compel arbitration of the dispute pursuant to the arbitration clause contained in the health plan, but the trial court denied defendant's petition to compel arbitration. The Court of Appeal reversed the order denying defendant's petition to compel arbitration and issued directions to enter an order compelling arbitration. The court held that the trial court erred in finding that defendant waived its right to compel arbitration, notwithstanding defendant's demurrers to plaintiff's complaint, since there had been no litigation on the merits, and plaintiff was unable to demonstrate prejudice.
- ***Imbler v. PacifiCare of Cal., Inc.***, 103 Cal.App.4th 567, 126 Cal. Rptr.2d 715, 2002 WL 31475007, 02 Cal. Daily Op. Serv. 11,009, 2002 Daily Journal D.A.R. 12,735, Cal.App. 4 Dist., November 06, 2002 (No. E030820) – An insured brought an action, alleging various causes, against his HMO to recover for defendant's failure to pay for his cancer treatment. The trial court denied defendant's petition to compel arbitration made pursuant to an arbitration provision. The Court of Appeal affirmed, holding that the trial court properly denied defendant's petition to compel arbitration, since defendant's arbitration provision failed to meet the requirement of the law, that an arbitration provision in a health care service plan be prominently displayed. The court further held that the health code is not preempted by the Federal Arbitration Act.
- ***Kaiser Foundation Health Plan v. Superior Court (Rahm)***, 203 Ca.App.4th 696 (2012) – Holding: That Insureds brought action against a health care service plan for breach of the implied covenant of good faith and fair dealing and intentional infliction of



SHERNOFF BIDART
ECHEVERRIA^{LLP}

LAWYERS FOR INSURANCE POLICYHOLDERS

emotional distress, and sought punitive damages. Kaiser moved to strike the punitive damages allegations. The Superior Court judge denied the motion to strike. Kaiser then petitioned for writ of mandate and the Court of Appeal summarily denied the petition. Kaiser then petitioned for review and the Supreme Court granted review and remanded with directions. The court held that the statute requiring leave of court for punitive damages allegations does not apply to claims against health care service plans, and the insureds' punitive damages allegations did not require leave of court.

- ***Kotler v. PacifiCare of California***, 126 Cal.App.4th 950, 24 Cal.Rptr3d 447, 2005 WL 318681, 05 Cal. Daily Op. Serv. 1310, 2005 Daily Journal D.A.R. 1713, Cal.App. 2 Dist., February 10, 2005(No. B171654.) – An insured patient who encountered delays in treatment brought a breach of contract and breach of implied covenant of good faith and fair dealing against his health care service plan and its parent corporation. The Los Angeles Superior Court granted defendants summary judgment and then patient appealed. The Court of Appeal held that the patient's treatment with out-of-network specialist was not "emergency medical condition" reimbursable under plan agreement, but the triable issue of fact remained whether six-week wait for appointment constituted breach of plan's implied-in-law obligation.
- ***Liberty Surplus Insurance Corp. et al. v. Ledesma & Meyer Construction Co. Inc. et al.***, case number S236765 in the Supreme Court of the State of California, and case number 14-56120 in the U.S. Court of Appeals for the Ninth Circuit. The California Supreme Court ruled that there is coverage under an insurance policy for an employer who has been sued for negligent hiring, supervision and/or retention when an employee sexually assaults another. The Court issued the ruling in response to a certified question from the Ninth Circuit in Ledesma & Meyer Construction Co. Inc.'s coverage dispute with Liberty Surplus Insurance Corp. The California Supreme Court found that claims that an employer who is negligent in hiring, retaining or supervising a worker who intentionally injured a third party triggers a general liability policy's coverage for an accident, or "occurrence." Under state law, an accident is "an unexpected, unforeseen or undesigned happening or consequence from either a known or an unknown cause."
- ***Medeiros v. Superior Court***, 146 Cal.App.4th 1008, 53 Cal.Rptr.3d 307, 2007 WL 93170, 07 Cal. Daily Op. Serv. 609, 2007 Daily Journal D.A.R. 745, Cal.App. 2 Dist., January 16, 2007 (No. B193042.) – Employees filed lawsuit against their health insurer for breach of contract and bad faith, and health insurer filed motion to compel arbitration. The Superior Court granted a motion to compel arbitration, and employees petitioned for a writ of mandate. The Court of Appeal held that arbitration provisions in employer's



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ECHEVERRIA^{LLP}

LAWYERS FOR INSURANCE POLICYHOLDERS

health benefits election agreement and evidence of coverage form were unenforceable based on failure to comply with statutory disclosure requirements.

- ***Minkler v. Safeco***, 49 Cal.4th 315 (2010) – In responding to a certified question from the Ninth Circuit The assignee of insured’s rights under liability policy brought action against Safeco for breach of contract and breach of the covenant of good faith and fair dealing. Insurer removed the case to the United States District Court for the Central District of California and the District Court granted Safeco’s motion to dismiss. The assignee appealed to the United States Court of Appeals for the Ninth Circuit which certified a question to the California Supreme Court. The Court held that exclusion barring coverage for intentional acts did not bar coverage for negligently failing to prevent another insured’s intentional acts, where the insurance applied “separately to each insured.”
- ***Mintz v. Blue Cross***, 172 Cal.App.4th 1594 (2009) – An insured under a health insurance plan brought an action against the administrator of the plan, alleging claims for interference with contractual relations, intentional infliction of emotional distress, and negligence, arising from administrator’s denial of coverage for cancer treatment as investigational, and failure to inform insured of his right to seek independent review of the denial. The Los Angeles Superior Court sustained the administrator’s demurrer, and insured appealed. The Court of Appeal held that the administrator could not be liable for intentional interference with contractual relations; administrator’s actions were not extreme and outrageous conduct, as required to state a claim for intentional infliction of emotional distress; but the administrator had a duty, as element of negligence, to exercise due care to protect insured from physical injury in making benefit determinations under plan.
- ***Notrica v. State Compensation Ins. Fund(aka State Compensation Ins. Fund)***, 70 Cal.App.4th 911, 83 Cal.Rptr.2d 89, 1999 WL 141814, 64 Cal. Comp. Cases 378, 99 Cal. Daily Op. Serv. 1933, 1999 Daily Journal D.A.R. 2503, Cal. App. 2 Dist., March 17, 1999 (No. B097529) – An employer sued the State Compensation Insurance Fund to recover damages for tortuous breach of good faith and fair dealing and for unfair business practices, based on allegations that defendant’s failure to estimate reasonable claim reserve levels resulted in plaintiff’s paying higher premiums and receiving lower dividends. The trial court entered judgment for plaintiff on the jury’s verdict awarding \$478,606 in compensatory damages for breach of the duty of good faith and fair dealing, and \$20 million in punitive damages under Civ. Code, § 3294. The court also issued an injunction requiring defendant to delete the term “maximum probable potential” from its claims estimating manual and to return to a previous standard. The Court of Appeal



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held: the trial court did not err in permitting tort recovery for breach of the implied covenant of good faith and fair dealing based solely on the fact that defendant's practices affected plaintiff's future premiums; the substantial evidence supported the trial court's findings of bad faith; that the jury properly awarded plaintiff compensatory damages. In addition, the court held that the trial court properly granted an injunction requiring defendant to delete the term "maximum probable potential" from its claims estimating manual and to return to a previous standard, and further enjoining defendant from other unfair business practices.

- ***Oakland-Alameda County Coliseum, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA***, 480 F.Supp.2d 1182, 2007 WL 949687, N.D.Cal., March 21, 2007 (No. C06-2328 MHP.) – The insured brought a state court suit against directors and officers (D&O) liability insurer and eight excess insurance carriers, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and seeking declaratory relief. The action was removed and the insurers moved for summary judgment. The District Court had several holdings: notice section of D & O policy did not dispense with timing requirement for notices mailed on last day of coverage; the timing provision applied to expiration date; the insurer did not waive timeliness defense to notice of claim through nine-year delay in asserting defense; the insurer was not stopped from asserting timeliness defense; the insured's reporting of litigant's demands and threats constituted making a claim under policy; one excess policy was a claims-made policy rather than claims-made-and-reported policy under which showing of prejudice was not required; and the coverage for negligent misrepresentation was not barred by Insurance Code.
- ***Smith v. PacifiCare Behavioral Health of California, Inc.***, 93 Cal.App.4th 139, 113 Cal.Rptr.2d 140, 2001 WL 1298977, 01 Cal. Daily Op. Serv. 9230, 2001 Daily Journal D.A.R. 11,463, Cal.App. 2 Dist., October 25, 2001 (Nos. B142321, B145004.) The court held, for the first time, that California health care service plans (HMO's) were engaged in the business of insurance, finding that "HMOs function the same way as a traditional health insurer" and "are in the business of insurance." Smith also held that health insurers and HMOs in California were required to comply with California statutes that regulated the use of arbitration clauses in health-insurance contracts—those that failed to comply with the requirements would not be enforceable.
- ***State Farm Fire & Casualty Co. v. Superior Court***, 45 Cal.App.4th 1093, 53 Cal.Rptr.2d 229, 1996 WL 273490, 96 Cal. Daily Op. Serv. 3713, 96 Daily Journal D.A.R. 5973, Cal.App. 2 Dist., May 23, 1996 (No. B096075.) (Allegro) The insureds brought suit against homeowners' and earthquake insurer under Unfair Competition Act of California Business and Professions Code §17200. The Los Angeles Superior Court

overruled demurrer to the complaint, and the insurer sought writ of mandate. The Court of Appeal held that: an insurer's conduct constituting a breach of the implied covenant of good faith may also constitute an unfair business practice under section 17200 and a claim for injunctive or restitutive relief under the UCA can be based on any fraudulent or unlawful or unfair business activity.

- ***Zolezzi v. PacifiCare of California***, 105 CalApp.4th 573, 129 Cal.Rptr.2d 526, 2003 WL 139718, 03 Cal. Daily Op. Serv. 626, 2003 Daily Journal D.A.R. 825, Cal.App. 4 Dist., January 21, 2003 (No. D039779) – Through her guardian, a patient brought an action against a Medicare Choice health care plan provider, alleging breach of the duty of good faith and fair dealing, intentional infliction of emotional distress, and other claims, arising from defendant's refusal to authorize surgery for a fractured bone. The trial court denied defendant's petition to compel arbitration, concluding that the federal Medicare Act did not preempt application the law, and defendant's noncompliance with the arbitration disclosure requirements. The Court of Appeal affirmed this and held that the trial court properly denied defendant's petition to compel arbitration, since the federal Medicare Act did not preempt application of the law, and defendant's noncompliance with the arbitration disclosure requirements precluded enforcement of the contractual arbitration provision. The court further held that the newly added preemption provision did not preempt application since the amendment does not apply retroactively.

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Class Action Cases in Which Shernoff Bidart Echeverria Represented Plaintiffs

Case Name	County	Case Number
9008 Group, Inc., et al. v. TIG Insurance Company, et al	Los Angeles County Superior Court	BC 157795
Apple One Services, Ltd. v. American Home Assurance Company, et al	Los Angeles County Superior Court	BC 155301
Arrow Air Conditioning Co. v. Golden Eagle Insurance Company	Riverside County Superior Court	284825
Black v. Blue Cross	Los Angeles Superior Court	BC250339
California Sample Services, Inc. v. Pacific Rim Assurance Company	Los Angeles County Superior Court	BC 153695
Coles Carpet, et al. v. Superior National Insurance Group, et al,	Los Angeles County Superior Court	BC 159813
Drasin Knitting Mills, et al v. Zenith Insurance Company	Los Angeles County Superior Court	BC 163825
Farris Brothers of California v. Liberty Mutual Insurance Company	Los Angeles County Superior Court	BC 217855
Hersch & ZiffInc. v. Nationwide Mutual Insurance Company	Los Angeles County Superior Court	BC 157667
Insurance Company Cases. in the coordinated "Med Pay" class action entitled Goodman v. Mercury and Thesis v. 21 st Century	Los Angeles Superior Court	J.C.C.P. No 4249 (BC275934) (BC275932)
Kirk v. First American Title Ins. Co.	Los Angeles Superior Court	8C372797
L.A. Airline, Inc. v. Republic Indemnity Company of California, et. Al	Los Angeles Superior Court	BC 156891
Malek v. Blue Cross	Los Angeles Superior Court	BC271992
Notrica 's 32'd Street Market v. California Compensation Insurance Company	Los Angeles County Superior Court	BC 157151
Pickett/Kaufman v. First American Title Ins. Co.	Los Angeles Superior Court	BC382826
R&M Food Services, Inc., et al. v. Fremont Compensation Insurance Company, et al.	Los Angeles County Superior Court	BC 155301
Shaefer Ambulance Service v. State Compensation Insurance Fund	Orange County Superior Court	725063
Sjobring v. First American Title Ins. Co.	Los Angeles Superior Court	BC329482
Villanueva v. Fidelity National Title Company	Santa Clara County Superior Court	1-10-CV173356
Wilmot v. First American Title Ins. Co.	Los Angeles Superior Court	BC370141

EXHIBIT 3

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Kershaw Talley Barlow

The law firm of Kershaw Talley Barlow PC (KTB) is dedicated to advancing the rights of consumers, employees and injured victims in class actions, mass torts and other complex consumer and antitrust litigation, and in matters involving catastrophic personal injury. The attorneys of the firm have lead responsibility in obtaining recoveries through judgments or settlement aggregating multiple billions of dollars for their clients. The partners have served as lead or co-lead counsel and liaison counsel in many high profile national class action and mass tort cases and have been appointed to the executive or plaintiffs' steering committees in both state and federal courts.

William A. Kershaw is Past President of the Sacramento County Bar Association, Past Chair of the California Consumer Protection Council, and Past President of the St. Michael's Episcopal Day School. He has also been named a Northern California Super Lawyer for 13 consecutive years, Best of the Bar 2014-2018 by Sacramento Business Journal, AV Preeminent rated by Martindale-Hubbell, Superb Rated by AVVO, and selected by his peers as a 2015-2019 Top Lawyer in the Sacramento region.

Stuart Talley is a name partner who for the past 30 years has practiced in the areas of mass torts and class action involving consumer and financial fraud as Lead or Co-Lead Counsel. He has been named a Northern California Super Lawyer for 2015-2021 and was selected by his peers as a Top Lawyer in the Sacramento Region during the same timeframe.

Ian J. Barlow attended University of California, Berkeley and UCLA School of Law. Ian also earned a Master of Public Policy degree from the Luskin School of Public Affairs at UCLA, where he received the Department of Public Policy Award of Honors for his thesis. His practice focuses on complex litigation in federal and state courts, including wage and hour violations, product liability, mass torts, fraud, whistleblower lawsuits, and consumer class actions. He was selected for Best of the Bar by the Sacramento Business Journal in 2018, Super Lawyers Northern California Rising Star Award from 2015-2018, and Top Lawyers by Sacramento Magazine from 2016-2018.

Some of the firm's more prominent successes and ongoing cases include:

- *Camp Fire Cases*, California Superior Courts and Northern District of California Bankruptcy Court. This is a case which Ian J. Barlow has managed since its inception and is a mass tort and bankruptcy proceedings involving PG&E and the November 8, 2018 Camp Fire in Paradise,

California. Prior to the start of the fire, PG&E reported damage to a high voltage transmission line located near the origin points of the Camp Fire. PG&E also considered turning off power for safety reasons given forecasts of extreme fire danger conditions. However, PG&E did not institute a power shutoff until November 9, 2018, after the Camp Fire had already incinerated the town of Paradise. The Camp Fire was the deadliest and most destructive fire in California history, with an official death toll of 86 people and over 19,000 structures destroyed or damaged. Mr. Barlow represents victims of the Camp Fire, including individuals and families who lost a family member, suffered personal injuries, lost real and personal property, experienced emotional distress, and business owners whose businesses and employees were impacted by the fire. The firm is currently working with claimants through the claims process to secure relief on behalf of fire victims.

- *Northern California Wildfires*, California Judicial Coordination Proceeding No. 4955, San Francisco County Superior Court; Bankruptcy Case No. 19-30088 (DM), Northern District of California Bankruptcy Court. Also managed by Mr. Barlow, this case is a mass tort and also a bankruptcy proceeding involving PG&E stemming from more than a dozen devastating fires in Northern California that burned through parts of Napa, Sonoma, Mendocino, Solano, Butte, Calaveras, Nevada, Yuba, and Lake counties. The fires started on or around October 8, 2017 and was the second most destructive fire event in California history, after the Camp Fire. The North Bay Fires resulted in over 40 fatalities and forced 90,000 people to evacuate their homes. Plaintiffs alleged that PG&E's improper maintenance of utility equipment and its neglect of surrounding vegetation caused the fires. Mr. Barlow represents victims of the Northern California Wildfires and is working through the claims process to secure relief for them from the Fire Victim Trust.
- *Gilead Tenofovir Cases*, this is a California Judicial Coordination Proceeding No. 5043, in which 25,000 cases are currently pending in San Francisco County Superior Court. William A. Kershaw is currently serving as Co-Liaison Counsel and in leadership on the Plaintiffs' Executive Committee for these cases. Mr. Kershaw represents over 500 of the 25,000 plaintiffs who were sold the HIV pro-drug tenofovir disoproxil fumarate (TDF) by Gilead which caused irreversible kidney and bone damage at a time when it is alleged that the company had in its possession and could have sold a much safer drug but declined to do so to maximize profit under a patent. The parties are currently working up four bellwether cases for trial which is currently set to start on July 11, 2022.
- *Essure Product Cases*, California Judicial Coordination Proceeding No. 4887 pending in Alameda County Superior Court involving some 30,000+ cases involving women who had the Bayer birth control device known as Essure implanted in their bodies causing internal and emotional injury when the device either migrated or disintegrated within a woman's fallopian tubes. William A. Kershaw is currently serving on the Plaintiffs' Executive Committee as Co-Liaison Counsel for these cases. William A. Kershaw and Stuart C. Talley currently represent close to 500 plaintiffs who have had the Essure Birth Control System implanted into their bodies and are in the process of distributing settlement monies to all of these women.

- *DePuy ASR™ Hip System Cases*, California Judicial Council Coordination Proceeding No. 4649, San Francisco County Superior Court. Stuart C. Talley and William A. Kershaw are currently serving on the Plaintiffs' Steering Committee. These proceedings are working cooperatively with MDL 2197, *In re: DePuy Orthopaedics, Inc., ASR™ Hip Implants Products Liability Litigation*. William A. Kershaw and Stuart C. Talley currently represented over 125 plaintiffs who had the *DePuy ASR™ Hip System* implanted into their bodies. Mr. Talley and Kershaw prepared for trial and settled these cases on the Court House steps on the eve of trial.
- *Campbell v. PricewaterhouseCoopers, LLP* (Case No. 06-CV-02376-LKK-GGH). Mr. Kershaw and Mr. Talley served as lead class counsel in the first certified class action against a big four accounting firm for failure to pay overtime to PwC Audit Associates as well as other compensation based on their alleged non-exempt status under California's wage and hour laws. The complaint was filed alleging failure to pay overtime compensation in violation of California Labor Code section 510, failure to timely provide and pay for meal period and rest breaks in violation of Labor Code section 512 and 226.7 and failure to provide accurate pay records and waiting time penalties all in violation of California Business & Professions code 17200. Federal Court, sitting in the Eastern District of California, granted plaintiffs' motion for summary judgment on liability finding that PwC's Audit Associates were non-exempt hourly employees and that PwC had improperly designated them as exempt. The case went up and down to the 9th circuit three times on class certification and summary judgment before it settled three months before trial.
- *Rutledge, et al., v. Hewlett-Packard Company*, Case No. 1-03-CV-817837. Mr. Kershaw served as co-class counsel in this complex case against HP. Plaintiffs contended that HP sold notebook computers that it knew or should have known contained defective inverters, which allegedly, resulted in dim, darkened, or flickering display screens. After fourteen years of litigation, including two published opinions by the court of appeals, a class settlement was reached in 2017 on behalf of more than 120,000 potential class members. After 10 years of litigation, the case settled just before trial.
- *McLean v. State of California, et al.*, Case No. 34-2012-00119161. Filed in 2012, Mr. Kershaw and Mr. Barlow served as lead class counsel for employees who resigned or retired from California state civil service in late 2010 and early 2011. After successfully arguing the case in the California Court of Appeal and California Supreme Court (see *McLean v. State of California* (2016) 1 Cal. 5th 615), the matter was returned to the Sacramento County Superior Court in 2016. Following two additional years of active litigation and nearly seven years after the case was initiated, a proposed settlement was reached in December 2018. The court granted final approval of the proposed settlement on May 31, 2019.
- *In re American Honda Motor Co., Inc. Dealerships Relations Litigation*, MDL 1069, U.S. District Court, Baltimore, Maryland. An antitrust and RICO class action where Mr. Kershaw served as plaintiffs' lead class counsel. Class action complaint filed in E.D., California; transferred to MDL; limited liability class certified. More than 80 cases are included in this MDL proceeding. The Court approved a global settlement of \$330

million (plus) in *Borman Motor Company, et al. v. American Honda Motor Company, Inc., et al.* a class action brought by current and former Honda and Acura dealers alleging RICO and antitrust violations and fraud related to misallocation of cars. *Borman II* was a case evolving from the MDL involving misconduct on the part of certain of Honda's counsel, resulting in an additional settlement of \$60 million.

- *Bayshore Ford Truck Sales, Inc., et al. v. Ford Motor Company*, USDC, District of New Jersey, No. 99 CV 741 (JCL), filed as a class action on behalf of all Ford heavy truck dealers for breach of contract damages arising from Ford's unilateral sale of its heavy-truck business to Freightliner, William A. Kershaw was appointed lead class counsel on behalf of the dealer class. The class was certified as to liability and thereafter continued as individual damage cases on behalf of 77 dealers. Mr. Kershaw served as co-lead trial counsel in a bellwether jury trial on behalf of 11 dealerships and obtained \$45 million jury verdict following month-long trial. The case litigated on allegations that Ford violated its franchise agreement by failing to supply the dealers with heavy trucks pursuant to that contract. The 11 bellwether dealers were located throughout the United States.
- *George Lussier Enterprises, Inc. dba Lussier Subaru, et al. v. Subaru of New England, Inc., et al.* USDC, District of New Hampshire, No. C-99-109-B. This is an antitrust case where Mr. Kershaw served as lead class counsel for plaintiffs in this class action filed by Subaru dealers in New England alleging antitrust and RICO violations relating to the vehicle allocation process administered by Subaru of New England. Mr. Kershaw successfully sought class certification.
- Mr. Kershaw and Mr. Talley served as co-lead class counsel and represented over 23,000 current and former UPS drivers in the case of *Cornn, et al. v. United Parcel Service, Inc.* (N.D. Cal C 03 2001 TEH), which settled for an \$87 million cash payment and other monetary benefits that were valued at more than \$4 million. Our research revealed that the \$91 million settlement is the largest class-action settlement in California history based solely on meal and rest period violations and itemized statement violations. In addition to the monetary benefits, the *Cornn* litigation also served as a catalyst to change the complained of practices within UPS. Eight months after the *Cornn* case was filed, UPS completely changed its meal and rest break policies and procedures throughout California. Again, this was a significant benefit obtained for the class. As a result of this case, thousands of UPS drivers are now able to work a healthy schedule and receive their meals and breaks as required by California law. There are a few final points about the settlement that are worth highlighting. First, half of the settlement proceeds were paid as "penalties and interest," which resulted in a significant tax savings to class members. Second, a non-reversionary settlement was negotiated, with any unclaimed funds being paid in equal parts to the San Francisco and Los Angeles Food Banks. Third, not a single class member objected to the *Cornn* settlement, which was approved by Judge Thelton E. Henderson.
- *In re: Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation* (MDL No. 2441) pending in the United States District Court, District of Minnesota. Stuart C. Talley is currently serving on the Plaintiffs' Steering Committee and has litigated and settled more than 80 of these cases

- *In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation* (MDL No. 2244) pending in the United States District Court, Northern District of Texas. Stuart C. Talley is currently serving on the Plaintiffs' Steering Committee and will be trying a score of these cases should they not be successfully mediated in the next few months.
- *In re: Bair Hugger Forced Air Warming Devices Products Liability Litigation* (MDL No. 15-2666) pending in the United States District Court, District of Minnesota. Mr. Talley is currently serving on the Plaintiffs' Steering Committee.
- *Nguyen et al. v. BMW of North America, LLC*, Case No. 3:10-cv-02257, in the Northern District of California. In this class action, Mr. Kershaw and Mr. Talley represented plaintiffs alleging BMW failed to replace defective high pressure fuel pump components and altered the vehicle's software after discovering design flaws in BMW models with N54 engines. The case resolved in a settlement, valued at \$211,470,000, on behalf of approximately 200,000 class members.
- *Sharma et al. v. BMW of North America, LLC*, Case No. 3:13-cv-02274, in the Northern District of California, is a putative class action on behalf of California consumers who purchased or leased BMW vehicles that were defectively designed by locating certain electrical components in the lowest part of the trunk where they became damaged by water intrusion under ordinary driving conditions. Mr. Talley and Kershaw representing Plaintiffs alleged that water intrusion in the vehicle trunk compartment results in electronic malfunction and related safety hazards. Messrs. Talley and Kershaw were successful in settling the class action for an equivalent value in parts and services as well as money damages for \$325 million for all class members.
- *Automotive Leasing Corporation v. Mahindra & Mahindra, LTD.*, USDC, Northern District of Georgia, No. 1:12-CV-2048-TWT, Stuart C. Talley filed as a class action on behalf of 110 vehicle dealers seeking to recover franchise fees paid to operate Mahindra dealerships in the United States. The class action alleges Mahindra, an Indian car manufacturer, reneged on the deal and refused to refund the dealers over \$60 million paid in franchise fees. Mr. Talley pursued claims under various "Dealers Day in Court" acts and the case settled in 2015 for a confidential amount.
- *Contratto v. Ethicon, Johnson & Johnson, Lifecore, et al* U.S. District Court, Northern CA. No. C03-3804MJJ ARB, a mass tort action involving some sixty plaintiffs initially filed in the Northern District of California and ultimately prosecuted in Florida State Court, West Palm Beach, Florida. Mr. Kershaw and Mr. Talley sought money damages caused by the medical device, Intergel, a product intended to reduce adhesions in women undergoing abdominal surgery. However, in certain women, the device caused injury by increasing adhesions. The case was prosecuted over three years resulting in a global settlement on behalf of all the firm's clients. The settlement amount and the terms of the settlement are confidential.
- *Sanchez v. California Public Employees' Retirement System, et al.*, California Superior Court, County of Los Angeles, No. BC517444. This is a certified class action involving CalPERS Long Term Care (LTC) Program where Mr. Talley serves as co-lead class counsel for plaintiffs. In this case,

plaintiffs allege that CalPERS improperly raised premiums on approximately 122,000 policyholders. The class was certified in 2016 and is set for trial in June 2022.

- *A & J Liquor Co., Inc., et al., v. State Compensation Insurance Fund, et al.*, California Superior Court, County of San Francisco, No. 975982. Mr. Kershaw served as lead class counsel in a certified class filed on behalf of purchasers of workers' compensation insurance alleging breach of implied covenant of good faith and fair dealing, breach of contract and fraud for over-estimating the cost of workers' compensation claims resulting in higher insurance premiums. The case was exceptionally complex involving millions of data record and extensive actuarial analysis by the country's leading experts well versed in regression methodologies. The case was tried to a defense verdict after a seven-month trial.
- *Southeast Texas Medical Associates, LLP et al., v. VeriSign, Inc., et al.*, California Superior Court, County of Santa Clara, No. 105CV035550. Mr. Kershaw and Mr. Talley were lead class counsel on behalf of consumers against VeriSign, the nation's largest provider of Internet security certificates. Plaintiffs allege that VeriSign violated California's unfair competition and deceptive business practices law relating to the sale of its Internet security certificates. VeriSign charged more for its Secure Site Pro certificate that claimed to provide the consumer with a higher level of Internet security, but in fact, there was no practical difference between the higher and lower priced certificates VeriSign offered consumers. The case has currently settled and class plaintiffs are in the process of seeking final approval of a proposed \$39,000,000.00 settlement which will provide refunds and damages for a nationwide class of potentially 400,000 class members.
- *Ellen Schenk, et al. v. Jenny Craig, Inc., et al.* California Superior Court, County of Orange, No. 635478 (1993), class action under the Consumers Legal Remedies Act. Mr. Kershaw served as co-lead class counsel. The case was certified as a liability class and as a mandatory settlement class; the court approved a settlement fund valued at \$46 million consisting of cash and vouchers for products.
- *In re: Vicryl Sutures Litigation*, Judicial Council Coordination proceeding No. 4148, Alameda County Superior Court, California; *Neely, et al. v. Ethicon, Inc., et al.* Civil No. 1:00CV569(Th) U.S. District Court for Eastern District of Texas: This was a mass tort action initiated involving product liability cases proceeding in multiple federal and state courts throughout the United States. Mr. Talley and Mr. Kershaw served as lead class counsel in this nationwide products liability class action against Ethicon, Inc. on behalf of persons who suffered injuries caused by contaminated medical sutures designed, manufactured, distributed and sold by Ethicon, Inc. and Johnson and Johnson. Following a highly-contested certification process and hearing seeking certification of a FRCP 23(c)(4)(A) class, the case was litigated to a successful resolution in a confidential proceeding.
- *Brock, et al. v. McCormick Mortuary, Inc., et al.* California Superior Court, County of Orange, No. 750989 consolidated with No. 74080. Mr. Kershaw served as lead class counsel in this wrongful cremation class action; the case was brought on behalf of the families of more than 4,500 persons who were cremated at the McCormick Crematory in Orange County; the Court

approved a \$10.8 million settlement and appointed Mr. Kershaw and his firm as settlement fund administrator for distribution of the settlement proceeds to absent class members.

- *In re: GCC Richmond Works Cases*, J.C.C.P. No. 2906, California Superior Court, County of Contra Costa (toxic spill at General Chemical plant in Richmond, California involving 65,000 class members). Mr. Kershaw served on the plaintiffs' management committee on behalf of plaintiffs he participated in administration and distribution of a \$180 million common fund settlement to class members; and was instrumental in establishing a claims center in Richmond, California.
- *Bushnell, et al. v. Cremar, Inc., et al.* California Superior Court, County of Orange, No. 657778, a mass tort involving wrongful cremations. Mr. Kershaw served as lead class counsel. The case was certified as a liability class and settled as a mandatory settlement class. Mr. Kershaw's firm was appointed as settlement administrator to administer the claims of 16,000 class members in a court approved settlement of \$17.1 million, which Mr. Kershaw negotiated as lead counsel.
- *Dorothea Locke and Agnes Boehner v. Pomona Cemetery Association, et al.*, (and related actions), California Superior Court, County of Los Angeles, No. 001190. Mr. Kershaw served as lead class counsel in a wrongful cremation class action; a litigation class of 10,000 class members was certified; final approval of a settlement class was ordered. The court approved a \$3.475 million settlement fund.
- *Noerdinger, et al. v. City of Santa Clara, dba Mission City Memorial Cemetery, et al.* California Superior Court, County of Santa Clara, Mass Tort No. 672565. Mr. Kershaw served as co-lead class counsel in a wrongful cremation case certified as a liability class, involving 3,500 decedents, and as a mandatory settlement class. The court approved a \$4.1 million settlement.
- *Curran, et al. v. Oeberst Financial Corp., et al.*, No. Civ. S-85-1685 MLS (E.D. Cal.) (1985) securities fraud. Mr. Kershaw served as lead defense counsel for a primary defendant. A class was certified for settlement purposes and settlement was granted final approval.
- *Neptune Society Cases*, Coordinated Action Nos. 1814 and 1817, California Superior Court, County of Sacramento (mass tort). Class action filed on behalf of family members alleging improper dumping of cremated remains in Amador County. Mr. Kershaw served as lead class counsel, and coordinated with individual cases. The case involved approximately 5,300 decedents. The case was certified as a liability class; and certified as a mandatory class for settlement purposes. The court approved a \$32.5 million settlement. Mr. Kershaw supervised the distribution of settlement proceeds, presenting and resolving disputed claims, and pursuing equitable remedy of final disposition of all cremated remains on the Elkin property (obtained legislative relief relative to the Elkin property).
- *Paxil*: Antitrust action challenging unlawful tactics under patent laws to prevent generic versions of anti-depressant from entering the market. Case resolved very favorable for the class.

- *Sony DVD Litigation*: Multi-state consumer class actions alleging that Sony manufactured and sold defective DVD players.
- *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, U.S.D.C., Northern District of Ohio, Eastern Division, Case No. 1:01-CV-900 MDL Docket No. 1401. Mr. Kershaw served as a member of the Plaintiffs' Executive Committee in the California State Coordinated Proceedings. The case resulted in a nationwide settlement on behalf of people implanted with a defective hip prosthesis.
- *GTI v. Microsoft Corp.*; MDL case 1:00-MD-01332-JEM; Mr. Kershaw served on the Executive Committee in litigation against Microsoft for violations of section 2 of the Sherman Act involving unreasonable restraints on trade and allegations of illegal monopoly.
- *In re: Computer Monitors Class Action Litigation*, No. JCCP-3159, California Superior Court, County of San Francisco (Coordinated Proceedings). Mr. Kershaw served as co-lead class counsel in this nationwide action involving consumer claims under the California Consumers Legal Remedies Act and the Business and Professions Code, as well as common law claims, against computer monitor manufacturers and retailers for false and deceptive advertising.
- *In re: American Online Spin-Off Accounts Litigation*. Mr. Talley served as co-lead class counsel in this MDL proceedings/class action alleging that AOL fraudulently billed consumers for "Spin-Off Subaccounts" without authorization or knowledge of thousands of its account holders. The MDL Panel ordered the cases consolidated in the District Court of the Central District of California before Judge Ronald Lew. Case resolved in nationwide settlement in conjunction with Illinois state court proceeding.
- *Nichols, et al. v. SmithKline Beecham Corporation*, USDC, Eastern District of Pennsylvania, No. 00-CV-6222. The attorneys served as members of the Discovery Committee in this case involving allegations that defendant "ever-greened" its monopoly on the anti-depressant drug, Paxil, by abusing the patent system in filing frivolous second-generation patents to improperly extend its monopoly, and then filing frivolous patent infringement suits and appeals to delay adverse rulings.
- *Sconce/Lamb Cremation Cases*, Coordination No. 2005 (Los Angeles County Superior Court). Mr. Kershaw served as co-lead class counsel. This case involves the improper handling of cremated remains of approximately 19,000 decedents. The case was certified on a mandatory basis for settlement purposes. The court approved was a \$16.5 million settlement, plus a \$1.6 million settlement on behalf of the Carolina Biological subclass, which had been certified for settlement purposes. Mr. Kershaw represented petitioners in a California Supreme Court decision arising out of this litigation, *Christiansen v. Superior Court*, 43 Cal.3d 868, 2 Cal.Rptr.2d 79.
- *Sacramento River Spill Cases I and II*, Coordinated Proceeding Nos. 2617 and 2620 (mass tort – involving a toxic spill in the Sacramento River in Dunsmuir, California following derailment of a Southern Pacific railcar in the Sacramento River; class certified for settlement purposes). Mr. Kershaw served on the plaintiffs' litigation committee; set up and administered a claims office in Dunsmuir, California; and was instrumental in negotiating

a \$15.5 million settlement, which was approved by the court and distributed to the class.

- *Hoefner, et al. v. Vieira Flying Service, et al.* No. 97AS02993, Judicial Council Coordination Proceeding No. 4078, coordinated in California Superior Court, County of Sacramento. Mr. Kershaw and his firm served as liaison and lead class counsel assisting with and overseeing arrangements for the respectful disposition of cremated remains. An equitable class was certified relating to cremated remains located by the Contra Costa County sheriff's department. The class action brought by family members of persons whose cremated remains were entrusted to Vieira Flying Service for scattering. Case settled for \$4.1 million.

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Kershaw Talley Barlow

STUART C. TALLEY

PROFESSIONAL EXPERIENCE

Mr. Talley is a partner who primarily practices in the areas of mass torts, consumer class actions, and other complex litigation. For the past 30 years, he has represented plaintiffs in numerous complex cases in both Federal and State Courts around the country. He is appointed by Federal and State Courts as lead or co-lead counsel for several high profile cases involving product liability and pharmaceuticals.

He is named a Northern California Super Lawyer for 2015-2016 and selected by his peers as a 2015-2016 Top Lawyer in the Sacramento Region. He has achieved many significant settlements and verdicts on behalf of plaintiffs. Representative cases and settlements include:

DePuy ASR Hip System Cases, Judicial Council Coordination Proceeding No. 4649, San Francisco County Superior Court, California. Stuart Talley and his partners served on the Plaintiffs' Steering committee in this mass tort involving recalled DePuy ASR hips. The case eventually resolved in a global settlement for more than \$2.8 billion.

In Re: DePuy Orthopaedics, Inc. Pinnacle Hip Implant Products Liability Litigation, MDL No. 3:11-MD-2244-K, U.S. District Court, Northern District of Texas. Stuart Talley and his partners were appointed to the Plaintiffs' Steering committee in this Multi-District Litigation involving DePuy Pinnacle metal on metal hips. This case is currently pending on behalf of more than 8,000 individual plaintiffs.

In Re: Bair Hugger Forced Air Warming Devices Product Liability Litigation, MDL No. 15-md-2666-JNE-FLN, U.S. District Court, District Minnesota. Stuart Talley was appointed to the Plaintiffs' Steering committee in this Multi-District Litigation involving Bair Hugger forced air warming devices manufactured by the defendant, 3M. Plaintiffs allege that these devices which are used during surgical procedures cause post-operative infections. This case is currently pending on behalf of more than 1,000 individual plaintiffs.

Nguyen et al. v. BMW of North America, LLC, Case No. 3:10-cv-02257, in the Northern District of California. In this class action, Mr. Talley represented plaintiffs alleging BMW stopped replacing defective components and altered the vehicle's software after discovering design flaws in BMW models containing N54 engines. The case resolved in a settlement on behalf of 200,000 class members for \$211,470,000.

In re Vicryl Sutures Litigation, Judicial Council Coordination proceeding No. 4148, Alameda County Superior Court, California; *Neely, et al. v. Ethicon, Inc., et al.* Civil No. 1:00CV569. U.S. District Court for Eastern District of Texas: Mr. Talley served as lead counsel in this mass tort action involving Ethicon Inc. and Johnson & Johnson's contaminated Vicryl sutures proceeding in multiple federal and state courts throughout the United States. Following a highly contested certification process and hearing seeking certification of a FRCP 23(c)(4)(A) class, the case was litigated to a successful resolution in a confidential proceeding.

Schlegel v. Kaiser Foundation Health Plan, Inc. et al - Mr. Talley was the lead attorney representing over 100 Kaiser Patients placed on the national kidney transplant list. The plaintiffs in the case alleged Kaiser dropped patients waiting for kidneys from the national transplant list due to administrative blunders. As a result, they did not obtain kidney transplants. The cases settled for a confidential sum.

Contratto v. Ethicon, Johnson & Johnson, Lifecore, et al U.S. District Court, Northern CA. No. C03-3804MJJ ARB, Mr. Talley served as lead counsel in this mass tort action involving some sixty plaintiffs initially filed in the Northern District of California and ultimately prosecuted in Florida State Court, West Palm Beach, Florida. The action sought damages caused by the medical device, Intergel, a product intended to reduce adhesions in women undergoing abdominal surgery. However, in certain women, the device caused injury by actually increasing adhesions. The case was prosecuted over three years resulting in a global settlement on behalf of KCR's clients. The settlement amount and the terms of the settlement are confidential.

In Re Guidant Defibrillator Litigation – Mr. Talley and his firm were part of the Plaintiff's Steering Committee in this MDL proceeding that sought reimbursement for more 5,000 individuals who had defective Guidant defibrillators placed in their bodies. A settlement in this case was recently announced wherein plaintiffs will receive more than \$200,000,000.

In Re AOL Spin-Off Sub Account Litigation – Mr. Talley and his firm were lead counsel in this MDL proceeding wherein it was alleged that millions of AOL subscribers improperly had screen names "spun-off" into separate accounts and were then billed additional fees for these "spun-off" accounts. The settlement in this case was valued at approximately \$25,000,000.

Larkin v. Best Buy – Mr. Talley served as lead counsel in this consumer class action against Best Buy alleging that the marketing of its extended warranties is false and misleading. Specifically, the complaint alleged that Best Buy did not have in place a sufficient number of service centers and technicians to make warranty repairs in a timely manner.

Mr. Talley has also litigated many individual personal injury actions as well as claims involving wills and trusts, oil and gas leases, Qui Tam cases, employment discrimination, and wage and hour law.

PROFESSIONAL ACTIVITIES & AFFILIATIONS

- State Bar of California
- Member, Consumer Attorneys of California
- Member, Capital City Trial Lawyers Association
- Member, Sacramento County Bar Association
- Member, Federal Bar Association
- Member, American Association for Justice
- Past Board of Directors for the Capital City Trial Lawyers Association

PRIOR PROFESSIONAL EXPERIENCE

Prior to joining Kershaw Talley Barlow PC (previously known as Kershaw, Cook & Talley PC), Mr. Talley was a partner in Kershaw, Cutter & Ratinoff, LLP and the Long Beach law firm of Taubman, Simpson, Young & Sulentor.

ACADEMIC BACKGROUND

- B.A. University of California, Santa Barbara, 1992
Graduated with High Honors
- J.D. Pepperdine University, 1995
Magna Cum Laude
- Member, Pepperdine Law Review

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EXHIBIT 4



Nelson & Fraenkel LLP is a Los Angeles based law firm that specializes in handling complex securities, class action, antitrust, insurance bad faith, breach of contract, employment and business tort litigation as well as product liability, personal injury and wrongful death claims brought on behalf of plaintiffs. Through a team of lawyers, the firm has extensive knowledge and expertise and has handled highly complex cases in federal and state courts. The firm has successfully prosecuted numerous cases to settlement and through trial. The experience of the attorneys who are responsible for handling the firm's complex class action practice are described below.

Gretchen Nelson is a 1983 graduate of Georgetown University Law School. She received her B.A. degree from Smith College in 1976. She is a Past President of the Los Angeles County Bar Association and a past Chair of the Litigation Section of that association. She is currently serving a term on the Judicial Council of California. She is an emeritus member of the Board of Governors of the Consumer Attorneys of Los Angeles and served three years as a Trustee on the State Bar of California. She is currently a member of the Board of the Consumer Attorneys of California. And, she previously served a three-year term on the Board of the Association of Business Trial Lawyers.

Ms. Nelson has lectured on class and class-related litigation issues as well as trial advocacy, admiralty and evidence issues for the Consumer Attorneys Association of Los Angeles, the Association of Trial Lawyers, Consumer Attorneys of California, California's CEB Program, the Practising Law Institute and the ABA's Tort Trial and Insurance Practice Section. She has also presented class action programs for the National Business Institute and Mealey's and has published articles in the Advocate, the Forum, the Brief and other publications on class, evidence and maritime issues.

As a partner in the firm, Gabriel Barenfeld focuses his practice on consumer class actions, securities litigation, FINRA Arbitrations and business litigation. He also has experience handling products liability cases ranging from automotive products to medical devices. Mr. Barenfeld has successfully argued appeals before the California Court of Appeal and has participated in trials in federal and state courts. Additionally, Mr. Barenfeld has represented clients in various arbitral forums, including claimants in an unauthorized trading case against a brokerage firm and two of its brokers before the Financial Industry Regulatory Authority (FINRA), which resulted in a substantial settlement. He has further represented claimants in a claim before the International Centre for Dispute Resolution (American Arbitration Association), represented a Panamanian title insurance agency against a large domestic title insurance company in a breach of contract dispute that was successfully resolved.

A list of representative cases, among others, in which Ms. Nelson and Mr. Barenfeld have had a substantial role during their careers is set forth below.

In re Broadcom Corp. Securities Litig., Master File No. SACV 01-275 GLT (MLGx) (C.D. Cal.). Ms. Nelson was local counsel for the Lead Plaintiff in these consolidated securities class actions in the United States District Court for the Central District of California, Santa Ana Division. A class settlement for \$150 million was achieved after lengthy pre-trial proceedings.

Godinez, v. Schwarzenegger, et al., Los Angeles Superior Court Case No. BC 227352. Ms. Nelson was one of four counsel for the plaintiffs in this public interest lawsuit filed on behalf of students and community organizations challenging the manner in which the State of California and its various agencies apportioned more than \$2 billion in new school construction funds. Following extensive briefing and hearing on plaintiffs' motion for preliminary injunction, the claims were successfully settled. Issues relating to plaintiffs' counsels' fee application were appealed to the Court of Appeal and resulted in a published opinion affirming the fee award but remanding for further findings. See *Godinez v. Schwarzenegger* (2005) 132 Cal.App.4th 73.

In re Countrywide Financial Corp. Securities Litig., U.S. District Court Case No. CV-07-5295-MRP. Ms. Nelson was Liaison Counsel representing the Lead Plaintiff in consolidated securities class actions filed against Countrywide Financial Corp. and various officers and directors, underwriters and accountants arising out of the sub-prime lending practices.

In re ATM Fee Antitrust Litigation, U.S. District Ct. Case No. CV 04-2676 CRB (N.D. Cal.) Ms. Nelson was one of the counsel for plaintiffs in consolidated antitrust class actions challenging foreign ATM fees charged by a number of banks and other entities.

In re Endosurgical Products Direct Purchaser Antitrust Litigation, U.S. District Court Case No. 05-CV-8809 JVS (Mlx). Ms. Nelson was Liaison Counsel for Co-Lead Counsel in these consolidated antitrust class action cases. A class settlement valued at in excess of \$20 million was achieved and is currently on appeal.

In re Cosmetics, California Superior Court Coordinated Proceedings No. JCCP Case No. 4056. Ms. Nelson was one of plaintiffs' counsel in coordinated class action proceedings that were litigated in the Marin County Superior Court arising out of antitrust claims asserted by a class of direct purchasers against manufacturers of high-end cosmetics and retailers. A class settlement was achieved valued at in excess of \$100 million.

Grossett v. Wenaas, California Supreme Court Case No. S139285. This is a derivative lawsuit filed in the San Diego Superior Court by a shareholder of JNI Corporation against the company's officers and directors charging them with violations of their fiduciary duties and insider trading with respect to a secondary offering. Ms. Nelson was counsel for the plaintiff along with two other firms. After lengthy and protracted proceedings, the trial court dismissed the case based on a report by a Special Litigation Committee. The company was then purchased and the stockholders were cashed out. The appellate court dismissed the appeal on the grounds that the stockholder lost standing as a result of the merger. The California Supreme Court granted plaintiff's petition for review and affirmed the finding that the sale of the company resulted in a

loss of standing to a derivative plaintiff. The decision is *Grosset v. Wenaas* (2008) 42 Cal.4th 1100.

In re Emulex Shareholder Cases, JCCP No. 4194. In these coordinated shareholder derivative cases, Ms. Nelson represented plaintiffs asserting claims against the officers and directors of Emulex Corporation. The cases were resolved in an \$8 million settlement.

In re Intermix Media, Inc. Shareholder Litigation, Los Angeles Superior Court Case No. BC 339083. Ms. Nelson and Mr. Barenfeld were counsel for certain plaintiffs in three consolidated class action proceedings asserting claims against the officers and directors of Intermix Media Inc. arising out of the sale of the company and its primary asset, MySpace.com, to News Corp. Plaintiffs alleged, among other things, that the defendants failed to maximize the value of Intermix in the sale. Following the dismissal of the claims on demurrer, the Court of Appeal affirmed the trial court's order.

Sanchez v. Survival Insurance Co., Los Angeles Superior Court Case No. BC 225524. Ms. Nelson was one of the attorneys representing plaintiffs in a wage and hour case brought against an insurance broker. Following the issuance of an extensive order certifying the class, the claims were settled for in excess of \$600,000.

Canning v. Music Express, Los Angeles Superior Court Case No. BC 227542. Ms. Nelson was one of the attorneys representing plaintiffs in a wage and hour case brought against a limousine company on behalf of its drivers. The court certified the class and thereafter a \$2.2 million settlement was achieved and approved by the Court.

Westways World Travel, Inc. v. AMR Corp., U.S. District Court Case No. 99-7689 RJT (C.D. Cal.). Ms. Nelson was one of the counsel for plaintiffs in this class action filed on behalf of a class of travel agents against American Airlines and other defendants. Reported decisions may be found at *Westways World Travel, Inc. v. AMR Corp.*, 182 F.Supp.2d 952 (C.D. Cal. 2001) and 218 F.R.D. 223 (C.D. Cal. 2003). Following an appeal from the dismissal of the claims on summary judgment, the Ninth Circuit reversed in part and affirmed in part the grant of summary judgment. In addition, Ms. Nelson was one of the counsel for plaintiffs in a related class action entitled *All World Professional Travel Services, Inc. v. American Airlines, Inc.* U.S. District Court Case No. ED CV 02-849RT (SGL). Reported decisions in *All World* may be found at 282 F.Supp.2d 1161 (C.D. Cal. 2003).

In re Crown Princess Listing Cases, Master Case No. BC356095 (Los Angeles Superior Court). Ms. Nelson was appointed to act as one of the Lead Counsel in more than 250 personal injury lawsuits filed arising out of an accident during which a 3,500 passenger cruise ship keeled over hard after leaving port in Florida in 2006.

In re ZZZZ Best Securities Litigation, Master File No. CV 87-3574 RSWL(Bx) (C.D. Cal.). Corinblit & Selzer was appointed by the Los Angeles federal court as sole lead counsel to represent the plaintiff class of defrauded securities purchasers. The ZZZZ Best fraud was described by the United States Attorney for the Central District of California as "the most massive and elaborate securities fraud perpetrated on the West Coast in over a decade." In the

consolidated class action cases, the court issued several important published rulings sustaining plaintiffs' claims. *See, e.g., In re ZZZZ Best Securities Litigation*, 864 F.Supp. 960 (C.D. Cal. 1994); and [1990 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶95,416 (C.D. Cal. 1990). The case was settled for approximately \$40 million in cash.

In re Taxable Municipal Bond Securities Litigation, MDL No. 863 (D. La.). Corinblit & Seltzer was among four firms selected for a leadership role in this consolidated multi-district litigation brought on behalf of defrauded securities purchasers of municipal bonds. After five years of litigation, the case was settled for approximately \$110 million in cash.

Raymark Industries, Inc. v. Stemple, No. 88-1014-K (D. Kan.). While with Corinblit & Seltzer, Ms. Nelson defended an attorney in an action brought under the RICO statute and state law for alleged fraud in connection with the settlement of a class action case. The firm was successful in obtaining an injunction restraining the prosecution of twelve related actions filed by the plaintiff in federal courts located throughout the United States. After several years of litigation, the case was settled and dismissed.

Biben v. Card, No. 84-0844-CV-W-6 (W.D. Mo.) While with Corinblit & Seltzer, Ms. Nelson served as co-lead counsel for plaintiffs with Cohen Milstein Sellers & Toll in consolidated securities fraud class action cases. The plaintiffs achieved substantial pretrial victories, including establishing the sufficiency of their claims under the federal securities laws against the director, accountant and attorney defendants in that case and in defeating motions for summary judgment by the insurance carriers for certain individual defendants. The case was settled for approximately \$12 million in cash.

Sanwa Bank California v. Facciani, No. CA001132 (L.A. Sup. Ct.) While with Corinblit & Seltzer, Ms. Nelson was counsel (together with two other plaintiffs' firms) for a class of investors in this state court securities case and a companion federal case in which settlements totaling approximately \$26 million were obtained on behalf of the investors.

Schneider v. Traweek, No. CV 88-0905 RG(Kx) (C.D. Cal.). While at Corinblit & Seltzer, Ms. Nelson played a primary role in prosecuting the claims of a class consisting of thousands of investors in eight limited real estate partnerships. In granting plaintiffs' motion for class certification, the court determined that "[t]he qualifications of Plaintiffs' counsel are not at issue, since the Defendants conceded at oral argument that no one questions the ability of the law firm of Corinblit & Seltzer to prosecute this action on behalf of the proposed class." *Schneider v. Traweek*, [1990 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶95,419 at 97,113 (C.D. Cal. 1990). The case was settled for in excess of \$14 million. Other reported decisions in the case can be found at *Schneider v. Traweek*, [1990 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 95,507 (C.D. Cal. 1990).

In re Domestic Air Transportation Antitrust Litigation, Master File No. 1:90-cv-2485 MHS. While at Corinblit & Seltzer, Ms. Nelson was one of counsel for plaintiffs where the firm was appointed by the Atlanta federal court to serve on the Plaintiffs' Steering Committee. The litigation consisted of more than fifty consolidated antitrust class actions. The case was settled

for \$50 million in cash and discount travel certificates with a face value of \$408 million, which the Atlanta federal court valued as being worth approximately \$305 million.

Pinto v. Birr Wilson & Co., Inc., No. CA001058 (L.A. Co. Sup. Ct.). Corinblit & Seltzer were sole counsel for a class of municipal bondholders who had been allegedly defrauded. Ms. Nelson was one of the primary attorneys responsible for prosecuting the case. The case was settled for approximately \$1.4 million in cash.

Slaven, et al. v. BP America, Inc., et al., No. CV-90-0705 RJK(JRx) (C.D. Cal.). Ms. Nelson and four other firms prosecuted claims on behalf of a class of businesses who suffered economic losses as a result of a massive oil spill off the coast of Huntington Beach that occurred in 1990. Reported decisions in the case appear at *Slaven v. American Trading & Transp. Co.*, 146 F.3d 1066 (9th Cir. 1998); *Holifield v. BP America, Inc.*, 973 F.2d 1468 (9th Cir. 1992); *Slaven v. BP America, Inc.*, 190 F.R.D. 649 (C.D. Cal. 2000); *Slaven v. BP America, Inc.*, 958 F.Supp. 1472 (C.D. Cal. 1997); *Holifield v. BP America, Inc.*, 786 F.Supp. 853 (C.D. Cal. 1992); *Holifield v. BP America, Inc.*, 786 F.Supp. 840 (C.D. Cal. 1991). The case was settled for in excess of \$6 million.

In re Brand Name Prescription Drugs Antitrust Litig., MDL 997 (E.D. Ill.). This was an antitrust class action against the manufacturers and wholesalers of brand name prescription drugs. Ms. Nelson was one of plaintiffs' counsel in obtaining certification of a class of pharmacies, settling the claims of the class members against certain of the defendants and pursuing remaining claims to trial. Reported decisions are found at *In re Brand Name Prescription Drugs Antitrust Litig.*, 186 F.3d 781 (7th Cir. 1999); 123 F.3d 599 (7th Cir. 1998); 115 F.3d 456 (7th Cir. 1997). The case resulted in settlements of over \$700 million for a class of independent pharmacies.

Porter v. City of Los Angeles, Los Angeles Superior Court Case No. BC119914. While with Corinblit & Seltzer and thereafter, Ms. Nelson was one of three attorneys who prosecuted a class action on behalf of tenants of a building demolished by the City of Los Angeles asserting claims for inverse condemnation and negligence. The claims were settled following class certification and shortly prior to trial for approximately \$4 million.

In re Compact Disc Antitrust Litigation, MDL 1216 (C.D. Cal.). Ms. Nelson was one of plaintiffs' counsel involved in the prosecution of antitrust claims against recorded music distribution companies charging the defendants with price fixing compact discs. Settlements for in excess of \$50 million were obtained in the case.

In re Amgen Inc. Securities Litigation, U.S. District Court Case No. CV 07-2536 PSG (PLAx). Ms. Nelson was Liaison Counsel representing Lead Plaintiff in securities class actions filed against Amgen Inc. arising out of allegations that defendant engaged in off-label marketing and falsely represented the long-term growth prospects of certain pharmaceutical drugs. The district court certified the class and the decision was affirmed by the Ninth Circuit Court of Appeals. *Connecticut Retirement Plans and Trust Funds v. Amgen Inc.*, 660 F.3d 1170 (9th Cir. 2011). The U.S. Supreme Court granted *certiorari* and affirmed the Ninth Circuit in *Amgen Inc. v.*

Connecticut Retirement Plans & Trust Funds __ U.S. __, 133 S.Ct. 1184 (2013). A settlement was achieved and granted final approval by the court in 2016.

Steele v. Rambus, Inc. et al., Santa Clara Superior Court Case No. 1-08-CV-113682. Ms. Nelson and Mr. Barenfeld represented a group of investors who opted out of a prior securities class action alleging that the defendants engaged in a long-term fraudulent scheme of backdating stock option grants to certain officers, directors and employees by failing to properly account for the option grants. A confidential settlement was achieved.

In re TD Ameritrade Account Holder Litigation, Master File No. C-07-2852 VRW (U.S.D.C., N.D. Cal.). Following the denial of final approval of a class action settlement in this case arising out of a security data breach, Ms. Nelson was asked to step into the case to represent the class. A class settlement was achieved providing for up to \$5 million in cash benefits for the payment of class claims. The settlement was granted final approval in August 2011.

In re Toyota Unintended Acceleration Marketing, Sales Practices & Products Liability Litigation, MDL Case No.10ML 02151 JVS (FMOx). Ms. Nelson was one of Plaintiffs' counsel on the initial class action filed against Toyota regarding unintended acceleration. Following the consolidation of the cases by the Judicial Panel on Multi-District Litigation, she was appointed Co-Liaison counsel to State and Federal Cases. Ultimately the economic loss class action cases were settled for \$1 billion.

Archer v. United Rentals, Inc. Los Angeles Superior Court Case No. BC296139. Ms. Nelson was one of two counsel representing plaintiffs in a complex class action involving privacy violations. The case was filed in 2003 and was heavily litigated in the trial and appellate courts until a settlement was achieved and approved in 2015. Numerous appeals and writs were filed and ultimately resulted in a published opinion at *Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807.

Kaewsawang v. Sara Lee Fresh, Inc., Los Angeles Superior Court Case No. BC360109. Ms. Nelson was brought in to prosecute antitrust claims in this class action involving distributors of baked goods. After the granting of a demurrer on Cartwright Act claims, Ms. Nelson successfully obtained review on a writ of the issues and obtained an unpublished opinion from the California Court of Appeal, Second Appellate District, at *Kaewsawang v. Sara Lee Fresh, Inc.* (2012) 2012 WL 1548290. A class settlement in the amount of \$14.5 million was achieved and granted final approval.

Orthopedic Systems, Inc. v. Schlein, Alameda Superior Court Case No. RG-05-210781. Ms. Nelson represented a physician in a contract dispute arising out of the licensing of a medical device. When the licensing company stopped paying royalties and sued for declaratory relief, Ms. Nelson counter-sued on behalf of the physician. In 2008, she tried the issues in a three-week jury trial. Ms. Nelson achieved a significant victory on behalf of her client and thereafter was counsel with Mr. Barenfeld on the appeal and cross-appeal. The appellate court issued its published opinion in 2012 which resulted in a \$4 million outcome for her client. *Orthopedic Systems, Inc. v. Schlein* (2012) 202 Cal.App.4th 529.

Allen v. Hyland's Inc., Case No., 2:12-cv-01150 DMG (MANx). This is a consumer class action involving homeopathic products which was prosecuted in the U.S. District Court for the Central District of California. Ms. Nelson was one of counsel for plaintiffs and they achieved certification of a class and she and co-counsel ultimately tried the case in 2015. The trial resulted in a verdict for the defendants and the matter was appealed and affirmed and reversed in part.

Sanchez v. California Public Employee's Retirement System, et al. Los Angeles Superior Court Case No. BC517444. This is a class action involving claims by purchasers of long term care insurance from CalPERS. Ms. Nelson along with co-counsel have successfully overcome demurrers, motions for summary judgment and have achieved certification of a class. In addition, a settlement with other defendants named in the case was achieved in 2017 for \$10 million and the settlement was granted final approval. The case against CalPERS started the first two phases of the trial in June 2019. A settlement is currently pending.

Dyer v. Childress, Los Angeles Superior Court, Case No. BC 334445. Mr. Barenfeld successfully defeated an appeal by a major movie studio and other defendants of the trial court's denial of an anti-SLAPP motion. The opinion is published at *Dyer v. Childress* (2007) 147 Cal.App.4th 1272.

EXHIBIT 5

Bentley & More LLP provides zealous legal representation to consumers and employees across the nation, and across a number of different practice areas, including insurance bad faith, catastrophic personal injury, product liability, worker’s compensation, and government entity liability. Founded in 2016 by two prominent consumer attorneys, Bentley & More LLP’s attorneys have decades of litigation and trial experience representing and fiercely advocating for consumers, workers, and victims.

While effective in resolving many kinds of conflicts outside of litigation, Bentley & More LLP has a proven track record of fearlessness in taking matters to trial and beyond. The firm particularly specializes in difficult “crossover” matters that require expertise across practice areas, including thorny issues of insurance coverage in personal injury matters, and matters that combine elements of worker’s compensation and third-party liability.

Bentley & More LLP, both at the firm and individual attorney level, also has significant experience in litigating class action or other significant multi-plaintiff cases, including the following:

- The *Insurance Company Cases*, J.C.C.P. No. 4249, in the coordinated “Med Pay” class action cases before the Los Angeles Superior Court, entitled *Goodman v. Mercury* and *Theis v. 21st Century*, where founding firm partner Gregory L. Bentley served as one of the lead attorneys involved in that class action.
- The *LG Chem Product Cases*, J.C.C.P. No. 5003, where firm attorneys Gregory L. Bentley and Matthew Clark served as the lead attorneys attempting to coordinate more than a dozen actions (in which Bentley & More LLP was lead counsel) against LG for lithium-ion battery defects.
- *Kimura v. CSAA Insurance Exchange*, Sonoma Superior Court Case No. SCV-263694, where firm attorneys Gregory L. Bentley and Matthew W. Clark served as the lead counsel litigating on behalf of more than a dozen homeowners against CSAA for underinsurance issues involving their residences that were damaged in the 2017 Northern California wildfires.

- *Allergan Biocell Textured Breast Implant Cases*, J.C.C.P. Case No. 5104, alleging product defects in defendants' textured implants, in which Bentley & More LLP represents a number of plaintiffs who are part of the coordinated proceeding, and has played an active role in the developing and ongoing litigation.
- *Kundanmal v. Safeco*, USDC C.D. Cal., 2:17-cv-06339-SVW, where Mr. Bentley served as co-lead counsel for plaintiffs and a proposed class asserting wrongful claim handling and underpaying a "total loss" for plaintiffs' vehicles under their insurance policies issued by defendants.

GREGORY L. BENTLEY

Greg Bentley is a trial attorney focusing on the representation of consumers in a wide variety of cases, including catastrophic personal injury, wrongful death, product liability and insurance bad faith matters. Mr. Bentley's efforts on behalf of his clients have been recognized by his peers:

- 2023 Super Lawyers Top 100 in Southern California, and recognized from 2010-2023
- 2023 Best Lawyers for Personal Injury, Product Liability & Insurance Law; Lawyer of the Year
- 2016-2023 Daily Journal Top Plaintiff Lawyers
- 2016 Top Gun Trial Lawyer of the Year (Products Liability) by the Orange County Trial Lawyers Association
- 2014 Consumer Attorney of the Year Award by Consumer Attorneys of California
- 2013 Top Gun Trial Lawyer of the Year (Government Entity) by the Orange County Trial Lawyers Association
- 2013 Jennifer Brooks Trial Lawyer of the Year by the Western San Bernardino County Bar Association
- 2012 William M. Shernoff Trial Lawyer of the Year by the Consumer Attorneys of the Inland Empire



Mr. Bentley has earned election to membership of the prestigious International Academy of Trial Lawyers, an invitation-only worldwide organization limited to 500 trial lawyers, is a Fellow in the International Society of Barristers, a Fellow of the American College of Trial Lawyers, and member of the American Board of Trial Advocates.

In 2016 he served as President of the Consumer Attorneys of California, a 3,000 plus member organization charged with protecting consumer rights. Mr. Bentley also serves on the Executive Committee of the CAOC PAC Board.

In 2019, Mr. Bentley was appointed by Governor Gavin Newsom to serve on the Orange County Judicial Selection Advisory Committee. Other leadership positions include President of the Riverside/San Bernardino ABOTA Chapter in 2015, CAL ABOTA Board 2014-2016, and President of the Consumer Attorneys of the Inland Empire from 2009-2012.

Mr. Bentley's success in litigation is highlighted by the following:

1. In December of 2020, Mr. Bentley obtained a confidential 8-figure settlement on behalf of multiple homeowners who lost their homes in the California wildfires. Despite maintaining insurance with the same carrier for years, and despite the insurance company recommending and even selecting the policy limits, the devastating wildfires left the homeowners without adequate insurance to even begin rebuilding their lost homes. This underinsurance problem – all too common in the property insurance industry – was instigated by insurers falsely promising to conduct detailed estimates of replacement cost value, falsely claiming they revised that estimate yearly to account for changes in construction costs, and by relying on software that knowingly underestimated the cost to rebuild insureds' homes. Despite the vast majority of homeowners believing they are adequately insured, these factors have combined to leave upwards of 80% of homes throughout the United States underinsured in the event of a total, catastrophic loss.
2. February 2020, Mr. Bentley reached a confidential 8-figure settlement on behalf of a wide-range of clients injured by alleged product defects suffering a variety of injuries.
3. January 2020, Mr. Bentley recovered \$6 million on behalf of a mother who's nineteen-year-old daughter was killed when her car careened down an embankment on the mountain winding Bouquet Canyon Road crashing into a tree, causing her tragic death. Through 39 depositions, numerous expert studies and analysis, and local resident declarations, Mr. Bentley and his team established that the road constituted a dangerous condition for its lack of a guardrail. As a result of the litigation, the County of Los Angeles has now installed a guardrail on this mountain winding road, which if it had been in

place at the time, would have prevented the tragic death. (*Parks v. County of Los Angeles*)

4. July 2012, \$31.5 million jury verdict against Caltrans and a left-turning driver on behalf of a Los Angeles County prosecutor who suffered catastrophic brain and spinal cord injuries as a result of an accident on SR 138 (*Evans v. Caltrans, et. al.* – Victorville Daily Press article).
5. In January 2018, Mr. Bentley obtained a \$30 million personal injury settlement against a large trucking company whose negligent maintenance of its fleet of trucks resulted in a driveshaft shearing off while traveling on the freeway striking 10 other vehicles before smashing through the windshield of a vehicle driven by a hard-working wife and mother of two, violently striking her in the face. The young mother suffered catastrophic injuries including severe traumatic brain injury, extensive encephalomalacia (the softening and loss of brain tissue), facial fractures, orbital fractures, nasal fractures, cognitive deficits, chronic and permanent nerve pain on her forehead due to a damaged 5th cranial nerve, numbness on her face, memory loss, headaches, severe double vision, loss of vision in her right eye, loss of smell, disfigurement, dizziness, anxiety, depression, anger, and impulsiveness. (*Dominguez v. Doe.*)
6. In April 2018, Mr. Bentley obtained a \$26 million personal injury and wrongful death settlement on behalf of four family members who, while traveling on the freeway and slowing for traffic ahead, were slammed into from behind by a Ford Ranger traveling in excess of 75 mph and driven by a summer intern of a large construction company. The tragic accident resulted in the tragic death of one rear-seat passenger, serious head, neck, back and shoulder injuries to the driver and front seat passenger, which required several surgeries, and catastrophic injuries to the other rear-seat passenger including spinal and facial fractures, major traumatic brain injury, a crushed skull, facial disfigurement and leaving her virtually blind in one eye. (*Munoz v. Doe.*)
7. In July 2018, Mr. Bentley obtained a \$12 million wrongful death settlement against the City of Los Angeles on behalf of the family of Alice Gruppioni, an Italian newlywed tragically killed on her honeymoon when struck by a reckless vehicle on the Venice Beach Boardwalk. The case received local and international media attention, shining a light on the City's failure to properly secure the Boardwalk from access by unauthorized vehicles. Mr. Bentley also

obtained a key ruling from the California Court of Appeal, deciding an issue of first impression, that an area such as the Boardwalk, with its high level of commercial and vendor activity, would not entitle the City of Los Angeles to “recreational trail” immunity under the California Government Code. The \$12 million settlement represents the largest wrongful death settlement ever reached with the City of Los Angeles. In addition to the settlement payment, the City will install more secure barriers to protect the area and agreed to place a plaque at the location in tribute to Alice Gruppioni. (*Gruppioni v. City of Los Angeles*, Los Angeles Superior Court Case No. BC553109, consolidated as Case No. BC537145, Court of Appeal Case No. B280429.) You can read about the case here. ([LA Times link](#)), ([Press Release link](#))

8. In September of 2015, Mr. Bentley obtained a \$1.885 million jury verdict in Riverside Superior Court in a first-of-its-kind product liability case involving an e-cigarette device that exploded while charging, causing severe physical burns and a lifetime of emotional scars to his client ([Jennifer Ries v. VAPCIQS – Los Angeles Times article](#)).

9. Nationally recognized e-cigarette injury lawyer

- First jury verdict against an e-cigarette company in the United States – recovering a \$1.9 million verdict on behalf of an injured user.
- Over \$44 million recovered to-date on behalf of injured users against manufacturers, distributors, and retailers of e-cigarette products.
- National leader handling 200 cases in California, Nevada, Washington, Arizona, Nevada, Texas, New York, New Jersey, Pennsylvania, North Carolina, and Wisconsin.
- Educating consumer attorneys about the issue – Greg Bentley has repeatedly been published and appeared at Consumer Attorneys of Los Angeles, Consumer Attorneys of California, Consumer Attorneys of Inland Empire, Orange County Trial Lawyers Association, and others regarding e-cigarette injuries.
- At the forefront of press coverage bringing attention to the harmful product – with appearances in the Los Angeles Times, Wall Street Journal, Buzzfeed, Daily Journal, Sacramento Bee, ABC Los Angeles,

NBC Los Angeles, CBS Los Angeles, KCAL 9 Los Angeles, Fox 11 Los Angeles, Seattle News outlets, New Jersey news outlets, and the Dr. Oz Show. You can read some of Mr. Bentley's media coverage here regarding e-cigs here: [E-Cigs Are Exploding In People's Faces – BuzzFeed](#); [E-Cigarette Users Sue Over Exploding Devices – Wallstreet Journal](#). Mr. Bentley was also a guest on the Dr. Oz show—bringing national attention to the widespread e-cigarette explosion problem. You can watch Mr. Bentley's appearance here: <https://youtu.be/ieexNnl9rDI>.

10. In December 2012, Mr. Bentley was successful in obtaining a \$2.3 million jury verdict in Glendale Superior Court on behalf of a 26-year Monterey Park Police Sergeant who suffered severe injuries after being struck by an Athens Services truck that pulled away from the curb directly in front of the client driving on the wrong side of the road. The client suffered significant orthopedic and urological injuries, including fractures of both wrists and a torn urethra (*Wiese et al. v. Athens Disposal Company, Inc. et al.*).
11. In July 2014, Mr. Bentley and Mr. More successfully obtained a \$3.8 million jury verdict on behalf of a former student of the Newport-Mesa Unified School District who suffered severe injuries to his right hand during metal shop class (*Zavala v Newport-Mesa Unified School District*).
12. Believing that a Medical Group should not cut costs at the expense of medically necessary care, Mr. Bentley obtained a \$820,000 jury verdict against a large Medical Group for their interference with a patient's contractual rights to receive medical benefits under an HMO policy. His client suffered severe headaches for a long time and was wrongfully denied a timely brain MRI to diagnose what turned out to be a massive brain tumor (*Medeiros v. Beaver Medical Group*).
13. In April 2014, Mr. Bentley, Matthew Clark and Clare Lucich teamed up on a pro bono basis with the Inner City Law Center in representing 28 people in a lawsuit that sought to seek change in horrible living conditions. Due to the team's litigation efforts, the matter settled on the eve of trial for nearly \$4 million, including a global recovery for the clients in the amount of \$680,000 in monetary damages, relocation benefits of \$93,150 and a full \$3,000,000 renovation of the building, including 100 units of newly refurbished affordable housing in Los Angeles. Mr. Bentley donated his fee to the Inner

City Law Center to help it advance its worthy cause (*Villegas, et al. v. Vista Cahuenga*).

14. Bentley frequently represents clients whose insurance company fails to defend them or settle cases filed against them for amounts within their policy limits. Through an assignment of rights and covenant not to execute, Mr. Bentley obtained a Judgment against American States Insurance Company in the amount of \$6,196,175 for their failure to settle a case on behalf of an insured who caused severe injuries, including wrongful death, following a head-on collision (*American States Insurance Co. v. H.L.C.D, Inc.*).
15. Bentley was lead counsel on behalf of 11 clients (2 adult church leaders and 9 high school students) involved in a tragic head-on collision on Highway 395, resulting in 4 deaths and major injuries to the survivors. Due to his litigation efforts, Mr. Bentley was able to uncover numerous Caltrans memorandums dating back to 1965 confirming Caltrans' knowledge of the dangerous propensities of a 6" Type A dike along State highways, which caused wayward vehicles to violently "launch" back into oncoming traffic. This complex case resulted in 60 depositions, the production of thousands of documents and extensive expert workup. The matter settled against multiple defendants for an amount in excess of \$20 million.
16. A staunch advocate for patient's rights, Mr. Bentley took on a major HMO representing over 90 patients who lost kidney transplant opportunities following the forced transfer of their care for cost saving purposes. The litigation efforts resulted in a \$17 million settlement and the transfer of all patient care back to qualified hospitals.

MATTHEW W. CLARK

Matthew Clark is a partner at Bentley & More whose practice focuses on insurance bad faith, catastrophic personal injury and wrongful death, products liability, and governmental entity liability. Mr. Clark leads the firm's law and motion and appellate practices, litigating in a wide variety of courtrooms across the state.



Awards

- Super Lawyers: Rising Star, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022
- Best Lawyers - 2023
- Best Lawyers: Ones to Watch, Personal Injury Litigation – Plaintiffs, Product Liability Litigation, Insurance Coverage – Plaintiffs, 2021-2022

Education

University of Notre Dame Law School, Notre Dame, Indiana

- J.D., Doctor of Jurisprudence, 2010
- Honors: *Magna Cum Laude*
- Law Review: Article Editor, Notre Dame Law Review

University of Michigan, Ann Arbor

- Bachelor of Arts, 2007
- Honors College
- NCAA Division 1 Athlete (Baseball)

Publications

- *Keep Digging – Utilizing Colonial Life Discovery in an Insurance Bad Faith Case*, CAALA Advocate Magazine, November 2022 Issue.
- *Workers' Compensation and Covid-19*, Los Angeles & San Francisco Daily Journal, March 2020 Issue.
- *Vaping with Fire – Emerging Issues in E-Cig Litigation*, CAOC Forum Magazine, September/October 2018 Issue
- *Demander Beware! A Policy Limit Demand is Crucial To Any Claim for Failure to Settle, But Making an Incorrect Demand Can Cripple Your Case*, CAALA Advocate Magazine, September 2017 Issue.
- *Questions In Coverage: Intentional Tort By An Employee*, CAALA Advocate Magazine, September 2016 Issue.
- *The Dangers of Vaping: A Primer on Litigating Exploding E-Cig Cases*, OCTLA's The Gavel, Fall 2016 Issue.
- *Safeguarding a Default Judgment from Claims of Insurer Neglect*, CAALA Advocate Magazine, December 2015 Issue.
- *The Lid is Off the Policy...But What's Next?*, CAALA Advocate Magazine, August 2015 Issue.

Mr. Clark's Experience Includes:

1. Primary attorney successfully litigating questions of personal jurisdiction against a foreign manufacturer across more than a dozen actions, ultimately achieving a settlement on behalf of dozens of clients in the eight-figure range.
2. Lead law and motion attorney and integral part of the litigation team that secured a \$30 million settlement on behalf of a client who suffered a massive traumatic brain injury, vision loss, and incurred a lifetime of care after the driveshaft of a truck in front of her vehicle dislodged, ricocheted off the roadway, and rocketed through the client's windshield, striking her in the face with massive force.
3. Lead law and motion and appellate attorney on behalf of the family and surviving spouse of a young woman killed by a vehicle that navigated around improperly placed bollards, drove along the Venice Beach Boardwalk, and struck numerous individuals. Following denial of defendant's summary judgment and an on-the-merits denial of the subsequent writ proceeding

(see *City of Los Angeles v. Superior Court (Alvarez)*, Second Appellate District, Division Three, Case No. B280429), the defendant settled with the firm's clients for \$12 million, the largest wrongful death settlement in the City's history.

4. Assisted in achieving a high-seven figure settlement for the family of a young woman killed by police misconduct, who, while a hostage during a botched bank robbery and subsequent pursuit, was tragically gunned down in a barrage of police gunfire.
5. Lead law and motion attorney in the case of a client who fell through an uncovered, unsecured hole in the roof of a jobsite, fell more than 20 feet to the floor below, and suffered a massive traumatic brain injury, significantly disabling orthopedic injuries, and will likely be confined to a facility for the rest of his life. Following judicial reference, the matter result in a \$67 million judgment, with the firm pursuing, and ultimately settling for significant value, the insurance bad faith case against the insurer that refused to settle when provided with an opportunity to do so.
6. Lead law and motion attorney on a Wyoming insurance coverage dispute in which the Court granted the insureds' partial summary judgment motion— finding coverage under the policy for a more than \$26 million judgment in the underlying case against the insureds. The case is *Interstate Fire & Casualty Company et al. v. Apartment Management Consultants, LLC, et al.*, Case No. 2:13-CV-00278-ABJ.
7. Lead law and motion attorney representing an insured who had purchased medical coverage for her newborn surrogate twins. After a wrongful denial of coverage, and multiple motions in the district court, the matter resolved for a confidential seven figure settlement.
8. Lead law and motion attorney for clients injured in a crosswalk when a driver, due to the public entity's failure to install proper warning equipment, failed to see them and struck the plaintiffs, causing serious and life-long injuries. Combined settlement with the driver's employer and the public entity resulted in a high-seven figure settlement.
9. Lead law and motion attorney in the case of a client who fell off a piece of construction supplies while on a jobsite, suffering quadriplegia, a brain injury,

and massive orthopedic injuries. Despite serious difficulties with liability, assisted the firm in securing a more than \$4 million settlement on behalf of the client.

10. Representing 28 tenants on a pro bono basis against the landlord and landowners permitting uninhabitable living conditions to persist on a property in Downtown Los Angeles. Resulted in nearly \$4 million in settlement/refurbish/repair benefits going to the tenants.
11. Law and motion attorney assisting with the case against an insurer who failed to settle claims against its insured related to the insured's medical practice. After confidential arbitration, the matter resolved for an eight-figure settlement.
12. Representing and second-chairing the trial of a former oil refinery employee who alleged breach of implied contract for continued employment against his former employer for wrongfully reduced the employee's profit sharing agreement without good cause. Mr. Clark sat second chair at trial where the jury awarded approximately \$2 million in past economic damages. (George Sturges, Jr. vs. Kern Fuels Research, LLC, et al.)
13. Representing the family in a wrongful death case where a woman was tragically killed during the repossession of her automobile. The case resulted in a confidential seven figure settlement for the husband and daughter.
14. Lead associate and law and motion attorney on property insurance case for commercial property in Southern California. After successfully opposing the insurer's three motions for summary judgment and writ petition, the matter settled in favor of the insured for \$3.05 million.
15. Lead associate and law and motion attorney on multiple six and seven figure settlements in favor of clients injured in auto accidents after the adverse driver's insurance carrier refused to accept a reasonable opportunity to settle within policy limits.
16. Lead law and motion attorney litigating wildfire underinsurance claims, resulting in an eight-figure settlement to provide clients the funds to replace and rebuild damaged homes.

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