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

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

25 vs.

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

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

[Hon. William F. Highberger]

**PLAINTIFFS’ NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF SECOND CLASS
SETTLEMENT; MEMORANDUM IN
SUPPORT**

Declarations in Support Filed Separately

Date: March 10, 2023

Time: 1:30 p.m.

Place: Spring Street Court, Dept. 10

**[Filed concurrently with Declaration in
Support, Stipulation/Proposed Order to
Shorten Time]**

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on March 10, 2023, at 1:30 p.m. in Department 10 of
3 the Los Angeles Superior Court, Spring Street Courthouse, located at 312 North Spring Street,
4 Los Angeles, CA 90012, before the Hon. William F. Highberger, Plaintiffs, on behalf of
5 themselves and on behalf of the Class (“Plaintiffs”), will and hereby do move for an order
6 granting preliminary approval of a settlement between Plaintiffs and defendant California Public
7 Employees’ Retirement System (“CalPERS”) in the above-entitled action (the “Second
8 Settlement”).

9 Through this Motion, brought pursuant to Rule 3.769 of the California Rules of Court,
10 Plaintiffs seek an Order from the Court:

- 11 (1) Granting Preliminary Approval to the Proposed Second Class Action Settlement;
- 12 (2) Certifying the Settlement Class for settlement purposes only;
- 13 (3) Approving the Form and Manner of Notice;
- 14 (4) Appointing a Settlement Administrator;
- 15 (5) Approving the Plan of Allocation of the Settlement Proceeds;
- 16 (6) Establishing a schedule for the provision of Notice of, the opportunity to opt out
17 of, and the opportunity to object to the Settlement to the Members of the Class;
18 and
- 19 (7) Setting the Final Approval Hearing.

20 This Motion will be based on this Notice of Motion and Motion, the attached
21 Memorandum of Points and Authorities, the concurrently filed Declaration of Gretchen M.
22 Nelson and the Exhibits thereto, the Declarations of Eileen Lodyga, Richard Lodyga and Holly
23 Wedding, the concurrently lodged [Proposed] Order Granting Preliminary Approval and Exhibits
24 thereto, and on the entire record in the proceedings and on such oral argument as the Court may
25 permit.

26
27
28

1 Date: February 27, 2023

Respectfully submitted,

2

BENTLEY & MORE LLP

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By:  _____

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GREGORY L. BENTLEY
MATTHEW W. CLARK
Attorneys for Plaintiffs and the Class

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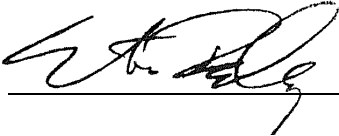
8 Date: February 27, 2023

Respectfully submitted,

9

KERSHAW TALLEY BARLOW PC

10

By:  _____

11

STUART C. TALLEY
Attorney for Plaintiffs and the Class

12

13

14 Date: February 27, 2023

Respectfully submitted,

15

NELSON & FRAENKEL LLP

16

By: _____

17

GRETCHEN M. NELSON
Attorneys for Plaintiffs and the Class

18

19

20 Date: February 27, 2023

Respectfully submitted,

21

SHERNOFF BIDART ECHEVERRIA LLP

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By: _____

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MICHAEL J. BIDART
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Attorneys for Plaintiffs and the Class

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26

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28

1 Date: February 27, 2023

Respectfully submitted,

2

BENTLEY & MORE LLP

3

By: _____

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GREGORY L. BENTLEY
MATTHEW W. CLARK
Attorneys for Plaintiffs and the Class

5

6

7

8 Date: February 27, 2023

Respectfully submitted,

9

KERSHAW TALLEY BARLOW PC

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By: _____

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STUART C. TALLEY
Attorney for Plaintiffs and the Class

12

13

14

15 Date: February 27, 2023

Respectfully submitted,

16

NELSON & FRAENKEL LLP

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By: 

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GRETCHEN M. NELSON
Attorneys for Plaintiffs and the Class

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20

21

22 Date: February 27, 2023

Respectfully submitted,

23

SHERNOFF BIDART ECHEVERRIA LLP

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By: 

25

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Attorneys for Plaintiffs and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Second Class Action Settlement¹ is made by and between Plaintiffs Holly Wedding,
4 Richard M. Lodyga, and Eileen Lodyga, individually and on behalf of the Settlement Class
5 (“Plaintiffs”), and Defendant California Public Employees’ Retirement System (“CalPERS”)
6 (collectively the “Parties”), with respect to the above-entitled action (the “Second Settlement”).
7 Plaintiffs and the Class are represented by Shernoff Bidart Echeverria LLP, Kershaw, Talley &
8 Barlow, PC, Nelson & Fraenkel LLP, and Bentley & More LLP (collectively, “Class Counsel”).
9 Defendant CalPERS is represented by attorneys at Morrison & Foerster.

10 This Second Settlement was achieved after lengthy and hard-fought negotiations with the
11 assistance of the Hon. Layn Phillips (Ret.) following the termination of the Prior Settlement. There
12 are significant differences between the Prior Settlement and the new Second Settlement. Under
13 the Prior Settlement, Class Members generally had to choose between: (1) giving up their CalPERS
14 Long Term Care Insurance policies (“LTC policies”) in exchange for a refund of their premiums;
15 or (2) opting out of the Class, keeping their LTC policies, and receiving nothing from the Prior
16 Settlement. The Prior Settlement was terminated because more than 30% of the Settlement Class
17 elected to opt out in order to retain their LTC policies.

18 Under the Second Settlement, Class Members who are current policyholders are given two
19 options. The first option allows Class Members to surrender their LTC policies in exchange for a
20 refund of 80% of all the premiums paid until the Second Settlement becomes final. The second
21 option allows Class Members to keep their LTC policies and receive a cash payment of \$1,000.
22 Class Members who elect to keep their LTC Policies also receive the benefit of CalPERS’
23 agreement not to raise premiums for a period up to November 2024.

24 Additionally, the Second Settlement provides payments to policyholders who do not have
25

26 _____
27 ¹ The Second Class Action Settlement Agreement and Release (the “Second Settlement
28 Agreement”) is Exhibit “A” to the Nelson Declaration. As much as possible, defined terms in this
Settlement as the Second Settlement in this motion and in the Agreement but in documents to be
distributed to the Settlement Class, the settlement is referred to as the “New Settlement”.

1 active policies, Class Members who are on claim, and the heirs of policyholders who have died.
2 Based on the decisions made by Settlement Class Members with respect to the Prior Settlement,
3 Plaintiffs’ experts have estimated that the total value of this Second Settlement (excluding the
4 premium moratorium) will be approximately \$820 million, which includes payment of \$80 million
5 for costs of litigation, Service Awards to the Plaintiffs, attorneys’ fees, and Settlement
6 Administration expenses for both this settlement and the Prior Settlement.² The total amount of
7 the Settlement is an “approximation” because, among other reasons, it does not take into account
8 additional premium refunds that will be owed as a result of premium payments made from
9 December 31, 2022, through the date that the Settlement becomes final (the “Final Settlement
10 Date”), the number of Class Members who may opt out of the settlement, or changes to Class
11 Members’ categories due to going on claim, passing away, or other events, that may take place
12 between December 31, 2022, and the date the settlement becomes Final.

13 The Second Settlement provides CalPERS with the opportunity to terminate the Second
14 Settlement if more than 1% of the Settlement Class opts out.

15 As part of preliminary approval, Plaintiffs seek certification of a Settlement Class
16 comprised of more than 79,500 policyholders for settlement purposes only. The Settlement Class
17 is defined fully in Section IV.A *infra*.

18 The Settlement is entitled to a presumption of fairness because: (i) it is the product of arm’s
19 length bargaining between the Parties after lengthy and numerous mediation proceedings before
20 an experienced mediator, the Hon. Layn Phillips (Ret.); (ii) the Parties have conducted substantial
21 investigation into the claims, defenses, and potential damages in this case, which has been pending
22 since August of 2013, including the trial of the first two phases of the case; and (iii) Class Counsel
23 is experienced in complex and class action litigation, including insurance law matters. (*7-Eleven*
24 *Owners for Fair Franchising v. The Southland Corp.*, (2000) 85 Cal.App.4th 1135, 1146; *Dunk v.*
25 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

26
27
28 ² CalPERS does not necessarily agree with this estimate including because its actuarial experts believe Settlement Class Members may make different decisions than the decisions that Plaintiffs’ actuaries have modeled.

1 Through this Motion, Plaintiffs seek an Order: (i) Granting Preliminary Approval to the
2 Proposed Second Class Action Settlement; (ii) Certifying the Settlement Class for settlement
3 purposes only; (iii) Approving the Form and Manner of Notice; (iv) Appointing a Settlement
4 Administrator; (v) Approving the Plan of Allocation of the Settlement Proceeds; (vi) Establishing
5 a schedule for the provision of Notice of, and opportunity to object to, the Second Settlement to
6 the Members of the Class; and (vii) Setting the Final Approval Hearing.

7 **II. FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION³**

8 **A. The Complaint and the Underlying Facts**

9 This is a class action lawsuit filed against CalPERS arising out of a long-term-care (“LTC”)
10 insurance program that CalPERS sold to CalPERS’ members and other state and local government
11 employees and their families from 1995 through 2004. LTC insurance is used to cover the cost of
12 nursing home care and other needs that can be related to a long-term disability or assisted living
13 that is required following an accident or as a person grows older.

14 CalPERS LTC Program was established by the California Legislature in 1995, through the
15 Public Employee’s Long-Term Care Act (the “Act”) (Gov. Code, §§ 21660 et seq.). Under the Act,
16 the LTC Program is supposed to be completely self-funded by policyholders with no contribution
17 from the state’s general fund or taxpayers.

18 From 1995 through 2002, CalPERS marketed and sold the LTC1 policy, and it marketed
19 and sold the LTC2 policy from 2003 through 2004. There were three different types of LTC1 and
20 LTC2 policies available for purchase: (1) PERS Comprehensive; (2) PERS Nursing
21 Home/Assisted Living Facility; and (3) PERS Partnership (not at issue in this litigation). Within
22 each type of policy, enrollees could select certain benefits, such as “lifetime benefits” (with no cap
23 on the number of years that benefits would be paid) or a set term for benefits to be paid (such as 3
24 years). Enrollees could also select “inflation protection” benefits, which automatically increased
25 benefits by 5% each year that the policy was in force.

26 The policy (or contract) between CalPERS and the policyholders is the Evidence of
27 Coverage (the “EOC”). The EOC for both the LTC1 and LTC2 policies states: “Your premiums

28 _____
³ The facts in this motion are set forth in the Nelson Declaration, filed concurrently herewith.

1 will never increase due solely to a change in Your age or health. PERS can, however, change Your
2 premiums, but only if We change the premium schedule on an issue age basis for all similar
3 coverage issued in Your state on the same form as this coverage.” In addition, the “BENEFIT:
4 INFLATION PROTECTION” section of the EOC states: “Your Premium Will Not Increase: Your
5 premium rate will not increase as a result of these annual [inflation protection] benefit increases.”
6 (Emphasis in original.)

7 In 2012, the CalPERS Board voted to increase premiums by 85% for those LTC1 and LTC2
8 policyholders who had purchased inflation protection and/or lifetime benefits (the “Challenged
9 Increase”). The increase was first announced to policyholders in a letter dated February 11, 2013.

10 This lawsuit was filed in August 2013, asserting breach of contract and other claims based
11 on CalPERS’ imposition of the 85% increase. Plaintiffs maintain the increase was “as a result of”
12 the inflation protection benefits, and thus the increase was a breach of CalPERS’ contractual
13 promise to not raise premiums as a result of inflation protection benefits. Thereafter, on December
14 18, 2013, Plaintiffs filed their First Amended Complaint in which they named as defendants certain
15 individual members of the CalPERS Board of Administration, and also asserted claims against the
16 defendants Towers Watson & Co., Towers Perrin, and Tillinghast-Towers Perrin (“Towers Watson
17 Defendants”), the actuarial consultant retained to help CalPERS run the LTC Program from as
18 early as 1992 until approximately March 2004.⁴

19 The operative Third Amended Complaint was filed on August 26, 2020.

20 **B. Certification of the Class, Notice, and the Expiration of the Opt-Out Period**

21 On September 15, 2015, Plaintiffs filed a motion for class certification. On January 28,
22 2016, the Court [Hon. Jane Johnson] certified a class on the breach of contract and breach of
23 fiduciary duty claims against CalPERS and the professional negligence claim against the Towers
24 Watson Defendants. The Class certified by the Court’s January 28, 2016, Order is comprised of
25 all California citizens who purchased long-term care policies from CalPERS between 1995 and
26

27 _____
28 ⁴ A class settlement was achieved with the Towers Watson Defendants (the “Towers Settlement”),
which was granted final approval in 2018. Class Counsel did not take any fee from that settlement,
although they were reimbursed out-of-pocket costs. See *infra*, fn. 11.

1 2004, who were subject to the 85% premium increase announced to policyholders in or around
2 February 2013, and implemented beginning in 2015 (the “Class”). The certified Class included
3 more than 122,600 policyholders. The Court appointed Plaintiffs’ Counsel as Class Counsel and
4 Plaintiffs Holly Wedding, Eileen Lodyga, and Richard Lodyga as the Class Representatives.

5 Thereafter, the Court approved the form of notice to be disseminated to the Class and
6 approved Heffler Claims Group as the Notice Administrator.⁵ In response to the Class notice, 169
7 persons opted out of the Class.

8 In 2018, CalPERS moved to decertify the Class. That motion was denied on May 15, 2018.
9 CalPERS’ writ to the Court of Appeal was denied on December 12, 2018.

10 **C. The Parties Engaged in Extensive Discovery Efforts Prior to Resolution**

11 Discovery in this matter has been extensive. The Parties have conducted more than 42 days
12 of depositions, including numerous expert depositions (including taking the deposition of all *seven*
13 of the Parties’ expert witnesses in December 2022), collectively responded to hundreds of special
14 interrogatories, requests for production, and requests for admission, and have produced, and
15 reviewed, tens of thousands of pages of documents. CalPERS alone has produced more than
16 38,000 pages of documents, with additional productions from Plaintiffs, the Towers Watson
17 Defendants, third party witnesses, and others. The parties have also engaged in lengthy and
18 repeated rounds of expert disclosure and discovery. A fuller description of the discovery performed
19 during this lengthy saga can be found *infra*, pp. 8-10.

20 **D. This Matter Has Involved Multiple, Pre-Trial Dispositive Motions**

21 This matter has been extensively litigated. The record contains more than 1,000 entries for
22 pleadings filed. There have been more than 100 Orders issued in this case and there have been
23 dozens of court appearances. Dozens of motions have been heard, including demurrers, motions
24 for summary judgment, class certification motions, motions in limine, and other trial-centered
25 practice for the three phases of trial. Among the dispositive motions was CalPERS’ motion for
26

27 ⁵ Plaintiffs seek approval to retain Epiq Global as the Settlement Administrator for this Settlement.
28 Epiq acted as the Settlement Administrator for the Prior Settlement and is well-versed on the issues
and complexity of the administration of this case.

1 summary judgment, which the Court [Hon. Ann I. Jones] denied as to the breach of contract and
2 breach of the implied covenant of good faith and fair dealing claims but granted as to the causes
3 of action for breach of fiduciary duty (primarily based on sovereign immunity) and rescission
4 (based on both sovereign immunity and that the purported claim was a remedy only, not a cause
5 of action). As a result of that order, the individual members of the CalPERS Board of
6 Administration previously named as defendants were dismissed from the case.

7 **E. The Prior Settlement with the Towers Watson Defendants**

8 The Towers Watson Defendants settled with the Class for \$9,750,000, with final approval
9 of that settlement granted on January 26, 2018 by the Court [Hon. Ann I. Jones]. That settlement
10 fully, finally, and forever released Plaintiffs' claims against the Towers Watson Defendants,
11 leaving CalPERS as the sole remaining Defendant.

12 **F. The Phase 1 Trial Conducted Before the Court, Including the Court's Adjudication
13 of CalPERS's Statute of Limitations Affirmative Defense (Phase 2)**

14 On April 4, 2019, the matter was transferred to the Hon. William F. Highberger for trial on
15 the breach of contract claim against CalPERS.

16 The Court granted CalPERS' motion on May 24, 2019, trifurcating trial into three phases:
17 (1) a bench trial pertaining to contract interpretation as a matter of law ("Phase 1"); (2) a jury trial
18 on CalPERS's affirmative defense of the statute of limitations ("Phase 2"); and (3) if appropriate,
19 a jury trial on the merits to determine if CalPERS breached the EOC and the damages to be
20 awarded to Plaintiffs and the Class, if any ("Phase 3"). CalPERS was granted leave to file a
21 declaratory relief cross-complaint.

22 The bench trial for Phase 1 commenced before this Court on June 10, 2019. The court trial
23 proceeded over two days.⁶ Following the submission of evidence, Plaintiffs served a [Proposed]
24 Statement of Decision on June 19, 2019, and Defendant responded on June 25, 2019. The Court
25 conferred with counsel on July 1, 2019, and issued a draft [Proposed] Statement of Decision the
26 same day, noting it was a "Draft subject to revision."

27
28 ⁶ The Court, pursuant to *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1381, adjudicated CalPERS' statute of limitation defense as a matter of law in Plaintiffs' favor.

1 The Parties paused trial proceedings in order to engage in settlement discussions. Once
2 those discussions proved unfruitful, the matter was placed back on calendar for further briefing
3 and resolution of objections to the Statement of Decision. The Court held a final virtual hearing
4 on the objections on July 23, 2020, and issued its Final Statement of Decision on July 27, 2020.

5 In the Statement of Decision, the Court found that, under the Guaranteed Renewable
6 clause, CalPERS could implement benefit-specific premium rate increases, such as to the lifetime
7 benefit only Class Members. (7/27/2020 Statement of Decision, p. 31:23-28.) But as to the
8 “Inflation Protection clause,” the Court found that the evidence was “consistent with an
9 interpretation under the plain meaning of the Inflation Protection clause that the EOC does not
10 permit rate increases that are as a result of increasing benefits owed to policyholders who
11 purchased Inflation Protection,” and determined that whether the rate increases at issue violated
12 this contractual limitation was to be decided in a further trial to a jury. (*Id.*, p. 35:2-7.) Finally, the
13 Court found that the Inflation Protection clause controls over the general provision of the
14 Guaranteed Renewable clause. (*Id.*, p. 36:17-20.) Essentially, this left those individuals who
15 purchased the LTC1 and LTC2 policies with Inflation Protection benefits as the only Class
16 members with viable claims for the Phase 3 jury trial. Class members who purchased LTC1 and
17 LTC2 policies with lifetime only benefits and no inflation protection were subject to the Court’s
18 ruling on the Guaranteed Renewable clause (i.e., that CalPERS was permitted to increase
19 premiums on a benefit-specific basis, such as for lifetime benefits only policies).

20 In ruling on CalPERS’ Cross-Complaint, the Court found that “CalPERS cannot increase
21 premiums specifically ‘as a result’ of the increasing liabilities from the Inflation Protection
22 benefit’s annual increase in the daily/monthly maximum allowable benefit.” But the Court also
23 found that “CalPERS can implement across-the-board increases which include Inflation Protection
24 insureds as long as the reason for the increase is some matter of general applicability to all insureds;
25 e.g. lower-than-anticipated lapse rates of all insureds, longer than expected longevity of all
26 insureds, longer duration on claim by all categories of insureds, and/or a further change in the
27 discount rate.” (*Id.*, p. 38:16-25.)

28 On August 11, 2020, the Parties submitted a Stipulation for approval in which they

1 preserved all objections to the Final Statement of Decision, appellate rights, and the right to further
2 challenge the Final Statement of Decision on appeal. A jury would be required, in the Phase 3 trial,
3 to resolve whether CalPERS breached the contract (by increasing premiums as a result of the
4 increasing liabilities from the Inflation Protection benefit's annual increase), and if so, the amount
5 of damages. The Parties engaged in significant additional expert disclosure/discovery, prepared
6 renewed expert reports, and began preparation for trial, which was continued due to issues arising
7 from the pandemic. In or around October 2020, the Parties renewed their prior settlement
8 discussions and ultimately entered into the Prior Settlement, which was preliminarily approved by
9 the Court in July 2021. After an extensive notice process, more than 30% of the Settlement Class
10 elected to opt out of the Prior Settlement because they wanted to retain their CalPERS LTC
11 policies.

12 In early 2022, the Prior Settlement was terminated by mutual agreement. In light of that
13 termination, the parties began renewed efforts to determine whether a new settlement could be
14 achieved, while at the same time pressing forward with trial preparation. In January 2023, the
15 parties agreed to a new settlement in principle and are now presenting the Second Settlement to
16 the Court for preliminary approval.

17 III. DUNK/KULLAR ANALYSIS

18 A. The Settlement Was Achieved After Extensive Investigation, Discovery, and the 19 Commencement of Trial

20 This Settlement was only achieved after full and complete discovery, disclosure and
21 depositions of experts, and the completion of the first two phases of the trial. Discovery was
22 conducted for more than 9 years and included the following:

23 a. Plaintiffs propounded extensive written discovery, and CalPERS responded to eight
24 separate sets of Request for Production of Documents; six separate sets of Special Interrogatories;
25 one set of Judicial Council Form Interrogatories; and one set of Requests for Admission.

26 b. CalPERS propounded written discovery on Plaintiffs, including document
27 requests, and interrogatories and requests for admission and Plaintiffs responded.

28 c. The Parties made multiple productions of documents resulting in nearly 40,000
pages of documents being produced by the Parties. Additional document productions from

1 CalPERS and third parties have resulted in more than 50,000 pages of additional documents that
2 have been produced and reviewed in this litigation. Class Counsel maintained an extensive
3 database of all documents, which was readily searchable, and conducted a thorough analysis of all
4 documents in the database.

5 d. Numerous discovery disputes resulted in motions to compel and certain of the
6 disputes were submitted to a Special Master regarding, among other things, whether documents
7 relating to actions taken by the CalPERS Board were protected from discovery under the
8 deliberative process privilege, official information privilege, legislative privilege, and closed
9 session privilege.

10 e. Plaintiffs were deposed on multiple occasions, and Plaintiffs took the depositions
11 of: four representatives of Towers Watson, including three former actuarial consultants who
12 worked with CalPERS on the LTC Program; five Person(s) Most Knowledgeable at CalPERS
13 regarding the LTC Program; four Person(s) Most Knowledgeable at LTCG regarding the LTC
14 Program; nine experts retained by the Parties in this matter; and additional third-party witnesses
15 including putative Class members. In all, more than **42** sessions of depositions were conducted.

16 f. Plaintiffs researched and analyzed the applicable law as to their claims, including
17 extensively researching and briefing issues of contract interpretation, insurance matters, the LTC
18 industry, and damage issues as well as the potential defenses asserted by CalPERS.

19 g. The Parties analyzed, prepared, reviewed, or filed more than 1,000 separate
20 pleadings in this action, including dispositive motions, discovery motions, motions in limine, trial
21 briefs, objections and responses to the Statement of Decision, and other law and motion work that
22 has spanned the near ten-year history of this case.

23 h. The Parties retained experts on actuarial, damages, and other issues, and the experts
24 were initially deposed between December 2018 and February 2019. Thereafter, following the
25 completion of Phases 1 and 2 of the trial, the Court granted CalPERS' request to reopen expert
26 discovery on October 22, 2019. And, in September 2020, the Court ordered the sequencing of the
27 production of the reports and ordered the Parties to produce "federal-style" expert reports. The
28 parties' experts prepared and issued the reports in October and November 2020 and then after the

1 Prior Settlement was terminated, the experts again produced extensive updated reports in October
2 and November of 2022. All seven of the experts were deposed in December 2022.

3 As noted above, Phase 1 and Phase 2 of the trial were completed, resulting in the lengthy
4 7/27/2020 Statement of Decision that clarified the claims and causes of action that were viable for
5 Phase 3 of the trial before a jury to determine the sole remaining breach of contract cause of action,
6 and the damages attendant to said breach, if any.

7 **B. The Settlement Negotiations Were Conducted Before an Experienced Class Action**
8 **Mediator**

9 Following the completion of Phase 1 and 2 of the trial, and in or around August 2019, the
10 Parties agreed to conduct settlement negotiations before Judge Layn Phillips (Ret.). The Court was
11 informed of Judge Phillips' retention to mediate the case and, following initial mediation sessions
12 in December 2019, the Court issued an Order on the Parties' stipulation appointing Judge Phillips
13 as a Settlement Master. The Parties had numerous telephonic conferences and in person mediation
14 sessions. Those discussions did not result in a settlement and the Parties recommenced trial
15 preparation.

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

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

24 It cannot be disputed that Judge Phillips is a highly capable and experienced mediator. In
25 addition to his experience as both a former United States Attorney and a former United States
26 District Judge, he has spent the last decade mediating and resolving some of the largest class action
27 settlements in the country. The Parties engaged in *multiple* day-long mediation sessions with Judge
28 Phillips as well as multiple conference calls and video conferences throughout the years-long
negotiations.

1 The Plaintiffs were available throughout this matter in person, telephonically and through
2 a virtual platform, and were apprised of the negotiations on an ongoing basis.

3 The Parties reached a settlement in principle in January 2023 that followed extensive
4 discussions with Judge Phillips and multiple proposals exchanged between Plaintiffs and CalPERS
5 from the period of March 2022 to November 2022. Throughout the negotiations, the Parties were
6 assisted by their actuarial and damages experts and at times the experts communicated among
7 themselves (with counsel participating) regarding various issues relating to the damages and status
8 of policyholders. The Settlement was finalized between Plaintiffs and CalPERS—which as
9 detailed below involves considerable issues, both as to the settlement categories and how to handle
10 expenses and fees—and was ultimately reduced to writing.

11 **C. Class Counsel Have Extensive Class Action Experience**

12 A detailed description of the experience of Class Counsel is set forth in the Nelson
13 Declaration and Exhibits 2 through 4 thereto.

14 Based on that experience, information produced pursuant to both formal and informal
15 discovery, and Class Counsel’s own independent investigation and evaluation, Class Counsel
16 believes that the settlement with CalPERS is fair, reasonable and adequate, and is in the best
17 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
18 significant delay and uncertainty associated with the litigation, the various defenses asserted by
19 CalPERS, and potential appellate issues and delays attendant to further appellate proceedings.

20 **D. Summary of the Case Including the Legal and Factual Basis for Each Claim**

21 A detailed description of the legal and factual claims in the case has been set forth above.
22 (See *supra*, pp. 3-8.) As a result of rulings made during the litigation, the sole class claim
23 remaining for trial is a breach of contract claim that is based on the Challenged Increase.

24 **E. Summary of the Risks, Expenses, Complexity, and Duration of Further Litigation if
25 the Settlement is Not Approved**

26 Throughout the nearly ten years that this case has been pending, CalPERS has vigorously
27 contested liability and damages, raising arguments that, if accepted, could undermine Plaintiffs’
28 ability to obtain a favorable class judgment. CalPERS repeatedly challenged the certification of
the Class and argued that certification was not warranted. Over opposition, the Court certified the

1 Class, and denied CalPERS' decertification motion (which CalPERS sought review of and which
2 writ was denied), but CalPERS retained the right to challenge that ruling through a renewed motion
3 to decertify or on appeal.

4 CalPERS has also strongly argued that the one avenue for breach of contract left open by
5 the Court—that the 85% increase was due to the increasing liabilities from the Inflation Protection
6 benefit—is either flawed, was not the true reason for the 85% increase, or that the damages (even
7 assuming Plaintiffs are correct) amount to only a small fraction of what Plaintiffs have claimed.
8 These and other defenses asserted by CalPERS, including the possibility of a lengthy appeal even
9 in the event of a favorable trial result, not only raise the specter of potential adverse rulings, but
10 also could result in further delays in the outcome.⁷ Moreover, the elections of the Class Members
11 with respect to the Prior Settlement demonstrated that a significant number of Class Members
12 (despite being extremely dissatisfied with CalPERS' repeated premium increases) want to retain
13 their CalPERS LTC policies. Since there is a possibility that any significant award in a trial has
14 the potential of impairing the ability of the LTC Program to pay future benefits, this is a further
15 risk that was considered for Class Members who desire to keep their LTC Policies.

16 To date, Class Counsel have incurred nearly \$4 million in total out-of-pocket expenses.
17 The vast majority of the costs incurred have related to experts. In the event the case proceeds to
18 trial and appeal, the expenses will likely exceed \$5 million. Moreover, the Phase 3 trial will be
19 lengthy, lasting three weeks or more, and will involve complex actuarial testimony on both liability
20 and damages. The complicated nature of such testimony will be difficult for any person, including
21 a jury.

22 The Second Settlement was reached after extensive arm's length negotiations, and was
23 negotiated in light of these facts, circumstances, and the risks associated with further litigation. It
24 was also negotiated in light of information obtained from the Prior Settlement as to Settlement
25 Class Members' views regarding their LTC policies. Ultimately, the parties spent more than *18*
26 *months* to reach the Prior Settlement and another *12 months* to reach the Second Settlement. The
27

28 ⁷ Given their increasing age, nearly 2,100 Settlement Class members die annually, a fact that
presents a compelling reason for an earlier resolution than if the case were tried and appealed.

1 magnitude, terms, and availability of this Second Settlement to the Settlement Class more than
2 demonstrates that it is fair and in the Settlement Class’s best interest, as further described below.

3 **F. The Risks of Maintaining Class Action Status**

4 As described above, CalPERS has twice attempted to defeat certification. It sought review
5 of the Court’s order denying its motion to decertify the Class in July 2018, and the Court of Appeal
6 denied the writ in December 2018. CalPERS has signaled its intention to challenge certification
7 in the future. Although Plaintiffs firmly believe that certification of the case was legally and
8 factually sound, there remains a risk that future proceedings, including appellate review, could
9 jeopardize the Court’s class certification orders.

10 **G. The Settlement Benefits Are Reasonable**

11 Although the outcome of any litigation is difficult to predict, Plaintiffs’ claims against
12 CalPERS were subject to defenses which, if accepted by the trier of fact, could result in Plaintiffs
13 recovering nothing, or significantly less than the proposed Settlement. Plaintiffs’ claims are
14 dependent on a finding that the Challenged Increase was specifically “as a result” of the increasing
15 liabilities from the Inflation Protection benefit’s annual increase in the daily/monthly maximum
16 allowable benefit. Plaintiffs’ claims are also dependent on complex expert modeling and analysis
17 as to the amount and type of damages that might be recoverable, in conjunction with potential
18 damages challenges by CalPERS as to the type, amount, and even ability to claim damages at trial.

19 Even assuming those obstacles could be overcome, which plaintiffs firmly believe they
20 can, Plaintiffs’ experts have calculated the amount of damages (i.e., in new money to pay Class
21 Members for both the lost policy value inherent in the 85% increase, the reduction or elimination
22 of benefits, and CalPERS’s alleged misdeeds, as well as the excess premiums paid as a result of
23 the increase, added to simple 10% per annum interest) to be \$3,000,000,000 (\$3B). Although an
24 award of that magnitude would leave Class members with their LTC policies in place, CalPERS
25 has repeatedly claimed that such a damage award would leave the LTC Fund actuarially
26 insolvent—a prospect this Court has described as a “suicide pact.” That contrasts with the
27 proposed settlement, which, if all potential Settlement Class Members participate, according to
28 Plaintiffs’ experts amounts to approximately \$820 million, excluding the value of the premium

1 moratorium and including the refund of premiums for a significant number of policyholders in
2 exchange for surrendering their policies (see *infra*, Exhibit A for the categories of Settlement Class
3 Members and how each is expected to be compensated from this Settlement if they do not opt
4 out).⁸

5 The Court has recognized many of the difficulties associated with Plaintiffs’ proceeding to
6 a resolution at trial, including that “there is some wiggle room for CalPERS to increase premiums
7 paid by this group if it was for some other reason,” and finding a triable issue of fact as to CalPERS’
8 reasons for imposing the premium increase on Inflation-Protection insureds, while acknowledging
9 that a jury may find that CalPERS’s reasons “were entirely acceptable, entirely unacceptable, or a
10 blend of the bad with the good.” (7/27/2020 Statement of Decision, p. 32:21-27.) Further, the
11 Phase 1 bench trial did not give “this Court an opportunity to pass on the correctness of some or
12 all of Plaintiffs’ theories of compensable damage.” (*Id.*, p. 7:18-23.) As a result, it is possible that
13 certain damages claimed by Plaintiffs could be further limited or potentially eliminated by the
14 Court even before the Phase 3 trial can begin. The risks of continued litigation, and the vagaries
15 of a trial in a complex, multi-year case, are hard to predict, and subject Plaintiffs and the Class to
16 considerable risk.

17 Finally, even if Plaintiffs were to achieve a considerable outcome at trial, proving not only
18 the vast majority of their damage theories but also that the Challenged Increase breached the EOC
19 as interpreted by the Court, this litigation could still face the potential for years-long appellate
20 proceedings, including, based on the nature, scope, and extent of this litigation, the potential for
21 review by the California Supreme Court—let alone the time and risk posed should a retrial be
22 ordered. The proposed Second Settlement, although not providing everything the Settlement Class
23 Members might desire, provides a certain, considerable, and definite benefit.

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27 ⁸ As noted above, the estimated value of the Second Settlement is based in material part on the
28 premiums paid by Settlement Class Members through June 30, 2022 and does not take into
account additional premiums that have been paid from that date and will be paid up to the date of
Final Approval.

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IV. CERTIFICATION OF THE SETTLEMENT CLASS

A. The Class Definition

The Settlement requires that the Court certify a Class for settlement purposes defined as:
Any individual who was a California citizen in February 2013, and who purchased LTC1 and LTC2 policies that included the automatic inflation protection benefit and were subjected to the Challenged Increase (i.e., the 85% increase announced in February 2013 and implemented in 2015).

Policyholders who converted their policies to LTC3 policies prior to the implementation of the Challenged Increase are not included in the Settlement Class, even if the conversion occurred after the Challenged Increase was approved in October 2012. The Settlement Class also does not include those individuals who opted out of the Class certified by the Court on January 28, 2016.

The definition identifies Settlement Class Members by objective means and provides sufficient information to inform individuals that they are in the Settlement Class.

B. The Settlement Class is Sufficiently Numerous

The Settlement Class is comprised of more than 79,500 individuals. The number of Settlement Class members has been confirmed through extensive data provided by CalPERS to Class Counsel that involved extensive discussions between the Parties’ experts as well as data from LTC Group as to the categories the policyholders were in as of December 31, 2022.⁹ Further during the administration of the Prior Settlement, a small number of additional Settlement Class Members have been identified and have been or will be added to the list. The Settlement Class is sufficiently numerous to justify class treatment.

C. The Settlement Class is Ascertainable

CalPERS maintains records of all individuals who in February 2013 were California citizens and purchased LTC1 and LTC2 policies that included the automatic Inflation Protection benefit and were subjected to the Challenged Increase. CalPERS maintains records detailing the actions taken regarding those policies since purchase (whether a Settlement Class Member went

⁹ The ultimate benefits to be provided will be based on the category Settlement Class Members are in when the settlement becomes final. However, changes will occur during the estimated 6 to 7 months before the settlement becomes final due to deaths and policyholders going on claim.

1 on claim and utilized policy benefits, let their policy lapse, or reduced their benefits), as well as
2 the amounts paid by each Settlement Class Member in premiums up to December 31, 2022, which
3 will likely increase. These records were sufficient for CalPERS to provide a list of Settlement
4 Class Members for notice of the Prior Settlement and the Settlement Administrator has maintained
5 those records and will be provided updated data as of December 31, 2022.

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

7 With respect to the elements of commonality and predominance, “[w]hat matters to class
8 certification . . . is not the raising of common ‘questions’ — even in droves — but, rather the
9 capacity of a classwide proceeding to generate common answers apt to drive the resolution of the
10 litigation.” (*Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 350, 131 S. Ct. 2541, 2551.)
11 The class certification inquiry focuses “on what type of questions—common or individual—are
12 likely to arise in the action” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
13 319, 327.) To assess predominance, a court “must examine the issues framed by the pleadings and
14 the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
15 (2001) 89 Cal.App.4th 908, 916.) The pertinent question is whether the common issues are so
16 numerous or substantial, when compared to the individual issues, that trying them in one
17 proceeding would be advantageous to the judicial process and the litigants. (*Sav-On*, 34 Cal. 4th
18 at 326.) Here, the breach of contract claim was resolved through the Court’s prior interpretation
19 of the EOC and the reasoning behind the Challenged Increase—these factual and legal questions
20 were identical as to all Settlement Class Members.

21 **E. Plaintiffs’ Claims are Typical of the Claims of the Settlement Class**

22 Plaintiffs’ claims arise from the same factual and legal questions as Settlement Class
23 Members. Plaintiffs were California citizens in February 2013 and purchased an LTC policy from
24 CalPERS issued on an EOC substantially identical to Settlement Class Members, during the
25 relevant period, with automatic inflation protection benefits. Plaintiffs’ and Settlement Class
26 Members’ premiums were subjected to the Challenged Increase and they either paid the rate
27 increase or reduced their benefits.

28

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

2 Plaintiffs are adequate Class Representatives because their claims are not antagonistic to
3 the claims of the Settlement Class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.)
4 Plaintiffs have prosecuted this case faithfully for many years, have responded to extensive
5 discovery, including numerous depositions, and have provided ongoing assistance to Plaintiffs’
6 counsel on many issues relating to the claims, including working diligently to assist on the Prior
7 Settlement as well as this Second Settlement.

8 Plaintiffs have selected Class Counsel with extensive experience in class action litigation,
9 including matters that include contract and insurance disputes. As described in the Nelson
10 Declaration, Class Counsel have represented plaintiffs in class actions involving insurance,
11 securities, antitrust, telecommunications, employment, and consumer claims for decades.

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

13 Certification for settlement purposes presents a superior means for resolution. The
14 Settlement Class is comprised of more than 79,500 individuals, and a class-wide resolution is far
15 superior to thousands of individual claims. Moreover, given the costs associated with this type of
16 litigation, most Class Members would be unable to seek redress for their losses absent class
17 treatment.

18 **V. CLAIM REQUIREMENT**

19 As detailed further below, Settlement Class Members who fall into Category A (i.e. those
20 who are current policyholders and who are not on claim) and those who fall into Categories B and
21 C (policyholders who are on claim), will be entitled to either ask for a return of 80% of all
22 premiums paid (less benefits received) in exchange for giving up their CalPERS LTC policies *or*
23 retain their policies and accept a cash payment of \$1,000 and obtain the benefit of a premium
24 increase moratorium up to November 2024. The Notice makes clear that for those in Categories
25 B and C, electing a premium refund and cancelling their policy is likely not in their best interests
26 and they are urged to call Class Counsel to discuss the issue before making their selection. If a
27 Settlement Class Member fails to submit an election, the member will be deemed to have elected
28 to retain their policy and receive the cash payment. Settlement Class Members who allowed their

1 policies to Lapse (Categories D and E) will have to return a form confirming that the Challenged
2 Increase was a substantial factor in allowing the policy to Lapse.

3 Class Counsel with the Settlement Administrator have created a telephone call center that
4 will provide information to Settlement Class Members along with an email address to which
5 Settlement Class Members can direct inquiries which will be responded to by Class Counsel or the
6 Settlement Administrator. In addition, Class Counsel will be available to answer any questions by
7 Settlement Class Members.

8 VI. MISCELLANEOUS

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

10 The settlement does not include terms that are outside the scope of the operative complaint.

11 B. The Class Notice Will Only be In English

12 The Settlement Class is comprised of current and former California government employees
13 and their families. There is no evidence that notice should be given in anything other than English.
14 The Towers Watson Settlement, the litigation notice, and the Prior Settlement notice were in
15 English only. There is nothing to suggest that Settlement Class Members had difficulty reading
16 the prior notices.

17 C. Affirmative Obligations of Settlement Class Members

18 The sole affirmative obligation required of Settlement Class Members involves (a) those
19 who fall into Category A, B and C who are asked (but not required) to return the Award
20 Acknowledgment Form and (b) those in Categories D and E, who must return a Lapse Claim Form.

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

22 Class Counsel have agreed to the following division of attorneys' fees which has been
23 approved in writing by Plaintiffs: Shernoff Bidart Echeverria LLP to receive 23.000%; Nelson &
24 Fraenkel LLP to receive 33.333%; Kershaw Cook & Talley PC to receive 33.333%; and Bentley
25 & More LLP to receive 10.333%. Each of the foregoing firms has been heavily involved in the
26 prosecution of the action over the nearly 10 years the matter has been pending, and costs have been
27 incurred by the firms in roughly the same proportionate split as the fees.

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

No provision in the Second Settlement provides for injunctive relief against any Plaintiff.

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VII. GENERAL TERMS OF THE SETTLEMENT

A. The Basics

1. The Class Definition

The Second Settlement provides for the certification of a Settlement Class. The definition of and scope of the Settlement Class is described above in Section IV.A.

2. The Class and Release Period

The Class and Release periods do not extend beyond preliminary approval. The Settlement Class is defined as individuals who, in the past, purchased LTC1 and LTC2 policies with automatic inflation protection benefits 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. However, it should be noted that 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 primary purpose of this provision is to ensure that any Settlement Class Member who goes on Claim between Preliminary Approval and the Final Settlement Date will still be able to receive the benefits afforded by their CalPERS LTC Policy.

3. The Scope of the Release

The scope of the release for Participating Settlement Class Members is set forth in Paragraph 1 (for the definition of “Claims” and “Released Claims”) and Paragraph 8 (“Releases and Waivers of Rights”) of the Second Settlement Agreement. The release is a release of all claims relating to or arising out of any and all claims which were or could have been pled as part of this action based on the facts alleged therein and which arise out of the Challenged Increase. Claims unrelated to the Challenged Increase are not being released.

4. The Civil Code Section 1542 Waiver Applies only to the Plaintiffs

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

5. The Release Effective Date

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

1 **6. There are no Confidentiality Provisions that impede Class Counsel’s**
2 **fiduciary duties**

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

7 **B. The Monetary Terms of the Settlement**

8 **1. The Total Settlement Amount**

9 Depending on various factors, Plaintiffs’ experts have estimated that CalPERS will pay
10 approximately \$820 million to Participating Settlement Class Members.¹⁰ Participating Settlement
11 Class Members shall be eligible for the benefits based on their “Final Settlement Category,” which
12 category shall be determined on the Final Settlement Date. The monetary benefits associated with
13 the Final Settlement Category are described in Exhibit A attached hereto.

14 The settlement categories account for differences in the relative strengths and weaknesses
15 of the claims of the various Settlement Class Members. Category A is comprised of current
16 policyholders who are *not on claim* and who paid the Challenged Increase or reduced their
17 benefits. Those who fall into Category A on the Final Settlement Date will receive a return of 80%
18 of all premiums paid (less any benefits received) with an \$8,000 mandatory minimum in exchange
19 for giving up their policies; or if the Participating Settlement Class Member elects to retain their
20 CalPERS LTC Policy, they will receive a \$1,000 cash payment. Class Members in Category A
21 also receive the benefit of CalPERS’ agreement not to increase premiums before November 2024.

22 In contrast, Settlement Class Members who fall into Categories B or C are *on claim* and
23 will retain their policies unless they request to receive a premium refund. Specifically, they will
24 receive a cash payment of \$1,000 if they retain their policies but can, if they wish, give up their
25 policies and receive 80% of all premiums paid less benefits received.

26 Participating Settlement Class Members who allowed their CalPERS LTC Policy to lapse
27 (Categories D and E) will receive either a return of 40% of all premiums paid (less any benefits)

28 _____
¹⁰ Participating Settlement Class Members are Settlement Class Members who do not opt-out.

1 or 80% of all Additional Premiums paid or \$2,000 as a mandatory minimum, depending on the
2 date of lapse. And the estates of those Settlement Class Members who died since February 2013
3 (Categories F and G) will receive either 80% of all Additional Premiums paid if they paid the
4 Challenged Increase; or, if they reduced their benefits, 80% of any Additional Premiums paid or
5 \$2,000 (whichever is greater).

6 In addition to the foregoing benefits, the Settlement also provides for up to \$80 million for
7 attorneys' fees, litigation costs, Service Awards to the Plaintiffs and Settlement Administration
8 costs, subject to this Court's approval.

9 CalPERS will fund the Settlement within 75 days of the Final Settlement Date. The timing
10 for funding the Settlement is due to a 45-day period required for CalPERS to identify and report
11 on the Final Settlement Categories for each Participating Settlement Class Member and to calculate
12 the total amount of premiums paid to that date, and a further 30-day period for CalPERS to
13 liquidate assets necessary to fund the balance.

14 Participating Settlement Class Members will be issued checks by the Settlement
15 Administrator within 30 days of the date CalPERS funds the Settlement.

16 ***2. Attorneys' Fees, Costs of Litigation, Costs of Settlement Administration,
17 and Service Awards***

18 The \$80 million that CalPERS will pay in addition to benefits to be provided to the
19 Participating Settlement Class Members will be used to pay unreimbursed costs incurred by Class
20 Counsel in the prosecution of this matter, which are estimated to be no more than \$2,500,000;¹¹
21 Service Awards to the Plaintiffs, which shall be no more than a total of \$85,000; Settlement
22 Administration Expenses, which are estimated to be \$5 million; and attorneys' fees of no more
23 than \$73 million, an amount estimated to be approximately 9% of the estimated Total Settlement
24 Amount.

25 To the extent any amount remains in the Settlement Fund after payments are made, the
26 funds will be distributed on a proportionate basis to Participating Settlement Class Members.

27 _____
28 ¹¹ From the proceeds of the prior settlement with the Towers Watson Defendants, Class Counsel
was reimbursed \$1,601,648.44 in costs. The total paid by Class Counsel for litigation costs from
inception to present is in excess of \$4 million.

1 Should any remaining amount result in a payment that is less than \$10 per Participating Settlement
2 Class Member, the funds will be distributed to an appropriate *cy pres* recipient to be identified by
3 the Parties at the hearing on Final Approval. Any checks that are uncashed by Participating
4 Settlement Class Members will be paid to the Unclaimed Property Section of the California State
5 Controller for the benefit of the Participating Settlement Class Member whose check remains
6 uncashed. The Settlement Administrator will pay the funds to the California State Controller
7 within thirty (30) days of the Court’s Order directing payment of the funds to the State Controller.¹²

8 **C. Subclasses**

9 The benefits available to Participating Settlement Class Members are dependent on the
10 policyholder’s category on the Final Settlement Date. The settlement categories provide for
11 different benefits dependent on whether the Settlement Class Member is a current policyholder
12 who is not on claim, is on claim, died, or allowed their CalPERS LTC Policy to lapse. These
13 categories and their benefits take into account the relative strengths of the claims of the Settlement
14 Class Members and further recognize that those who are on claim should not have to surrender
15 their policies to receive any settlement benefits.

16 Richard and Eileen Lodyga are current policyholders who are not on claim. Ms. Wedding
17 very recently has gone on claim. Prior to that, Ms. Wedding paid the Challenged Increase and Mr.
18 and Mrs. Lodyga reduced their benefits.

19 **D. The Services Provided by the Plaintiffs have Been Extraordinary**

20 Plaintiffs seek approval of a total service award of \$85,000. From that, \$35,000 will be
21 paid to Mrs. Wedding and \$25,000 each to Mr. and Mrs. Lodyga. Plaintiffs have provided
22 extraordinary help throughout this litigation, including producing hundreds of pages of documents
23 from their files and the files of other Class members, responding to formal discovery requests
24 including interrogatories, being deposed multiple times, attending many days of mediations,

25 _____
26 ¹² The schedule provides that 365 days after the Final Settlement Date, Class Counsel and the
27 Settlement Administrator will submit a report to the Court outlining all payments that have been
28 made, the funds remaining in the Settlement Account, and identifying any uncashed checks issued
to Participating Settlement Class Members. At that time, Class Counsel will request an Order from
the Court directing the Settlement Administrator to pay any funds for the uncashed checks to the
State Controller’s Unclaimed Property Fund.

1 meeting with Class Counsel to assist in analyzing the claims and providing information not only
2 as to Plaintiffs' claims but also information regarding other Class members, reviewing and
3 commenting on multiple documents and attending the Phase 1 portion of the trial, and attending
4 hearings in this case, including hearings on summary judgment, final settlement approval as to the
5 Towers Watson settlement, and the preliminary approval hearing for the Prior Settlement. Further
6 information on the work of Plaintiffs is outlined in the Nelson Declaration.

7 **E. Attorneys' Fees will Be Calculated on a Lodestar Basis With a Percentage of the**
8 **Total Settlement Award as a Cross Check**

9 Class Counsel will request, and CalPERS agrees not to oppose, that the Court award
10 up to \$73 million in attorneys' fees, an amount estimated to be 9% of the estimated value of
11 all settlement benefits, including the value of the prior Towers Settlement. In addition, Class
12 Counsel will seek to recover their out-of-pocket costs incurred to date, and unreimbursed
13 since the prior class settlement with Towers Watson, in an amount up to \$2,500,000 as well
14 all Settlement Administration costs incurred for the Prior Settlement (except for \$900,000
15 paid by CalPERS) and this Second Settlement. It is estimated that the amount of the total
16 Settlement Administration costs to be paid will be \$5 million. Attorneys' fees shall be paid
17 solely from the \$80 million to be paid by CalPERS over and above the amount of the benefits
18 afforded to Participating Settlement Class Members and will be limited to the extent of the
19 money available after an award of costs, Plaintiffs' Service Awards, and Settlement
20 Administration expenses.

21 **F. Reversions to the Defendant**

22 If the Second Settlement becomes final, then no funds will revert to the Defendant
23 under any circumstance.

24 **G. Payment Formula**

25 Participating Settlement Class Members will be entitled to receive benefits based on
26 their Final Settlement Category and their election among the available options. The amount
27 to be paid will be dependent on the premiums paid, less benefits received, and whether the
28 policyholder is current and not on claim, died, or allowed the policy to lapse. It is estimated
that Category A Settlement Class Members who elect a premium refund will receive on

1 average approximately \$40,000, though this amount could be more or less depending on the
2 premiums paid since inception of the policy and the amount of any benefits paid. For most
3 Participating Settlement Class Members, Settlement checks will be issued no later than 105
4 days after the Final Settlement Date.

5 **H. Tax Allocation of Settlement Payments**

6 Settlement payments, in whole or in part, may be taxable depending on the manner in which
7 the policyholder accounted for the premium payments during their policy period. Settlement Class
8 Members are being informed in the Class Notice that they should communicate with their
9 accountants to determine whether there will be any tax consequence to them from the Second
10 Settlement.

11 **I. Injunctive Relief**

12 The Second Settlement provides that for a period up to November 2024, CalPERS will not
13 impose a premium increase on Participating Settlement Class Members.

14 **VIII. NOTICE ADMINISTRATION**

15 **A. The Settlement Administrator and its Qualifications**

16 Plaintiffs seek approval of the appointment of Epiq Global (“Epiq”) to act as Settlement
17 Administrator. Epiq’s experience is outlined in the declaration of Cameron R. Azari, previously
18 filed on July 12, 2021. Epiq is uniquely qualified to administer this Settlement, which is
19 exceedingly complex and will require extensive communication with Settlement Class Members,
20 many of whom are elderly, because Epiq handled the administration of the Prior Settlement. Class
21 Counsel have monitored the extensive work performed by Epiq as to the Prior Settlement and
22 know that the work was done professionally and competently.

23 **B. CalPERS Has Provided the Settlement Class List to the Settlement Administrator
and the List is Being Updated**

24 The Settlement Administrator was previously provided with the list of Settlement Class
25 Members for the Prior Settlement and the Administrator has maintained updated records for
26 Settlement Class Members. In addition, CalPERS will be providing updated data (current as of
27 December 31, 2022) necessary for the Settlement Administrator to prepare and send the Individual
28

1 Settlement Award Forms identifying the Initial Settlement Category and the benefits that each
2 Settlement Class Member will receive.

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

4 The proposed Notice process will be as follows:

5 **U.S. Mail and E-mail Notice:** By April 7, 2023, the Settlement Administrator shall send
6 the Class Notice to Settlement Class Members by U.S. Mail and email to those Settlement Class
7 Members for whom the Settlement Administrator has email addresses.

8 **Telephonic Call Center:** The Settlement Administrator shall establish a telephonic call
9 center for Settlement Class Members, where members can obtain answers to most questions
10 regarding the settlement. In addition, an email address will be provided to Settlement Class
11 Members where they can direct inquiries that will be responded to by Class Counsel.

12 **D. The Class Notice Complies with CRC Rule 3.766(d)**

13 The Class Notice is attached as Exhibit A-1 to the Proposed Preliminary Approval Order
14 and complies with Rule 3.766(d) in that it informs the Settlement Class of the following:

- 15 (1) A brief explanation of the case, including the basic contentions or denials of the parties;
- 16 (2) A statement that the Court will exclude the member from the Settlement Class if the
17 member so requests by a specified date;
- 18 (3) A procedure for the member to follow in requesting exclusion from the Settlement
19 Class;
- 20 (4) A statement that the Second Settlement and Release will bind all members who do not
21 request exclusion; and
- 22 (5) A statement that any member who does not request exclusion may, if the member so
23 desires, enter an appearance through counsel.

24 (California Rules of Court Rule, 3.766(d).)

25 Along with the Class Notice, Settlement Class members will receive a letter and Award
26 Form that is tailored to each category that informs each Settlement Class Member of: (1) the
27 amount they may receive under the Settlement if their Initial Settlement Category does not change
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1 prior to the Final Settlement Date and how that amount was calculated;¹³ (2) the Settlement Class
2 Member’s current address and point of contact; (3) an explanation that if the Settlement Class
3 Member is in Category A, B or C and elects a premium refund they will Surrender their CalPERS
4 LTC Policy, *or* if the policyholder elects to retain their policy they will receive a \$1,000 cash
5 payment and retain all the benefits of the policy; and (4) an explanation that Category A Settlement
6 Class Members must continue to pay premiums to CalPERS at the level set by CalPERS until the
7 Final Settlement Date in order to obtain the benefits of the Settlement. The Class Notice will also
8 include a letter from Class Counsel and the Plaintiffs that outlines the Second Settlement and
9 explains the reasons for the settlement.

10 For those in Category A, B or C, the Class Notice will direct the Settlement Class Members
11 to an online portal where they can select the option of either (i) a reimbursement of premiums and
12 the surrender of their CalPERS LTC policy or (ii) retaining their CalPERS LTC policy and
13 receiving a \$1,000 cash payment, and acknowledges that the Category A Settlement Class
14 Members must continue to pay premiums to CalPERS until the Final Settlement Date. For those
15 unable to utilize the online portal, the Class Notice will provide information for Settlement Class
16 Members to obtain an Election Form that can be completed and returned by U.S. Mail. The
17 Election Form is to be completed online or returned within 60 days of the mailing of Notice.

18 Settlement Class Members in Categories D and E, who let their policies lapse as a result of
19 the challenged increase, must complete and submit a claim form no later than 60 days after the
20 Notice Date stating under penalty of perjury that they permitted their policies to lapse as a result
21 of the Challenged Increase—the “Lapse Claim Form.” This form will be available electronically
22 through an online portal. Any Lapse Claim Forms submitted in connection with the Prior
23 Settlement will be counted as a Lapse Claim Form submitted in connection with the Second
24 Settlement as well.

25 **E. Settlement Class Members Are Informed of the Court’s Social Distancing**

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

1 **Procedures**

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

5 **F. The Manner in Which Payments Will Be Processed**

6 The Class Notice informs Settlement Class Members that Settlement checks will be
7 mailed out by the Settlement Administrator following the Final Settlement Date, without the
8 need for any further action by the Participating Settlement Class Members.

9 **G. Notices Returned as Undeliverable**

10 The Settlement Administrator will remail any Class Notice returned as undeliverable
11 to any updated addresses available through the U.S. Postal Service forwarding information
12 database, and in addition will conduct skip trace searches for any Class Notice returned
13 undeliverable without forwarding information.

14 **H. The Manner in Which Rемаiled Notices Will be Handled**

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

17 **I. Notice of a Change in the Hearing Date or Location**

18 The Class Notice advises Settlement Class Members that the hearing date or time may
19 be changed without further notice. Any such change will be posted on the Settlement website.

20 **J. The Settlement Website**

21 A website at www.calpersltcclassaction.com was previously established by the Settlement
22 Administrator for the Prior Settlement and it will be updated with information regarding the
23 Second Settlement, including the Second Settlement Agreement, the Long Form Notice, the
24 Preliminary Approval Order, and such other documents regarding the Second Settlement as the
25 Parties agree are necessary. The website shall be maintained throughout the settlement process
26 and after the Order and Final Judgment are issued. Settlement Class Members will each be
27 provided with a unique personal-identification number to enter an electronic portal maintained by
28 the Settlement Administrator for information individual to the Settlement Class Member and to
complete the Election or Lapse Form.

1 **K. Publication Notice**

2 There will be no published notice of this Second Settlement.

3 **L. Notice of Final Judgment**

4 Upon the granting of final approval of the Second Settlement, notice of entry of the Order
5 and Final Judgment will be posted on the settlement website described above.

6 **IX. RESPONSES TO NOTICE**

7 **A. Description of the Procedures for Submitting Written Objections, Requests for
8 Exclusion and Award Acknowledgement Forms, and Disputes as to Estimated
9 Payments or Categories**

10 The Parties are proposing a schedule for dissemination of Class Notice that includes
11 deadlines for objecting to the Second Settlement, opting out of the Second Settlement, and
12 submission of the Award Acknowledgement Forms along with a hearing on final approval and
13 other relevant dates. The proposed Schedule is set forth in Exhibit B hereto and the procedures
14 are outlined below.

15 **B. The Manner in Which Settlement Class Members May Object**

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

24 Settlement Class Members are informed that if they wish to appear at the Final Approval
25 Hearing and voice their objection without having submitted a written objection they may do so.

26 **C. Requests for Exclusion**

27 Despite the existence of a litigated Class, the Settlement Class differs from the prior Class
28 certified by the Court. The Second Settlement provides that in exchange for receiving a premium
refund, policyholders must surrender their CalPERS LTC Policy. As an alternative, policyholders
can elect to retain their policies and receive a \$1,000 cash payment. The Prior Settlement afforded

1 Settlement Class Members with the option of opting out. Given these facts, Class Counsel
2 determined that it was necessary to provide Settlement Class Members with a renewed opportunity
3 to opt-out.

4 Each Settlement Class Member wishing to opt out of the Second Settlement must submit a
5 written and signed request to be excluded from the Second Settlement to the Settlement
6 Administrator. The Class Notice provides instructions to Settlement Class Members on how to
7 submit a Request for Exclusion. Settlement Class Members may submit the request in such other
8 form that provides the information identified in the Class Notice. The request must be signed and
9 postmarked no later than 60 calendar days from the date of mailing of the Class Notice (the
10 “Response Deadline”). The date of the postmark on the return mailing envelope shall be the
11 exclusive means to determine whether an exclusion request was timely submitted.

12 Class Counsel may communicate with those who opt-out to seek to have the Settlement
13 Class Member retract the exclusion request.

14 **D. Disputes as to Class Member’s Final Award**

15 To the extent any Class Member disputes their final category or the amount of their final
16 award, they may submit their dispute to the Settlement Administrator in writing. The dispute must
17 be post-marked no later than 30 calendar days after Settlement checks are issued by the Settlement
18 Administrator. The Settlement Administrator may submit any dispute to CalPERS and Class
19 Counsel for additional details, but the Settlement Administrator shall have sole authority to resolve
20 any such dispute and shall resolve the dispute and inform the Settlement Class Member of the
21 resolution within 30 days of the date of receipt of the dispute.

22 **E. CalPERS’ Option to Terminate the Second Settlement**

23 CalPERS shall have the option to terminate the Settlement after the Settlement
24 Administrator provides CalPERS with a list of opt-outs if more than 1% of the Settlement Class
25 (by policy count) timely and validly request to be excluded from the Second Settlement. CalPERS
26 shall make that decision within 10 days after the Settlement Administrator provides the Final
27 Settlement List unless CalPERS determines that it requires additional time to make the decision
28 but in no event shall it have more than 60 days to make the decision.

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X. CY PRES DISTRIBUTION

Settlement checks will remain valid for 90 days (3 months) after issuance. In the event 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 timely cash their Settlement checks 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 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.

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XI. THE CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

No action brought on behalf of a class may be settled, compromised, or dismissed without Court approval. (Cal. Rules of Court, Rule 3.769 (a).) There are three steps to the settlement approval process: (1) Preliminary approval of the proposed settlement at an informal hearing; (2) dissemination of notice of the settlement to class members; and (3) a final settlement approval hearing. This three-step settlement approval process is prescribed by the *Manual for Complex Litigation* and is widely followed in the federal circuits; and has been adopted by California courts. (*Manual for Complex Litigation, Fourth* § 21.63 (2004); *see also, Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1599-1602 (outlining the Class Action settlement-approval process).) Under this standard, a trial court's preliminary approval of a class action settlement is simply a conditional finding that on its face, the compromise appears to be within a range of acceptable agreements. Plaintiffs request that this Court take the initial step of granting Preliminary Approval of the Settlement under this framework.

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A. Preliminary Approval is Appropriate Where, as Here, the Proposed Settlement is Within the Range of Possible Final Approval

Settlements, in general, are highly favored by the courts. (*Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) Public policy generally favors compromise of complex class-action litigation. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723 fn. 14 (*citing, 4 Alba Conte & Herbert Newberg, Newberg on Class Actions* (4th ed. 2002) Settlement of Class

1 Actions, §11:41 pp. 87-88.)

2 In evaluating a class action settlement, this Court has broad powers to determine whether
3 a proposed settlement is fair and reasonable under the circumstances of the case. (*Wershba v.*
4 *Apple Computer, Inc.*, 91 Cal.App.4th at 234-235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d
5 434, 438.) There is a presumption of fairness when the settlement is the product of arm's length
6 negotiations; investigation and discovery have taken place sufficient to permit counsel and the
7 court to act intelligently; counsel are experienced handling in similar litigation; and the percentage
8 of objectors is small. (*In re Microsoft I-V Cases, supra*, 135 Cal.App.4th at 723; *Dunk v. Ford*
9 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

10 Before granting final approval of a proposed class settlement, the court must scrutinize the
11 proposed settlement "with the purpose of protecting the rights of the absent class members who
12 will be bound by the settlement." (*Wershba, supra*, 91 Cal.App.4th at 245.) In granting
13 preliminary approval, a court need only find the settlement falls within the range of possible final
14 approval. (*Holden v. Burlington Northern, Inc.* (D. Minn. 1987) 665 F.Supp. 1398, 1402; *In re*
15 *Montgomery County Real Estate Anti. Litig.* (D. Md. 1979) 83 F.R.D. 305, 313.)

16 **B. The Second Settlement Is Presumptively Fair**

17 All three of the applicable prerequisites for presumptive fairness for preliminary approval
18 are present here: (1) the Second Settlement is the result of arm's length bargaining by the Parties
19 and their counsel and was only achieved through extensive mediation before a highly-experienced
20 mediator after the termination of the Prior Settlement; (2) the Parties have conducted extensive
21 discovery, have briefed dispositive motions, have participated in Phases 1 and 2 of trial, and have
22 significantly prepared for Phase 3 of trial; (3) Plaintiffs are represented by counsel with many years
23 of experience in litigating class actions who have negotiated numerous other class settlements
24 approved by courts throughout California and the United States; and (4) Plaintiffs and Class
25 Counsel received extensive information as to the position of Settlement Class Members with
26 respect to the CalPERS LTC policies.

27 ***1. The Proposed Settlement Meets the Criteria for Preliminary Approval***
28 ***Because It Is Fair, Reasonable, and Adequate under the Circumstances***

In reaching a determination as to the fairness, adequacy, and reasonableness of a proposed

1 class settlement, the Court is to consider the strength of plaintiffs’ case, the risk, expense and likely
2 duration of further litigation, the settlement amount, the stage of the proceedings, the views of
3 class counsel, and the reaction of the class members. (*In re Microsoft I-V Cases, supra*, 135
4 Cal.App.4th at 723; *7-Eleven Owners For Fair Franchising, supra*, 85 Cal.App.4th at 1146; *Dunk,*
5 *supra*, 48 Cal.App.4th at 1801.)

6 Even though Plaintiffs firmly believe that their claims against CalPERS are meritorious,
7 there are risks associated with further litigation. There is no guarantee of success at trial, either as
8 it relates to establishing that the Challenged Increase was “as a result” of the Inflation Protection
9 benefits or in establishing the type, and amount, of damages that might be awardable. The risks
10 of continued litigation, and the vagaries of a trial by jury in a complex, multi-year case, are hard
11 to predict, and subject Plaintiffs to the risk of an unfavorable outcome at trial.

12 There is a further reason for granting preliminary approval—the current status of the
13 CalPERS LTC program, which Plaintiffs believe is at financial risk. In 2020, CalPERS announced
14 a further rate increase that was implemented in 2021 and 2022 and resulted in a 90% increase. If
15 Plaintiffs are successful at trial, the amount of a verdict may further jeopardize the LTC Fund, and
16 whether the State of California will step in to fund any verdict is uncertain. Should the LTC Fund
17 be placed in further financial difficulty it may be unable to pay benefits or be forced to further
18 increase premiums—an unwanted outcome for Settlement Class Members.

19 The procedural history of the case also confirms the reality of the foregoing risks. Since
20 the filing of the case, the Class claims have been pared down through dispositive motions and the
21 Phase 1 trial. The Parties are facing a lengthy, costly, and complicated Phase 3 trial which, as with
22 all trials, entails the risk of a loss. Even if Plaintiffs prevailed, the specter of an appeal would
23 remain, and the Court would remain free to decertify at any time up to and during trial.

24 The benefits obtained under the Second Settlement are substantial, especially when the
25 potential value of the Settlement Class’s claim against CalPERS is weighed against the risks that
26 CalPERS would prevail at trial or on appeal. These benefits must be weighed against the risks of
27 continued litigation, including the risk that Plaintiffs might not prevail on their claims.

28 Once notice is disseminated, Settlement Class Members will be able to review the Second

1 Settlement and react, including by opting out or objecting, and the Court will be able to evaluate
2 their reaction.

3 In short, the Second Settlement has no deficiencies that would require it to be rejected.
4 Further, the Court should grant preliminary approval of a class settlement if its preliminary
5 evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other
6 obvious deficiencies, such as unduly preferential treatment of the class representatives or of
7 segments of the class, or excessive compensation for attorneys, and appears to fall within the range
8 of possible approval. (Conte & Newberg, *supra*, at § 11:25; citing, *Manual for Complex Litigation*,
9 *Third* § 30.41; see also, *In re Shell Oil Refinery* (E.D. La. 1993) 155 F.R.D. 552, 555.)

10 **2. The Notice Meets Applicable Legal Standards and Due Process**

11 The method and content of notice should fairly apprise the Class of the terms of a settlement
12 and the options available to each member and it should be designed to reach a substantial
13 percentage of the class. (*Phil. Housing Auth. v. Am. Radiators & Std. Sanitary Corp.* (E.D. Pa.
14 1970) 323 F.Supp. 364, 378; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.)

15 The proposed Class Notice describes the terms of the Second Settlement and the proposed
16 plan with respect to the distribution of the settlement funds to the Participating Settlement Class
17 Members. The Class Notice informs Settlement Class Members of how they may opt-out of or
18 object to the Second Settlement and the schedule for final approval. The Class Notice also informs
19 the Settlement Class of the scope of the release, including that upon acceptance of the Second
20 Settlement those Participating Settlement Class Members who elect a premium refund must
21 surrender their CalPERS LTC Policy. In short, the proposed Notice describes the Second
22 Settlement with enough specificity to allow Settlement Class Members to decide whether they
23 should accept the benefits offered or opt-out or object to the Second Settlement.

24 **XII. CONCLUSION**

25 For all of the foregoing reasons, Plaintiffs respectfully request that the Court issue an
26 Order: (i) Granting Preliminary Approval to the Proposed Second Class Settlement; (ii) Certifying
27 the Settlement Class for settlement purposes only; (iii) Approving the Form and Manner of Notice;
28 (iv) Appointing Epiq as Settlement Administrator; (v) Establishing a schedule for the provision of

1 Notice of the Second Settlement to the Members of the Class; and (vi) Setting a Final Approval
2 Hearing.
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1 Date: February 27, 2023

Respectfully submitted,

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BENTLEY & MORE LLP

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By:  _____

4

GREGORY L. BENTLEY

5

MATTHEW W. CLARK

6

Attorneys for Plaintiffs and the Class

7 Date: February 27, 2023

Respectfully submitted,

8

KERSHAW TALLEY BARLOW PC

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By:  _____

10

STUART C. TALLEY

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Attorney for Plaintiffs and the Class

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13 Date: February 27, 2023

Respectfully submitted,

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NELSON & FRAENKEL LLP

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By: _____

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GRETCHEN M. NELSON

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Attorneys for Plaintiffs and the Class

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19 Date: February 27, 2023

Respectfully submitted,

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MICHAEL J. BIDART

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Attorneys for Plaintiffs and the Class

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Attorneys for Plaintiffs and the Class

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22

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REID EHRLICH

24

Attorneys for Plaintiffs and the Class

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EXHIBIT A

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>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 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</p>

	<p>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> <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>

	Any Participating Settlement Class Member who does not submit an Election Form shall be deemed to have selected Option 2.
CATEGORY D. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between February 1, 2013 and December 31, 2014.	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.
CATEGORY E. Participating Settlement Class Members who let their CalPERS LTC Policy Lapse between January 1, 2015 and the Final Settlement Date	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.
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.	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.
CATEGORY G. Participating Settlement Class Members who passed away after February 1, 2013 and before the Final	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)

<p>Settlement Date, and who paid the Challenged Increase and never reduced benefits in response to the Challenge Increase.</p>	<p>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>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 cash payment of \$1,000 and shall retain their Policies and all benefits due thereunder.</p>

	Any Participating Settlement Class Members who does not return an Late Election Form shall be deemed to have selected Option 2.
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EXHIBIT B

<p>Deadline for Defendant to submit the Notice List to Class Counsel and Settlement Administrator (Second Settlement Agreement, Section 5.1)</p>	<p style="text-align: center;">March 8, 2023</p>
<p style="text-align: center;">Notice Date: Deadline for Settlement Administrator to Mail and Email the Class Notice to Settlement Class Members (Second Settlement Agreement, Section 5.3)</p>	<p style="text-align: center;">April 7, 2023 [30 days after receipt of data from Defendant]</p>
<p>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)</p>	<p style="text-align: center;">June 6, 2023 [60 days after the Notice Date]</p>
<p>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)</p>	<p style="text-align: center;">June 20, 2023 [14 days after the Response Deadline]</p>
<p>Deadline for CalPERS to Advise Class Counsel of Confirmation or Termination of Settlement (Second Settlement Agreement, Section 18.1)</p>	<p style="text-align: center;">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)]</p>
<p>Deadline for Class Counsel to file Motion for Final Approval of Settlement (Including Responses to</p>	<p style="text-align: center;">_____ [16 court days prior to Fairness Hearing]</p>

Any Objections) (Second Settlement Agreement, Section 3.3)	
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]
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]
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
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]
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]

<p>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)</p>	<p>15 days after Final Settlement Date]</p>
<p>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)</p>	<p>[30 days after Final Settlement Date]</p>
<p>Deadline for Participating Settlement Class Members to submit the Late Election Form (Second Settlement Agreement, Section 5.6)</p>	<p>30 days after Settlement Administrator mails the Late Election Form]</p>
<p>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)</p>	<p>[15 days after the expiration of the deadline for Participating Settlement Class Members to complete their Late Election Forms]</p>
<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)</p>	<p>[45 days after Final Settlement Date]</p>

<p>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)</p>	<p>[75 days after Final Settlement Date]</p>
<p>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)</p>	<p>[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]</p>
<p>Deadline for Settlement Administrator to Mail Checks to Participating Settlement Class Members (Second Settlement Agreement, Section 2.5)</p>	<p>[30 days after receipt of Settlement Fund from CalPERS or 105 days after the Final Settlement Date]</p>
<p>Deadline for Settlement Administrator to Mail Checks to Participating Settlement Class Members in Category I and eligible to reverse their elections under Section 5.7 (Second Settlement Agreement, Sections 2.1 and 2.5)</p>	<p>[30 days after CalPERS funds the Second Settlement for policyholders in Category I and eligible to reverse their elections under Section 5.7]</p>
<p>Deadline for Participating Settlement Class Members to submit any dispute as to Final Settlement Category or Final Settlement Award (Second Settlement Agreement, Section</p>	<p>[30 days after Settlement Administrator Mails Settlement checks]</p>
<p>Deadline for Settlement Administrator to Resolve any Disputes Submitted by Participating Settlement Class Members (Second Settlement Agreement, Section 2.4)</p>	<p>[30 days after the deadline for all disputes to be submitted]</p>

<p>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)</p>	<p>[14 days after Settlement Administrator resolves any disputes in the Participating Class Members favor]</p>
<p>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)</p>	<p>[15 days after CalPERS funds the monies owed as a result of the resolution of the dispute]</p>
<p>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)</p>	<p>[365 days after Final Settlement Date]</p>

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 601 So. Figueroa Street, Suite 2050, Los Angeles, California 90017.

On **July 12, 2021**, I served the foregoing documents described as **Plaintiffs Notice of Motion and Motion for Preliminary Approval of Class Action Settlement** on the interested parties in this action in the manner set forth below:

PLEASE SEE ATTACHED SERVICE LIST

BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

VIA ELECTRONIC SERVICE VIA CASE ANYWHERE through electronic transmission to all parties appearing on the electronic service list.

BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

VIA EMAIL I caused the document to be served via electronic mail to the email addresses listed on the service list

BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

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

Executed on **July 12, 2021**, at Los Angeles, California.

Karina Torres
Printed Name

Signature

SERVICE LIST

<p>Sheldon Eisenberg Adam Thurston Erin E. McCracken DRINKER BIDDLE & REALTH LLP 1800 Century Park East, Suite 1400 Los Angeles, CA 90067-571 Telephone: (310)203-4000 Facsimile: (310)229-1285 Email: Sheldon.eisenberg@dbr.com Adam.thurston@dbr.com</p>	<p><i>Attorneys for Defendant</i> CalPERS <i>Attorneys for Respondents</i> Rob Feckner; George Dier Michael Bilbrey; Richard Costigan JJ Jelincic; Henry Jones Priya Mathur; Bill Slaton</p> <p>E-SERVICE</p>
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<p>MORRISON & FOERSTER LLP ALLYSON R. BENNETT (SBN 302090) abennett@mofocom KATHERINE E. McNUTT (SBN 320128) kmcnutt@mofocom TIMOTHY A. TROST (SBN 340843) ttrost@mofocom 707 Wilshire Boulevard, Suite 6000 Los Angeles, CA 90017-3543 Telephone: 213-892-5200 Facsimile: 213-892-5454</p> <p>DARALYN J. DURIE (SBN 169825) ddurie@mofocom RAGESH K. TANGRI (SBN 159477) rtangri@mofocom ADAM R. BRAUSA (SBN 298754) abrausa@mofocom GALIA Z. AMRAM (SBN 250551) gamram@mofocom 425 Market Street San Francisco, CA 94105-2482 Telephone: 415-268-7000 Facsimile: 415-268-7522</p>	<p><i>Attorneys for Defendant</i> <i>CALIFORNIA PUBLIC EMPLOYEES'</i> <i>RETIREMENT SYSTEM</i></p> <p>E-SERVICE</p>