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SHERNOFF BIDART ECHEVERRIA LLP — LAWYERS FOR INSURANCE POLICYHOLDERS

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BENTLEY & MORE — TELLING YOUR STORY

CalPERS Long-Term Care Class Action

Letter From Plaintiffs and Class Counsel Regarding New Settlement

Legal Name:

CalPERS Policy Number:

Current Address:

Dear,

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

A. Overview

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

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

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

- Notice of Class Action Settlement
- Individual Award Letter

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

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

B. What Happened to the Prior Settlement?

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

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

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

C. What are the Terms of the New Settlement?

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

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

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

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

Third, Class Members who are "On Claim" (meaning they are currently receiving benefits or have applied for and may receive benefits under their policy prior to the New Settlement becoming final), will also have the option of cancelling their policy and receiving an 80% premium refund (less benefits received) or keeping their policy in exchange for a cash payment of $1,000. Class Members who let their policies Lapse, exhausted their benefits, or who passed away before going On Claim will receive certain cash benefits which are outlined in the Notice on pages 2 and 3.

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

D. What Will I Receive Under the New Settlement?

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

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

E. Why is Class Counsel Recommending the New Settlement?

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

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

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

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

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

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

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

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

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

If you have questions about the New Settlement that are not answered in the enclosed documents, you will find additional information on the Settlement website at www.CalPERSLTCClassAction.com. If your questions are still not answered, you can call 1-866-217-8056.

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

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